



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/04281

Date and time of decision: 14 September 2018 09:30:00

S Carlton, 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 Hazara Shi'a who was born in the [village], Qarabagh district, Ghazni province in Afghanistan. He left there when he was [age] years old. He states he lived in [Country 1] for two years before moving to Iran, where he lived for 28 years. His wife and [number of] children remain in Iran.
2. He was deported from Iran to Afghanistan in December 2012. He stayed in Kabul for a few months before commencing his travel to Australia. He departed Kabul, travelling through [several countries]. He left [a country] by boat and arrived in Australia on 11 June 2013. On 23 March 2017 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 1 February 2018.
3. The applicant said that when he left Afghanistan, aged [age], it was to avoid recruitment by the Haraqat party. He claims to fear forced recruitment on his return. He is [age] years old.
4. The applicant claimed to fear harm because of generalised violence in Afghanistan as a Hazara Shi'a and as a returned asylum seeker who had been in the west. His wife and children continue to live in Iran illegally.
5. The delegate was concerned about the applicant's identity given that his taskera was issued in Dai Kundi rather than his place of birth in Ghazni. He also appeared to have adopted the surname "[name]". The applicant's explanation for the place of issue of the taskera was that Dai Kundi was where his father was born. His explanation for the adoption of the surname "[name]" was that it was his great-grandfather's name. Ultimately, the delegate accepted the applicant's identity. She also accepted that the timeline of his departure and return to Afghanistan and that he is Hazara Shia. She did not accept that he would be at risk of forced recruitment at [age].
6. The delegate did not accept the applicant faced a real chance of serious harm in his home district as a Hazara Shi'a or because of the general security situation in Afghanistan, or because he may be identified as a failed asylum seeker and western returnee in his home area. The delegate considered that he could be reasonably relocated to Mazar-e-Sharif, where two of his sisters reside. The delegate found that the applicant is not a person in respect of whom Australia owes protection obligations.

Information before the IAA

7. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
8. The delegate's decision relied on country information which has since been updated in relation to the security situation generally in the applicant's home area and possible areas of relocation, as well as specifically relating to the threat faced by Shi'as in those areas. Given the fluid security situation in Afghanistan, I have obtained updated reports in relation to

these issues.¹ I am satisfied that there are exceptional circumstances to justify considering this new information.

9. On 27 February 2018 the IAA received a submission from the applicant's representative (not the representative who assisted with the application) which refutes the delegate's findings and makes argument in respect to the delegate's decision. I do not consider that these aspects of the submission amount to 'new information' within the meaning of s.473DC.
10. The submission refers to a number of documents which were not before the delegate and are new information. These are:
 - a. Information about internal Afghanistan air travel and the safe passage of the applicant, being
a [travel] review of [a traveller] (dated [in] July 2016); an [Airline] booking error message and flight schedule (dated [in] February 2018); DFAT Travel Advice (dated 6 February 2018) and three news articles regarding the availability of internal travel (dated 9 March 2016) and the effect on that flight availability occasioned by the attack on the Intercontinental Hotel in Kabul on 21 January 2018 (dated 22 January 2018 and 14 February 2018). Obviously some of these documents post-date the delegate's decision, while others pre-date it. However, because of my considerations as to the applicant's claims, I consider these documents to be of limited value and I am not satisfied that there are exceptional circumstances to justify considering this new information.
 - b. Country information, being
Two reports by EASO (dated 25 January 2018 and 1 December 2017) and two reports from UNAMA (dated 12 October 2017 and 15 February 2018) are reports I have obtained and referred to above. Additionally, the representative referred to a report by the International Crisis Group (dated 31 January 2018) and a report by the Norwegian Refugee Council (dated 24 January 2018); as well as a Tolo News article (dated 24 February 2018). The report of the Norwegian Refugee Council pre-dates the decision by a week and is of limited relevance, in that the information it provides is found in other documents already before me or is not relevant to my reasoning. While the Tolo News article post-dates the decision and the International Crisis Group report was released contemporaneously with the decision, I consider these documents are also of limited value. Accordingly, I do not consider there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - He is a Hazara Shia man born in Ghazni in about [year].

¹ CIS7B839411538: EASO, "Country Guidance - Afghanistan", 27 June 2018; CIS7B839411148: EASO, "Afghanistan Security Situation – Update," 30 May 2018; CIS7B83941177, "Afghanistan Networks", EASO, 25 January 2018; CISED50AD7868: EASO, "Afghanistan: Individuals targeted by armed actors in the conflict", 12 December 2017; CISED50AD8102, "Afghanistan: Security Situation December 2017", EASO, 01 December 2017; CIS7B83941276, "Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017", UNAMA, 15 February 2018; CISED50AD6106, "Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 30 September 2017", UNAMA, 12 October 2017; CIS7B839419284: UNHCR, Eligibility Guidelines for Afghanistan, 30 August 2018

- Following the killing of his father, he and his family left Afghanistan when the applicant was about [age] years old. He and his brothers were being pressured by the Haraqat party to fight. The family went to [Country 1].
- After two years in [Country 1], the family went to Iran. He has no lawful status in Iran and was deported from there in December 2012. His wife and [children] are still there.
- He speaks Hazaragi and has some English.
- He fears harm from the Taliban, Daesh and other anti-Shia and anti-Hazara groups.
- He fears harm because he has been in a western country. He speaks Hazaraghi with an Iranian accent and will be able to be identified. He dresses and thinks like a westerner. He would be perceived to be a spy.
- He cannot relocate because no place in Afghanistan is safe for him. He does not have family in Afghanistan and has not lived there since 1982, apart from for a few months immediately following his deportation there from Iran.

Refugee assessment

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

Well-founded fear of persecution

13. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
14. The applicant claims, and I accept, that he is a Hazara Shia man who originates from Ghazni in Afghanistan. I further accept that he lived in Afghanistan until he was [age] years old. I accept that the two main factors prompting the applicant and his family to leave Afghanistan at the time were that the applicant’s father had been killed while travelling from Ghazni to Kabul and that he and his brothers were being pressured to take up arms against the Russians by the

Haraqat party. He does not assert, and I do not accept, that at age [age] he would be at risk of forced recruitment upon a return to Afghanistan.

15. The applicant asserts that his family (comprised of his mother, [brothers] and [sisters]) initially went to [Country 1]. They stayed only two years, finding it insecure. They travelled onto Iran, settling there in around 1984. I accept these assertions.
16. The applicant states that he never gained legal status in Iran, despite the many years he lived there. I note that this assertion was accepted by the delegate. The applicant states he met and married his wife in Iran, but that her family lived in [Country 1] and she was brought over to Iran by a male relative. She also had no legal status in Iran. All [of] their children were born in Iran.
17. At the SHEV interview, the applicant advised of the whereabouts of his family members. He said he has [married] sisters who live in Mazar-e-Sharif, Afghanistan. His mother died in Iran during the time the applicant has been in Australia. [Several] of his brothers are in [Country 1] and [some] in Iran. All of the applicant's wife's family are in [Country 1].
18. When the applicant lived in Afghanistan, he was a shepherd. He says his family has no land in Afghanistan. In Iran, the applicant did day labour work, [but] also factory work in the off-season. Since he has been in Australia, the applicant has worked as [an occupation]. He continues to support his immediate and extended family through remittances. He has about three years of informal mosque education.
19. In December 2012 the applicant was caught by authorities in Iran whilst travelling home from work, detained and held, before being deported to Kabul. Whilst in Kabul and while making arrangements to travel out of Afghanistan again, he says he feared for his life and rarely left his hotel. He states if he tries to return to Iran, having been deported, he faces a longer term of imprisonment. I accept on the evidence before me that the applicant has no right to reside in Iran or in [Country 1]. I further accept that apart from a couple of months in Kabul in 2013 the applicant has not lived in Afghanistan since about 1982.
20. The applicant's specific fears relate to being a Hazara Shia. I accept that people of the Hazara ethnicity are physically discernible and the overwhelming majority of Hazara people are Shia. I therefore accept that his ethnicity and religion would be easily identifiable in Afghanistan.
21. A key consideration in my assessment is a determination of the applicant's 'home area', or the area he would return and live in if he went back to Afghanistan. Given the applicant's complete lack of family or other connections in Ghazni, I do not consider this to be his 'home area' or the area to which he would return. His evidence is that he has no family connections, or connections, anywhere in Afghanistan. I note that he has [married] sisters in Mazar-e-Sharif and that particular family connection will be discussed further below. DFAT reports that Afghan citizens from western countries are almost exclusively returned to Kabul.² On the basis of that information and in light of the applicant's particular circumstances, I've considered his claims on the basis that he would be returning to Kabul.
22. Turning to whether he would face a real chance of harm from the Taliban or Islamic State because of his claimed ethnic or religious profile, recent analysis indicates that the Taliban does not have a sectarian or ethnic agenda in terms of its current insurgent activities. EASO does not assess the Taliban as a main perpetrator of attacks against the Shia population.³

² CISED50AD5680: DFAT, "Country Information Report – Afghanistan", 18 September 2017

³ CISED50AD7868: EASO

While I accept the Taliban is clearly active as an insurgent and armed group, including within Kabul, I am not satisfied the Taliban is systematically targeting Shi'as for harm within the country or specifically Kabul, 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 in Kabul for these reasons.

23. The assessment in relation to Islamic State is less straightforward. In 2016 and 2017, there were a series of deliberate sectarian attacks perpetrated by Islamic State in Khorasan Province (ISKP) against Shia targets in Afghanistan. According to DFAT, UNAMA reported five separate attacks against Shia Muslim gatherings and mosques in the second half of 2016 and five more up until August 2017. These were religiously motivated, using derogatory language against Shia and calling for further attacks on them. DFAT assess that the number and scale of the attacks demonstrate that Shi'as, both Hazara and non-Hazara, now face a risk of being attacked by ISKP based on their religious affiliation. DFAT assesses that Shi'as are particularly vulnerable when assembling in large and identifiable groups, such as during demonstrations or when attending mosques or during major Shia religious festivals.⁴
24. The recent EASO report on Afghanistan states that the Shia community is disproportionately represented among civilian casualties in Kabul. There are reports of attacks against Shias in gathering places such as mosques, particularly during religious commemorations and political demonstrations.⁵ ISKP claimed responsibility for most of these attacks, including:
 - a. August 2017 – Shia mosque in Kabul was attacked by suicide bombers, killing 20 and injuring dozens
 - b. September 2017 – Shia mosque in Kabul: During preparations for Ashura commemorations, a suicide bomber disguised as a shepherd targeted the mosque, killing at least five people and injuring more than 20.
 - c. October 2017 – Shia mosque in Kabul: A suicide attacker lobbed a grenade into the women's section of the mosque and detonated his suicide vest in the second row of worshippers, killing 69 and injuring another 60.
 - d. December 2017 – Shia education centre in a pre-dominantly Hazara area in Kabul: a suicide bomber killed 41 and injured 80 more.
 - e. March 2018 – at a commemoration for a Hazara leader in Kabul: a suicide bomber tried to gain entry and detonated his explosives when intercepted by police, killing at least seven and injuring 22.
 - f. March 2018 - Shia education centre in a pre-dominantly Hazara area in Kabul: a suicide bomber, wearing an explosives vest, tried to throw a hand grenade into a class of 600 students. The grenade exploded in his hand killing him, but injuring between six and 11 students.
 - g. March 2018 – Nowruz attacks across the city, near a hospital, the Kabul University, and a Shiite shrine, killing 29 and wounding 52 more.⁶

⁴ CISED50AD5681: DFAT, "Thematic Report - Hazaras in Afghanistan," 18 September 2017; CISED50AD5680, DFAT

⁵ CIS7B839411538, EASO

⁶ CIS7B83941148, EASO

25. EASO reported that the Ministry of the Interior has been arming Shia civilians in order to protect their own places of worship and gathering. The security measures are concentrated in larger cities which have seen large-scale attacks on Shia, such as Kabul, Herat, and Mazar-e-Sharif.⁷
26. ISKP has demonstrated an increased capacity to strike beyond its perceived areas of influence and presence in eastern Afghanistan.⁸ Based on those assessments, I accept the view of some reports that the attacks on Shias can no longer be considered as isolated incidents. Having regard to the analysis from DFAT and EASO, I find the risks to ordinary Shias living and practising their faith, particularly in Kabul, is elevated and ongoing. Based on current security assessments, I find that Shias living in Kabul face a more than remote chance of serious harm as a consequent of their religious (and ethnic) profile.
27. However, I am not satisfied the real chance of harm relates to all areas of Afghanistan, as required by s.5J(1)(c) of the Act. While Islamic State (and its affiliates) have orchestrated a number of attacks in Kabul, Herat and the east of Afghanistan (Nangahar), the information before me does not indicate that the group is active in the Hazara-dominant areas of Mazar-e-Sharif and the Balkh province, that it has an operational presence in these areas, or that it is responsible for major attacks in these areas.⁹ While I accept UNAMA's assessment that ISKP has demonstrated an ability to strike beyond its perceived areas of influence and presence, I am not satisfied the group presently has the potential or intention to undertake attacks in these areas, let alone at a scale or frequency which would lead me to consider there as a real chance of the applicant being harmed by ISKP for reasons of religious, ethnic or any other profile.¹⁰
28. Weighing all the evidence before me, I am not satisfied the threat to the applicant as a Shia is present in areas where ISKP has no active or operational presence or influence, such as Mazar-e-Sharif in the 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 the Shia-dominant areas in Mazar-e-Sharif and the Balkh province. In view of the above, I am not satisfied that the real chance of harm the applicant would face in Kabul on the basis of his religious and/or ethnic profile, relates to all areas of the receiving country of Afghanistan. It follows that I find his fears of harm for these reasons are not well-founded.
29. In considering 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.¹¹ DFAT has most recently 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 the strongest. The ability of the Afghan National Police (ANP) to provide and maintain security and law and order is constrained by a number of factors,

⁷ CISED50AD8102: EASO, "COI Report Afghanistan - "Individuals targeted by armed actors in the conflict", December 2017

⁸ CISED50AD201: UNAMA

⁹ A blast from an IED at the entrance to a Shia mosque in Balkh province on 12 October 2016 killed 18 and injured 67 others. While some early reporting suggested it may have been the work of ISKP, DFAT advises that no group had claimed responsibility for the attack. CISED50AD5681, DFAT

¹⁰ CISED50AD7868: EASO; CIS7B839411148: EASO; CISED50AD5681: DFAT; CISED50AD201: UNAMA

¹¹ CISED50AD5680, DFAT

including lack of resources, poor training and leadership, low morale, and high levels of corruption.¹²

30. Given the limited effectiveness of the ANP throughout Afghanistan and the applicant's profile of an outsider with no community support or networks, I have serious concerns the applicant would be able to obtain protection from an authority of the country such that there would not be a real chance that he will suffer serious harm if he returned.
31. Beyond his ethnic and religious profile, the applicant contended that he feared persecution because he has lived in Iran most of his life and has also spent several years in Australia. As a failed asylum seeker and a returnee from the west, he fears he will be targeted. I accept the country information that indicates that, without more, failed asylum seekers and returnees from the west are not generally targeted on those bases and that most such returnees seek to conceal their association with a western country like Australia.
32. According to EASO, documented instances of individual targeting of returning Afghans on the basis of 'westernisation' due to having travelled in or lived in Europe, holding western identity documents, or adopting ideas that are seen to be western following time spent outside Afghanistan were scarce. Varying descriptions by sources indicated that there were occasional reports of alleged kidnapping and targeting, though the scale and prevalence is said to be difficult to quantify. Advice from the IOM to EASO is that there have been no ethnically-based killings of returnees coming back from western countries, except where someone was caught in crossfire between government forces and insurgents. The analysis from EASO also indicated no clear evidence of the targeting of returnees from the west by state authorities.¹³
33. I consider the above analysis is applicable for Afghans that have spent time in Australia. I accept that as a Shia man returning to Afghanistan after a period living in the west (Australia), there will be challenges for the applicant on return to Afghanistan. However, 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, or that there is any real potential for him to be targeted for harm for those reasons. Considering the information before me, I am not satisfied he would face a real chance of harm on the basis of being a failed asylum seeker or a returnee from the west or a returnee from Iran, or on any other basis claimed.
34. In relation to generalised and insurgent violence, I accept there has been deterioration in the security situation in the country, notably within Kabul. I also note the applicant's concerns about the security situation in Mazar-e-Sharif. That city is not immune from serious insurgent attacks and civil casualties, but the country information indicates the security situation for ordinary civilians is stable.¹⁴
35. There are obvious risks to civilians throughout the country, including within Mazar-e-Sharif, but when having regard to the applicant's lack of any profile, the absence 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, and giving weight to the stable security environment of the Balkh province and Mazar-e-Sharif, I find the chance or risk of the applicant being seriously harmed in generalised, insurgent or other violence in Mazar-e-Sharif or the Balkh province is remote.

¹² CISEDB50AD5680, DFAT

¹³ CISEDB50AD7870; EASO

¹⁴ CISEDB50AD5465: EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City", 1 August 2017

36. The applicant would likely be returned to Kabul first.¹⁵ I find there is an international airport in Mazar-e-Sharif accepting flights from Kabul and international locations.¹⁶ I am satisfied that the applicant would be able to safely access these two airports, notwithstanding occasional attacks on airports and other high profile targets.¹⁷ I am satisfied the applicant could safely and reasonably access Mazar-e-Sharif.

Refugee: conclusion

37. There is more than a remote chance of the applicant being seriously harmed if he returned to live in Kabul, because of his religious and ethnic profile. However, I also find that the real chance of harm is limited to Kabul and other areas where ISKP is active and has an operational presence. I find the chance of harm does not extend to areas such as Mazar-e-Sharif, in the Balkh province. Accordingly, I find the real chance does not relate to all areas of Afghanistan.

38. Considering all the circumstances, I am satisfied the applicant would not face a real chance of serious harm for reasons of his religion, ethnicity, or any related profile; or generalised violence; or being a failed asylum seeker or a returnee from the west or a returnee from Iran, or any related imputed political opinion or profile arising from these factors.

39. 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

40. 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

41. 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.

42. I have found above that the applicant faces a real chance of being seriously harmed in Kabul for reasons related to his ethnicity and/or religion. For the same reasons and 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 Kabul.

¹⁵ CISED50AD5680: DFAT

¹⁶ CISED50AD5465: EASO

¹⁷ CISED50AD5465: EASO

43. I have found that 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; or generalised violence; or as a failed asylum seeker or a returnee from the west or a returnee from Iran, or any related imputed political opinion or profile arising from these factors. 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 the Balkh province for any of these reasons.

Qualifications to the real risk threshold

44. 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.

45. Having accepted that there is a real risk of the applicant facing significant harm in Kabul, where I have found he would return, 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 from Australia via Kabul.

46. In terms of generalised violence, I have found the applicant would not face a real chance or risk of serious or significant harm in Mazar-e-Sharif. Considering his lack of profile, I consider his risk of harm 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 safest areas in Afghanistan, I consider relocation to this area a factor in favour of relocation.

47. While the general situation is more secure in Mazar-e-Sharif, I consider the applicant's personal circumstances may preclude him from safely relocating with the country. He and his adviser have pointed to a number of factors militating against relocation; however I am particularly concerned about the applicant's age, his limited education and the size of his family, coupled with his limited support networks in Mazar-e-Sharif. He is now [age] years old and has not lived in Afghanistan for 35 years. He supports his wife and [children].

48. As noted above, the applicant has [married] sisters in Mazar-e-Sharif. However, I consider that they would be able to provide limited assistance. I note the country information which indicates that in considering the ability of a returnee to rely on extended family networks, the degree of expected reliance diminishes the further the degree of family connection. Married women, considered to be part of their husbands' families after marriage, have limited obligation or ability to assist family returnees and much would depend on family relationships.¹⁸

¹⁸ CIS7B83941177, EASO

49. I accept that there is a sizable Hazara Shia population in Mazar-e-Sharif and I take into account that the applicant speaks Dari (albeit with a Iranian accent) and has lived among Hazara Shias in Iran. I am satisfied that he speaks the language and knows the general customs observed by the Shia.
50. UNCHR considers that internal flight or relocation may be a reasonable alternative only where the individual can expect to benefit from meaningful support of his 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.¹⁹
51. I am satisfied that the applicant would be returning to Afghanistan as a married man with [children], the youngest of which is about [age] years old. While is [age] years old, he appears to be able-bodied.
52. The applicant has work experience and I accept that he would, if returned to Mazar-e-Sharif, join the day labour market, much like he did in Iran. I am not satisfied that his English is of a level that would assist him to find work. I accept that his skill set is similar to other day labourers, but note that he would likely be older than most others seeking day labour jobs.
53. While Mazar-e-Sharif is comparatively secure, and has a strong diversified economy, including robust construction, manufacturing, and services sectors, those sectors are also under considerable pressure. There are 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. According to EASO, those who arrive for casual labour in Mazar-e-Sharif are at a disadvantage relative to those who are better known and make better use of their networks to find work.²⁰
54. Both IDPs and returnees face significant challenges in accessing employment and livelihood opportunities. IDPS, who are mostly former farmers and lost their livestock and harvest in place of origin, often rely on daily wage jobs. These jobs are more limited during fall and winter seasons. Returnees also mostly rely on daily wage jobs. The average income for returnees and IDP families in between 50 and 100 Afghanis (less than AUD2). Living in poverty is defined as earning a wage below the poverty line of 1,150 Afghanis (AUD20) per month.²¹
55. EASO notes that only about 15% of inhabitants of Mazar-e-Sharif live above the poverty line and the city has the largest proportion of income earners who earn only an irregular income. The report notes that food diversity is a problem and that this makes food less affordable than in other areas. The situation is worsened by the effect on the area by one of the most severe droughts in decades and the consequent adversity felt by the agriculture industry. Balkh is said to one of the worst-affected provinces.²² The absorption capacity of Mazar-e-Sharif and the wider province has been stretched and some IDPs have had to return to their places of origin because they could no longer afford living expenses in Mazar-e-Sharif. This includes IDPs who come from insecure areas.²³
56. The information cited above leads me to the view that economic and employment prospects in Mazar-e-Sharif have deteriorated since 2016 and that persons who are obviously strangers to

¹⁹ CIS7B839419284: UNHCR

²⁰ CISEDB50AD5465: EASO

²¹ CISEDB50AD5465, EASO

²² CIS7B839419284: UNHCR

²³ CISEDB50AD5465, EASO

the area, with limited or no networks or connections, and no particular or desirable labour skills, face significant difficulties in obtaining employment. In light of the above, I consider the following to be particularly relevant to the question of whether it is reasonable for the applicant to relocate to Mazar-e-Sharif:

- The economic situation in Mazar-e-Sharif appears to be one of increasing competition for reducing jobs, stagnant or reducing wages, and increasing poverty. In view of the increasing competition, family or family networks, or being known to an employer, are significant (some reports suggest determinative) factors in obtaining work and subsistence.
- The applicant left Afghanistan 35 years ago and has never worked in Afghanistan. He has never lived in Mazar-e-Sharif or the Balkh province and his family there, being [married] sisters, are of limited assistance to him in establishing networks. He has no history in Mazar-e-Sharif and has an accent and mannerisms that will identify him as someone who is not from the area. He has limited networks to recommend him for work.
- The applicant does not have any particular employment or education skills of a type that appear to be particularly advantageous in finding work in the competitive and uncertain day labour market in Mazar-e-Sharif. He is [age] years old and this may affect his ability to find employment.
- He is married and supports a wife and [children].

57. While the applicant has demonstrated resilience and capability by relocating to Pakistan, Iran and Australia, I am not satisfied that this indicates the applicant has an ability to relocate to Mazar-e-Sharif with his wife and [children], to engage in employment and sustain a livelihood, and adequately support his family.

58. I consider there is a very high potential that the applicant would not find adequate work to support himself and his family and thus, would be vulnerable to poverty, harm and exploitation. Individuals who have no established networks locally are more likely to be taken advantage of, or be viewed critically by the local population. It has been suggested that the lack of any established networks to help a person navigate locally would lead to significant difficulty resettling and that people who have been outside the country and/ or grew up in another country would be in a particularly difficult position due to their unfamiliarity with local systems.²⁴

59. 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

60. 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.

²⁴ CISED50AD5465, EASO

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.