



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/04252

Date and time of decision: 4 October 2018 11:30:00

D Hughes, 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 citizen of Afghanistan. He applied for a protection visa on 28 June 2017. A delegate of the Minister for Immigration refused to grant the visa on 30 January 2018.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The applicant has made two submissions to the IAA through his representative. The first submission reaffirms the applicant's existing claims, responds to the delegate's findings and relies on country information that was before the delegate. I am satisfied the submission does not contain new information.
4. The second submission contains new country information. Specifically, a news article about a Taliban attack in Parwan dated 30 September 2017, a Tolo News article from the same date about the same incident, a Tolo News article from 2 October 2017 about the retaking of Taliban controlled areas in Parwan, a Reuters article from 13 June 2016 about road security in Afghanistan, and an Afghanistan Analysts Network article from 7 November 2017 about Taliban attacks in October of that year. The representative contends that information about the risks on this route through Parwan could not have been put to the Minister previously as it arises from combination of the reasoning in the decision and the new information about the applicant's change of circumstances. As such, she states it constitutes exceptional circumstances.
5. While not referring to the specific incidents in Parwan, submissions on the issues of relocation, road security and the applicant's individual circumstances were advanced by the applicant post-interview. Significantly, each of the new pieces of country information provided predates the delegate's decision. Looking to all the circumstances, I am not satisfied that the new country information contains credible personal information, or that it was not, and could not have been, provided to the Minister before the delegate made the decision on 30 January 2018. Furthermore, while I accept this is specifically relevant country information, I do consider the applicant benefitted from representation at the visa interview and in the post-interview submission. I am satisfied the previous representative was alive to the determinative issues. Viewed together, I am not satisfied there are exceptional circumstances to justify considering the new information.
6. The submission contains credible new personal information from the applicant, including a letter from a Clinical Psychologist dated [in] February 2018, a letter from his treating GP dated [in] February 2018, and a new statutory declaration from the applicant, dated 22 February 2018, in which he updates his psychological and employment status and the relevance to his claims. I accept this is credible personal information that was not previously known and, had it been known, may have affected consideration of the applicant's claims. I accept the submissions that this evidence has bearing on the applicant's credibility, his substantive claims, most notably in terms of relocation, but also in terms of his ongoing mental health and capacity to return to Afghanistan more generally. I am satisfied there are exceptional circumstances to justify considering the new information.

7. In undertaking this assessment, I have obtained and had regard to new information, specifically reports discussing the risks to Shia Hazaras, Hazara farmers and returnees (from the west) in Afghanistan. The analysis from these reports relates to specific profile groups the applicant falls within, and I consider it critical to have regard to the most up-to-date analysis about these risk profiles, in particular given the fluid security situation in the country, and the age of some of the reports cited. For instance, the November 2016 EASO report is almost two years old at the date of this decision. I am satisfied there are exceptional circumstances to justify consideration of this new information.¹

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
- He is an ethnic Hazara and a Shia Muslim.
 - He was born [in year] in a village in [District 1], Maidan Wardak Province, Afghanistan.
 - His family lived and owned a farm in the area. His family and the Hazara community in his home area clashed with Kuchi (Pashtun) Nomads, who would seek to use their land to graze their animals.
 - Around 11/12 years ago, his mother and brother were killed by the Kuchi. Several other people were also killed. These attacks continued every year around the summer season. Some people were taken captive, some were injured in skirmishes, and some were killed. His family fled several times over the years. On two occasions his home was burned.
 - He decided to flee Afghanistan, but his family have remained in the same area because they do not have anywhere else to go. If he returns to his home area, he fears he will be killed by the Kuchi or local Taliban.
 - He also fears that if he returns to Afghanistan, he will be tortured or killed by the Taliban and Daesh (Islamic State) because of his Shia Islam religion and Hazara ethnicity.
 - He fears the Taliban and Daesh may think he is a spy for Australia or Iran and they may think he has changed his religion because he has lived in a western country.
 - He is unable to relocate to another area because the risk of harm extends throughout the country.

Refugee assessment

9. 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.

¹ EASO, "Afghanistan: Individuals targeted by armed actors in the conflict", 12 December 2017, CISED50AD7868; EASO, "Afghanistan: Individuals targeted under societal and legal norms", 12 December 2017, CISED50AD7870.

Well-founded fear of persecution

10. 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.
11. I accept the applicant's identity as claimed. I acknowledge there were some discrepancies in his earlier evidence, relating to his full name, his home area and the periods of his work in Kabul. The applicant appears not to have fully appreciated the importance of providing specific and accurate information about these matters until the visa interview. Having regard to his explanations, the timing of the arrival interview, and the fact that these matters were not ultimately material to his claims, I am prepared to accept his name, his home area and his work history in terms of Kabul.
12. I found his evidence about his religious and ethnic identity to be general, but freely given and free from embellishment. I accept he is a Shia Hazara.
13. The delegate did not accept the applicant's central claims as they related to the death of his mother and brother at the hand of Kuchi nomads in Maidan Wardak. The applicant's evidence on these matters was at times vague and lacking in detail. He was also not consistent in the claims, for example on the issue of whether other persons observed the killing of his family members, or whether they were killed by Kuchi or the Taliban. In that context, it was reasonable for the delegate to have concerns about this evidence, however there are a range of matters that I consider outweigh those concerns.
14. The applicant has consistently claimed that his family owned a farm in [District 1]. The applicant has also contended that he travelled from Wardak to Kabul every winter to find construction work. At the end of winter, in Spring, he would return to Wardak to assist his father on the family farm. I consider the applicant seeking work and income during the winter months when the farm would not have been producing crops or income is consistent with his claims to be from a farming family living in a mountainous region. The applicant has claimed to be from [District 1], an area where Kuchi nomads are active during the warmer months. I consider the applicant has provided a solid foundation for his claim that he is from a farming family in [District 1].
15. The applicant has consistently claimed that his mother and brother were killed by Kuchi nomads. At the arrival interview in 2013, he contended they had been killed around 8 years previously, being circa 2005. If that was the case, the applicant was [in age range] at the time of their deaths (around [age] years old). The applicant has had a limited education and, if the claims are accepted, he has also suffered the trauma of his family members being killed, and

escaping to another area (probably [another named district]) to find safety. The applicant has presented evidence of his [specified conditions] and other mental health concerns, which would potentially provide some corroboration of those claims, albeit incomplete and indirect evidence. In that context, I consider his age, limited education, past trauma, and current mental health potentially account for the inconsistencies in his evidence. Otherwise, his account of these matters has been consistent.

16. The delegate expressed concern that the applicant and his family would continue to live in [District 1] given the annual threat from the Kuchi, and the fact that his home had been burned twice, and two of his family members killed. The applicant's evidence was that they could not just leave the area, and they could not sell their house and land as the area was too dangerous. He said his family could not survive otherwise. His father is elderly and his sisters (as females) could provide no income. The applicant's other brother is not yet an adult. I consider it plausible they have no other option but to remain in [District 1] and endure the risks from the Kuchi – I expect they do this by retreating to more secure areas when the Kuchi attack or travel to their areas for grazing.
17. Notwithstanding the concerns about the applicant's specific evidence, the delegate accepted that the applicant would face a real chance of harm as a Hazara if he returned to live and work in [District 1], Maidan Wardak.
18. Conflict between Kuchi nomadic groups and other settled tribes and groups over access to pasturelands are ongoing in Afghanistan with the most long-standing conflict being over nomadic Kuchi access to the pastures inhabited by Hazara farmers. The conflict is limited to certain access points along the Kuchi migratory paths, which are controlled by Hazara militias.² In terms of Maidan Wardak, in 2016 EASO reported that during Spring, Kuchi migrations regularly caused violent clashes in the predominantly Hazara Behsud districts, as well as [a named district]. According to EASO, the conflict dates back many generations and is about access to summer pastures for the nomads. In 2016, two to four people were reported dead after clashes in Behsud, and several houses were [affected] in [another district].³
19. In 2017, DFAT and UNAMA recorded seven incidents involving the abduction of 34 Hazara civilians in Maidan Wardak province compared to two incidents in 2015. UNAMA attributed the increase to continuing land disputes in the area between Hazara residents and Kuchi tribal members. UNAMA reported that in Maidan Wardak (and Ghor) provinces, Hazaras carried out retaliatory counter-abductions of Tajik or Pashtun civilians in an attempt to secure the release of abducted Hazara civilians.⁴
20. Given his account, I consider the applicant's family likely owns a farm in one of the Kuchi migratory paths in [District 1]. The country information supports his claim that attacks, abductions and the burning of Hazara houses occurs in [District 1], and this further corroborates his claims. While I accept the threat from Kuchi nomads is seasonal, and not a constant, I consider the risk is ongoing and present, particularly given that his family appears to live in one of these migratory tracts. If the applicant were to return to live and work in his home village in [District 1], I consider there would be a more than remote chance that he would be harmed or killed in clashes between Hazara farmers and Kuchi nomads, and/or

² EASO, "Afghanistan: Individuals targeted under societal and legal norms", 12 December 2017, CISED50AD7870.

³ EASO, "Afghanistan Security Situation 2016", 20 January 2016, CIS38A8012395; EASO, "Afghanistan Security Situation" 1 November 2016.

⁴ UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201; DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680. Note, these numbers were revised.

abducted on the roads in these areas, and put at further chance or risk of harm. That risk may not manifest in the immediate future, but I consider the applicant living their permanently would heighten the chance or risk of harm in the foreseeable future.

21. While I accept there is a real chance of harm in his home area, I consider the chance of harm in this regard is localised to that area and other areas where Hazaras own farming land and where Kuchi nomadic grazers are active. The country information does not indicate that these clashes occur elsewhere, or that the applicant is likely to have any ongoing risk profile from his time living in one of these areas. It follows that I find there is not a real chance of the applicant facing harm for these reasons in major urban areas in Afghanistan, such as Mazar-e-Sharif or Kabul. It follows that his fears are not well founded because the chance of harm is not present in all areas of the receiving country, as required by s.5J(1)(c).
22. Having accepted that the applicant would face a real chance of harm in his home area, I have considered whether the applicant would face a real chance of harm in other parts of Afghanistan, including Mazar-e-Sharif in Balkh Province, whether from the Taliban, Islamic State or any other person or group.
23. Recent analysis indicates that the Taliban does not have a sectarian or ethnic agenda in terms of its current insurgent activities. According to advice before me, the Taliban considers the targeting of Hazaras a 'red line'. EASO does not indicate that the Taliban is a main perpetrator of attacks against the Shia Hazara population.⁵ While I accept the Taliban remains the dominant insurgent and armed group, including within Kabul, I am not satisfied that the Taliban is systematically targeting Shia Hazaras for harm within Afghanistan, including Mazar-e-Sharif, whether for reasons of their ethnic, religious or related profiles. I find there is no real chance of the applicant facing harm from the Taliban for these reasons.
24. Since 2016, have been were a series of deliberate sectarian attacks perpetrated by Islamic State in Khorasan Province (ISKP) against Shia targets in Afghanistan. DFAT assesses that Shias are particularly vulnerable when assembling in large and identifiable groups, such as during demonstrations or when attending mosques during major Shia religious festivals.⁶ However, while ISKP (and its affiliates) have orchestrated a number of attacks in Kabul, Herat and the east of Afghanistan (Nangarhar), the information before me does not indicate that the group is seriously active in Mazar-e-Sharif and Balkh Province, that it has an operational presence in these areas, or that it is responsible for major attacks in these areas.⁷
25. Weighing all the evidence before me, while I accept the risks for Shia Hazaras living in Kabul, Herat and Nangarhar is elevated, I am not satisfied the threat to the applicant as a Shia Hazara is present in areas where ISKP has no active or operational presence or influence, such as Mazar-e-Sharif in Balkh Province. It follows that I find that there is no real chance of the applicant facing serious harm from ISKP or any other armed group for reasons of his ethnic and religious profile in Mazar-e-Sharif and Balkh Province.
26. Beyond his ethnic and religious profile, the applicant has contended that he fears persecution as a person that has spent time in the west (Australia). He claimed he would be seen as a *kafir* (an infidel, non-believer) who had given up his faith. He highlighted the way that he

⁵ EASO, "Afghanistan: Individuals targeted by armed actors in the conflict", 12 December 2017, CISED50AD7868.

⁶ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

⁷ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681; UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201; Borhan Osman, "With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War", Afghanistan Analysts Network, 19 October 2016, CX6A26A6E11358.

speaks since he has been in Australia, in particular his use of English words. He also said that armed groups might check his phone and see photos of him in Australia, or the names of Australian contacts. He contends his information will be given to the Afghan government if he is deported and this information would be shared with the Taliban's informants.

27. 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. However, DFAT also stated that it understood most returnees take measures to conceal their association with the country from which they have returned, and keep a low profile on return. DFAT further stated 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.⁸ In an earlier report, DFAT stated those steps include not travelling with documents or symbols that may link them to the Afghan government, the international community based in Afghanistan or western countries (e.g. Australia).⁹
28. Outside of two incidents in 2014 reported by DFAT and the UNHCR,¹⁰ there is little in the way of recent and specific information, examples of attacks, or other clear advice available that indicates that persons with the profile of living in or returning from the west (Australia), and/or who sought asylum in Australia, have been targeted for harm for those reasons on return to the country, or because of an imputed opinion or other profile (e.g. as an infidel).¹¹
29. According to EASO, documented instances of individual targeting of returning Afghans on the basis of 'westernisation' due to having travelled in or lived in the Europe, holding Western ID documents, or adopting ideas that are seen to be 'un-Afghan', 'Western' or 'European' following time spent outside Afghanistan were scarce.¹² EASO advises of only one other potential incident, which occurred in Maidan Wardak, when two Hazara brothers were robbed, one apparently abducted and killed. However, there are few confirmed details of this attack. Asylos also reported of some anecdotal instances of harm and harassment, including a report of a German deportee who was killed.¹³ EASO also referred to this incident, but noted that no further details had been reported. The IOM indicated in correspondence with EASO that the killing of a returnee from Germany had 'not been confirmed by any reliable sources'.¹⁴
30. I accept he may sometimes use English words when speaking Hazaragi, and that he may have photos of himself in Australia or other documentation which links him to the country, but I consider these factors are limited, superficial and within his control. The applicant spent the majority of his formative years living in Afghanistan. I am satisfied he speaks Hazaragi fluently, and would have a deep and instinctive understanding of Afghan culture. In this regard, he can be distinguished from the young Afghan males referred to in his submissions that left the country as children, and were vulnerable for exploitation on return because of cultural and language barriers, and a lack of familial support. In contrast, the applicant has demonstrated an ability to live, work and travel in Afghanistan without interference. In terms of his claims that he would be viewed as an infidel or someone that has abandoned his

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

⁹ DFAT, "Country Information Report - Afghanistan", 18 September 2015, CISEC96CF13366.

¹⁰ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660.

¹¹ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201.

¹² EASO, "Afghanistan: Individuals targeted under societal and legal norms", 12 December 2017, CISED50AD7870

¹³ Asylos, "Situation of young male 'Westernised' returnees to Kabul", 31 August 2017.

¹⁴ EASO, "Afghanistan: Individuals targeted under societal and legal norms", 12 December 2017, CISED50AD7870.

religion, the applicant continues to identify as a Shia and practise his religion, albeit at a low level.

31. Having regard to the available country information, I am not satisfied that he would be vulnerable to harm for these reasons. There simply is not enough support in the material before me that he would be imputed with an adverse profile, that incidents against persons with these profiles occur with any frequency, or that there is any real potential for him to be targeted for harm for those reasons. Considering the analysis before me, I am not satisfied he would face a real chance of harm on the basis of his protection claims in Australia, his time in the west (Australia), or any related profile, including an imputed profile that he has abandoned his religion or is an infidel.
32. In relation to generalised and insurgent violence and insecurity in Afghanistan, I acknowledge the submissions from the applicant and his representatives about the serious security situation in the country. I accept there has been a deterioration in the security situation in the country. However, I do not consider that the country information before me indicates that insurgent or generalised violence that impacts civilians is at such a level, scope or frequency that the applicant would face a real chance of harm on that basis.¹⁵ The information before me indicates that civilian casualties in Balkh Province are on the lower end. From the period 1 January 2017 to 30 June 2017, UNAMA reported 46 civilian casualties over the period (19 deaths and 27 injured), which was down 56 percent on the previous period. The leading causes of civilian casualties in Balkh were IEDs, ERWs (explosive remnants of war) and targeted/deliberate killings. In contrast, Kabul experienced 1,048 civilian casualties (219 deaths and 829 injured), the leading cause of which was suicide/complex attacks. Casualties in Kabul were up 26 percent on the previous period.¹⁶
33. I accept that no area in Afghanistan is immune from generalised and insurgent violence, and this includes Mazar-e-Sharif and Balkh, however when having regard to the more favourable security assessment in relation to Mazar-e-Sharif, the applicant's lack of any profile or proximity to those with a risk profile, and given the lack of advice to suggest that a person with the applicant's profile would be at a real chance or real risk of harm, even in a cumulative sense, I find the chance or risk of the applicant being seriously harmed in generalised or insurgent violence, is remote.
34. The applicant would likely be returned to Kabul first.¹⁷ I accept the risks in Kabul are elevated, including for Shia Hazaras, but I consider his stay in the capital would be temporary in order to arrange travel elsewhere in Afghanistan. I find there is an international airport in Mazar-e-Sharif accepting flights from Kabul and international locations.¹⁸ The applicant has some savings, and I am satisfied he could afford a flight from Kabul to Mazar-e-Sharif. I acknowledge he appears to have lost his employment recently, but I consider it is within his control to maintain some savings for his return to Afghanistan. I am satisfied that the applicant would be able to safely access these two airports, notwithstanding occasional

¹⁵ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201; UNAMA, "Afghanistan- Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852.

¹⁶ UNAMA, "Afghanistan- Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852.

¹⁷ DFAT, "Country Information Report - Afghanistan", 18 September 2017, CISED50AD5680.

¹⁸ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", 1 August 2017, CISED50AD5465.

attacks on airports and other high profile targets.¹⁹ I am satisfied the applicant could safely and reasonably access Mazar-e-Sharif from Kabul.

Refugee: conclusion

35. I accept there is a more than remote chance of the applicant being seriously harmed if he returned to live in Maidan Wardak, because of clashes between Hazara farmer and nomadic Kuchi (Pashtun) herders. However, I also find that the real chance of harm is limited to the areas where his family owns land and the Kuchi are active. I am satisfied the chance of harm does not extend throughout Afghanistan, including the city of Mazar-e-Sharif in Balkh Province. Accordingly, I find the real chance of harm does not relate to all areas of Afghanistan.
36. In terms of his residual claims, I am satisfied the applicant would not face a real chance of harm for any of these reasons in Mazar-e-Sharif, or all areas of Afghanistan. I am satisfied his fears of harm are not well founded.
37. 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

38. 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

39. 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.
40. I have found above that there is a real chance of the applicant being seriously harmed in his home area of [District 1] in Maidan Wardak in clashes between Hazara farmers and nomadic Kuchi herders. On the basis of the same evidence, I am also satisfied there are substantial grounds for believing that the applicant will face a real risk of significant harm for these reasons if he returns to live in his former home area in Maidan Wardak.
41. I have also found the applicant would not face a real chance of harm in Mazar-e-Sharif, for reasons related to his religion, ethnicity or any related profile, in generalised violence, on the

¹⁹ EASO, "Afghanistan Security Situation 2016", 20 January 2016, CIS38A8012395; EASO, "Afghanistan Security Situation – November 2016", 1 November 2016, CIS38A80122597; DFAT, "DFAT Thematic Report Conditions in Kabul", DFAT, 18 September 2015, CISEC96CF13367.

basis of his protection claims in Australia, as a result of his time in the west (Australia, or any other related profile (e.g. as a person that has abandoned his religion or an infidel). For the same reasons, and having regard to the same information, I am satisfied there is not a real risk that the applicant would face significant harm in Mazar-e-Sharif in Balkh Province for any of these reasons.

Qualifications to the real risk threshold

42. Section 36(2B) 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
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.
43. Having accepted there is a real risk of the applicant facing significant harm in his home area in Maidan Wardak, I have considered whether it would be reasonable for the applicant to relocate to an area where he would not face a real risk of significant harm, specifically Mazar-e-Sharif. I have found above that the applicant could safely and reasonably access Mazar-e-Sharif via Kabul. I adopt those findings here, and consider these are factors in favour of him being able to relocate to this city.
44. In terms of generalised violence, I have found the applicant would not face a real chance or risk of harm in Mazar-e-Sharif. Considering his lack of profile, or proximity to any person with an adverse profile, I consider the risks to him as a low level civilian are likely to be remote. Given the comparatively favourable security assessment for Mazar-e-Sharif, I do not consider the overall security situation is a factor that would make relocation to that city unreasonable. In fact, as one of the safer areas in Afghanistan, particularly when compared to Kabul, I consider relocation to this area is a factor in favour of relocation.
45. While the general situation is more secure in Mazar-e-Sharif, I consider his personal circumstances may preclude him from safely and reasonably relocating within the country. I am concerned about the applicant's limited education and skill set, but perhaps most significantly his mental health.
46. There is no suggestion that the applicant has family, friends or tribal support in Mazar-e-Sharif. I accept he has family in Maidan Wardak, but I am satisfied they would be unable to travel elsewhere in the country, such as to Mazar-e-Sharif, because of his father's age, his sisters' gender, the costs involved, and general insecurity. Indeed, given that they have not left his home area in the face of past insecurity, I consider these are genuine barriers to them leaving the area. I am also not satisfied they could provide the applicant with economic or any other support outside of his home area.
47. The applicant has a limited education, but some work experience. He has farmed before, and worked in construction in Kabul in the past. His description of his work was consistent with

information before me about informal day-labour practices.²⁰ In Australia, he is currently unemployed, but he has some experience [specified trades]. I accept he has some construction skills, but it appears these are of a low level. His previous informal work was unspecific, but included mud work. I find he has low level construction skills. The evidence before me indicates he would be able to find construction work, but also that there are pressures in relation to that work. EASO reports that there are clear indicators that construction, investment and trade were all down in Mazar-e-Sharif in recent years, with casual labourers finding less work and stagnant or lower wages. Those who arrive for casual labour in Mazar-e-Sharif are at a disadvantage relative to those who are better known and can make better use of their networks to find work.²¹

48. The information before me indicates that while single men of working age are more likely to be able to return and reintegrate successfully than unaccompanied women and children, the lack of family networks for single men can also impact on their ability to reintegrate into the Afghan community. UNHCR considers that internal flight or relocation may be a reasonable alternative only where the individual can expect to benefit from meaningful support of his or her own (extended) family, community or tribe in the area of prospective relocation. The exception to this requirement of external support is single able-bodied men and married couples of working age without identified vulnerabilities.²²
49. A significant factor is that the applicant has no family or tribal connections in Mazar-e-Sharif, and while I consider the UNHCR indicates these challenges can be overcome, a key consideration is whether he has the personal attributes or work skills to overcome the lack of a network, or whether he has other vulnerabilities. The applicant is single and able-bodied, and apparently physically capable of undertaking construction work. However, his current mental health assessment indicates he has [specified conditions].
50. His current psychologist cautions that if the applicant were required to return to a place where he has no social supports and where there is no sense of safety or security, he would not be able to function, work or engage in the normal social components of life. His extreme psychological state currently, should it undergo further shock, trauma, stress or intense pressure, may result in other psychiatric disorders, as well as a loss of any value for his own life. This indicates to me that the applicant's mental health is highly vulnerable, particularly if he was returned to an area where he has no family or social networks. I accept and give weight to the delegate's assessment of the availability of medical treatment and support,²³ my concern is the fuller context of his current mental state without meaningful support networks, and its impact on his capacity to relocate within the country.
51. While I accept there are a range of factors that would support a conclusion that it would be reasonable for the applicant to relocate to Mazar-e-Sharif, such as the security situation in the city, and the applicant's past experience living and working in Afghanistan, I consider the applicant's low level construction skills, and his lack of family, economic or tribal support outside of Maidan Wardak, and the assessment of his current mental health, lead me to have serious doubts that the applicant could find work and overcome the challenges of relocating

²⁰ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", 1 August 2017, CISED50AD5465.

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

²² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660.

²³ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", 1 August 2017, CISED50AD5465; The Guardian, "Afghanistan tackles hidden mental health epidemic", 2 September 2015, CXBD6A0DE18728; [Source deleted].

to another city, particularly in the current economic climate. I consider there is a very high potential that the applicant would not find adequate work and therefore he would be unable to afford or access medical treatment, and that his mental health would deteriorate. In that context, I consider the applicant would be at risk of becoming indigent, and vulnerable to poverty, exploitation or other harm. If those pressures continued, I consider the continued presence of his family in Maidan Wardak would eventually lead him to seek to return home, and this would again put him at risk, whether in terms of his own profile as a Hazara farmer, or on insecure roads in returning home.

52. In some ways, I consider the medical evidence before me is incomplete. The advice in these reports focuses on his visa status and turn significantly on self-reporting. The most recent advice was based on a single initial consultation, yet it states that he meets the criteria for [several specified conditions]. It is not clear whether the clinical psychologist, [named], assesses the applicant as actually having these conditions, nor does it provide much in the way of detail in terms of his long-term prognosis, treatment plans, or any realistic assessment of his ability to return to Afghanistan beyond generalities. Equally, her advice is unequivocal about the extreme nature of his current mental health condition, which I have given considerable weight. I have also given weight to the fact this advice is consistent with earlier medical treatment and evidence relating to his mental health dating back to his initial application. While there are gaps in this evidence, gaps I would hope are clarified and filled in any later review of the applicant's circumstances, I give these assessments considerable weight in assessing his ability to relocate to Mazar-e-Sharif.
53. When weighing all the circumstances, I am not satisfied it would be reasonable for the applicant to relocate from Kabul to an area of the country such as Mazar-e-Sharif where there would not be a real risk that he would suffer significant harm.
54. In terms of whether the applicant could obtain protection from the Afghan authorities, DFAT has assessed that due to the ongoing insurgency and deteriorating security situation across Afghanistan, the government does not exercise effective control over all parts of the country. DFAT has stated that the continuing armed conflict has significantly challenged the government's ability to exercise effective control over large parts of the country, particularly outside major urban centres. In addition, the increase in the number and impact of large-scale attacks that have taken place in Kabul since the beginning of 2016 demonstrate the limits of the government's ability to protect its citizens even where its security infrastructure is strongest. The ability of the Afghan National Police to provide and maintain security and law and order is constrained by a number of factors, including lack of resources, poor training and leadership, low morale, and high levels of corruption.²⁴
55. Given the limited effectiveness of the ANP throughout Afghanistan, the challenging security environment in Afghanistan, the sustained insurgency in Maidan Wardak, the ongoing annual threat from Kuchi Nomads, and the applicant's risk profile as a Shia Hazara and a Hazara farmer, I have serious concerns about whether the applicant would be able to access effective protection against the harm he fears within his home area in [District 1] in Maidan Wardak. Considering all the circumstances, I am not satisfied the applicant could obtain protection from an authority of the country such that there would not be a real risk that he will suffer significant harm if he returned to live in Maidan Wardak.

²⁴ DFAT, "DFAT Country Information Report - Afghanistan", 18 September 2015, CISEC96CF1336; DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680.

56. On the evidence before me, I am satisfied that the risk to the applicant would be due to his particular profile as a Shia Hazara, in particular a Hazara farmer living in [District 1], and that the risk is one faced by him personally, and is not a risk faced by the population of the country generally.
57. Accordingly, I am satisfied that the qualifications in s.36(2B) do not apply and that there is a real risk that the applicant will suffer significant harm if he returns to live in Afghanistan.

Complementary protection: conclusion

58. 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

In this Act, unless the contrary intention appears:

...

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.