



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/04339

Date and time of decision: 2 May 2018 09:56:00

Scott MacKenzie, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Afghanistan. The applicant arrived in Australia [in] April 2013 as an unauthorised maritime arrival. On 24 July 2017 he lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 7 February 2018, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Afghanistan.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information was obtained or received by the IAA.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant is a Shia Hazara male from the district of [District 1], Ghazni Province;
 - In 2009, the applicant's [Relative 1] was killed by the Taliban;
 - Following the death of [Relative 1], the applicant and his family moved to Kabul to be looked after by [Relative 2]'s family;
 - In Kabul, [Relative 2] mistreated [Relative 3] and [Relative 4]. He was also involved in criminal activities and gambling.
 - In 2011, [Relative 4] went missing. [Relative 3] believes that [Relative 2] sold her;
 - [Relative 2] advised [Relative 3] that he would help find [Relative 4] if he could take ownership of [Relative 1]'s land. [Relative 3] refused;
 - [Relative 3] feared [Relative 2] would take her other [children], so the family fled to [Country 1] in 2013;
 - Following this, [Relative 3] arranged for the family land to be sold so that the applicant could leave [Country 1] for Australia;
 - The applicant has since lost contact with his family in [Country 1];
 - If returned to Afghanistan the applicant fears he will be unable to subsist;
 - If returned to Afghanistan the applicant also fears he may be killed by [Relative 2];
 - If returned to Afghanistan the applicant further fears he will be harmed or targeted by the Hazara communities, the Taliban, Daesh (Islamic State), and/or other anti-Shia groups due to:
 - his Hazara ethnicity
 - his Shia religion
 - his time spent outside of Afghanistan

- his time spent living in a western country.
5. In support of his SHEV application, the applicant’s representative provided country information and an undated written submission (SHEV submission) with reference to the applicant’s protection claims, which I have had regard to. In the SHEV submission, the representative also claimed that the applicant faced harm in Afghanistan due to an imputed ‘anti-Taliban’ opinion.

Refugee assessment

6. 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

7. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity and home area

8. Since his arrival in Australia, the applicant has consistently claimed to be a Shia Hazara who originates from [District 1] in Ghazni Province. The applicant has also consistently claimed to have never held any Afghan identity documentation. Since being in Australia, I note he has spoken through a Hazaragi interpreter at a number of interviews with the Department, including his protection visa interview on 7 November 2017 (SHEV interview). The delegate also noted in his decision that the applicant had physically distinct Asiatic facial features, which is a characteristic of persons of Hazara ethnicity.¹ Given this, I accept that the applicant is an Afghani citizen and Shia Hazara who originates from that part of Afghanistan.

¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Thematic Report - Hazaras in Afghanistan”, 18 September 2017, CISED50AD5681, 2.1

9. As noted by the delegate in his decision, the applicant's evidence since his arrival in Australia as to his age has been inconsistent, as are the reasons he advanced for providing different dates of birth. However, having regard to all the circumstances, I accept the applicant's explanation in his written statement, dated 1 June 2017 (SHEV statement), that he has never been certain of his age, and that he willingly accepts the date of birth given to him by the Department, which is [a particular date].
10. The applicant has also consistently claimed that he moved to Kabul with his family in 2009 and remained there until he departed Afghanistan in January 2013. However, given the difficulties the applicant faced in Kabul, which I have largely accepted, I am not satisfied that, if returned to Afghanistan, he would seek to return to that city.
11. For the purposes of this application I find that the applicant's home area is [a particular area] in the district of [District 1], Ghazni Province, where he lived for [a number of] years before moving to Kabul. I also note that in the SHEV submission, the applicant's representative expresses the applicant's fear in terms of the harm he may face in his 'home district', and that it would be unreasonable for him to relocate to other areas such as Kabul or Mazar-e-Sharif. Having regard to the evidence discussed, I am satisfied that if returned to Afghanistan, [District 1] is the part of Afghanistan to which the applicant would return.

Events in Afghanistan

12. While I accept the applicant's consistent evidence that [Relative 1] died in 2009, I find his claim that [Relative 1] was killed by the Taliban speculative. In the SHEV interview, the applicant initially advised the delegate that [Relative 1] was killed because he was a Hazara. However, when he was later asked about how he knew that [Relative 1] was killed by the Taliban, he advised the delegate that he had overheard a conversation between [Relative 3] and [Relative 2] and, although he did not know what happened to [Relative 1], guessed that he had been killed by the Taliban due to a land issue. Although I have concerns due to the applicant's evidence being somewhat speculative, I am willing to accept that [Relative 1] may have been killed by the Taliban in 2009.
13. I also accept the applicant's consistent evidence that he and his family moved to Kabul to live with [Relative 2] following the death of [Relative 1]. Although the applicant had claimed in his SHEV statement that [Relative 2] was violent and constantly beat [Relative 3], I prefer his evidence in the SHEV interview that [Relative 2] just argued a lot with [Relative 3]. I also accept the applicant's claim that when he tried to stand up to [Relative 2] he was told to go away and to mind his own business. I further accept the applicant's evidence that [Relative 2] may have been involved activities such as crime and gambling.
14. The applicant's evidence in relation to [Relative 4] is problematic. He advised in an interview with the Department on 3 May 2013 (arrival interview) that he had [siblings] and that one of them had been missing for [years]. However, in the entry interview, conducted less than two weeks later, he claimed to have only one [sibling]. In his SHEV statement, the applicant stated that [Relative 4] went missing in [year] and that [Relative 3] believed that [Relative 2] had sold her. However, according to his SHEV application form, [Relative 4] is currently residing in [Country 1]. In the SHEV interview, the applicant stated that [Relative 4] went missing and that he did not know whether [Relative 2] had sold her. He also advised the delegate that on one occasion [Relative 2] became violent and hit [Relative 4] which resulted in her [suffering a serious injury], although it was not clear as to which of his [relatives] he was referring to. Although I have concerns, I am willing to accept the applicant's earlier evidence in the arrival interview that he had [a relative] who went missing in around 2010. However, I find the later

claim that [Relative 4] was sold by [Relative 2] speculative and I am not satisfied this occurred. I also find the applicant's failure to mention in his application that one of [his relatives] was blinded by [Relative 2] not insignificant. I do not accept this claim.

15. In his SHEV statement, the applicant indicated that the arguments between [Relative 3] and [Relative 2] centred on [Relative 2]'s attempts to take ownership of [Relative 1's] land. However, in the SHEV interview, he advised the delegate that [Relative 3] got into arguments because she was stressed that [Relative 2] was making the family work like slaves. Having considered the applicant's overall evidence, I find both claims plausible and I accept them. According to the transcript, the applicant stated in the entry interview: '[Relative 2] was abusing us and telling us he...wanted us to work very hard for him...he was very violent...he was taking care of us but he wasn't taking care of us...'. According to a transcript, the applicant stated in the arrival interview that [Relative 2] was 'cruel to us'. I note the applicant's evidence is that he was working in [Relative 2]'s [shop] from [dates].
16. I accept that [Relative 2] was an aggressive personality and that he mistreated the applicant and his family in respect of the work they were forced to undertake for him. Although I find the applicant's evidence in respect of this claim to be somewhat vague, which could be attributed to his age at the time of these events, I also accept that [Relative 2] sought to take ownership of his later brother's land. In his decision, the delegate speculated that [Relative 2] may have felt some sense of entitlement to [Relative 1's] land for taking in his family in 2009. While this may have been the case, in the circumstances, I do not find [Relative 2]'s motivations for pursuing [Relative 1's] land is relevant. I note the applicant's evidence is that [Relative 3] never signed over the land to [Relative 2], and that she sold it in 2013 to fund the applicant's travel to Australia.
17. Towards the end of the SHEV interview, the applicant raised a new claim that he suspected that [Relative 2], also a Hazara, may be affiliated with the Taliban because he was involved in gambling. The applicant made no reference to this in his written claims or at any other time. In the circumstances, I find this claim speculative and I do not accept that [Relative 2] is or was affiliated with the Taliban.
18. I have accepted that [Relative 1] died in 2009 and that he may have been killed by the Taliban. The applicant has not claimed, and nor is there any information before me to indicate, that he will face harm from the Taliban, or any other person or group, due to [Relative 1]'s death or [Relative 1]'s profile before his death. Accordingly, I am not satisfied the applicant faces a real chance of serious harm in Afghanistan on this basis.
19. I have accepted that the applicant moved to Kabul in 2009 to live with [Relative 2], that [Relative 2] was aggressive and forced him to work long hours making [items], and that [Relative 2] attempted to take ownership of [Relative 1]'s land from [Relative 3]. I have also accepted that [Relative 4] went missing in 2010, and that in 2013 [Relative 3] sold the family land. I have further accepted that [Relative 2] was previously involved in criminal activity, including gambling. However, there is no credible evidence before me to indicate that the applicant faces a real chance of serious harm from [Relative 2], or due to the events from 2009 until 2013, on return to Afghanistan. The applicant's evidence in the SHEV interview was that his [Relative 2] never physically harmed him and I note he has had no contact with [Relative 2] since 2013. I am also mindful that the family land in [District 1] is now sold, and that the applicant is now an adult and no longer dependent on [Relative 2]. On the information before me, I am not satisfied that the applicant will be killed, harmed, or pursued by [Relative 2], if returned to Afghanistan.

Return to [District 1]

20. The applicant has claimed that if returned to Afghanistan he will be harmed by the Taliban, Islamic State and/or anti Shia groups due to his ethnicity and religion. He has also claimed that he faces harm due to an imputed 'anti-Taliban' opinion.
21. Although administratively part of Ghazni Province, [District 1] is part of the larger Hazara dominated area of central Afghanistan which is known colloquially as the 'Hazaraajat', which is made up of the Hazara-majority districts.² [District 1] is exclusively Hazara and under government control.³
22. DFAT observe that security in Hazara majority areas tends to be better in part because Hazaras make up the vast majority of the population, which has two effects: because of the ethnic homogeneity, there are fewer opportunities for ethnic tension; and because Hazaras are visually distinct, non-Hazaras can find it difficult to infiltrate these areas without detection.⁴ DFAT also report that sectarian violence in Afghanistan is rare and that targets for insurgent groups like the Taliban were government officials and persons associated with the international community, rather than groups or individuals solely on the basis of their ethnicity or Shia religion.⁵ In October 2016, Afghanistan Analysts Network (AAN) reported that the Taliban had convincingly spoken out against sectarianism and stayed away from violence that could stir sectarian hatred.⁶
23. Between 1 January and 31 August 2015, there were 72 security incidents in Ghazni Province where individuals were specifically targeted. In this same period, there were between zero and nine security incidents in total (including targeting of individuals, armed confrontations and airstrikes, explosions, and security enforcement) across the five districts of Malistan, Jaghori, Nawur, Jaghatu, Rashidan.⁷
24. Between 1 January and 31 December 2015, United Nations Assistance Mission in Afghanistan (UNAMA) reported that, across Afghanistan, 146 members of the Hazara community were abducted in 20 separate incidents. 15 Hazaras were reportedly killed or died in captivity. The motives for the abductions included holding hostages for ransom, exchange of detainees, suspicion of the hostages being members of the Afghan national security forces, and non-payment of illegal taxes. All but one incident took place in areas with mixed Hazara and non-Hazara communities, in Ghazni, Balkh, Sari Pul, Faryab, Uruzgan, Baghlan, Wardak, Jawzjan, and Ghor provinces.⁸ DFAT assess that ethnicity is rarely the primary motivating factor in these incidents.⁹
25. According to the European Asylum Support Office (EASO), there was only [a relatively small number of] security incidents reported within [District 1] between 1 September 2015 and 31

² DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.4; DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, 4.11; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.3

³ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102, p.119-120

⁴ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.19; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.18

⁵ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.7

⁶ AAN, "With an active cell in Kabul, ISKP tries to bring sectarianism to the Afghan war", 19 October 2016, CX6A26A6E11358

⁷ EASO, "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395, p.91

⁸ UNAMA, "UNAMA Protection of Civilians Annual Report 2015", 14 February 2016, CIS38A8012245, p.49

⁹ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.28

May 2016.¹⁰ In September 2016, DFAT noted that UNAMA had not highlighted the Hazarajat as an area of particular concern in relation to conflict-related abductions in the first half of 2016. While DFAT noted that the abduction of civilians occurred, most kidnappings targeted those believed to have connections to the government or security forces, or were carried out for financial gain. Consistent with other reporting, DFAT identified that health care personnel, judicial authorities, representatives of humanitarian de-mining organisations, journalists and females were profiles at particular risk, rather than Shia Hazaras.¹¹ In February 2017, UNAMA reported that there had been no documented abductions of Hazara civilians in Ghazni Province in 2016.¹² EASO reported only [a small number of security incidents] reported within [District 1] between 1 September 2016 and 31 May 2017.¹³

26. In its September 2017 update, DFAT reported that international and domestic observers agreed that the security situation for Hazaras living in the Hazarajat was considerably better than in most other parts of Afghanistan.¹⁴
27. In its 2017 update, DFAT assessed that the number of attacks in 2016 and 2017 in Afghanistan raised concerns that Shias may now be vulnerable to being targeted based on their religious identity by Afghanistan-based groups.¹⁵ DFAT assessed that those attacks demonstrated that Shias (Hazara and non-Hazara) are at risk of being attacked by Islamic State based on their religion, and that Shias are particularly vulnerable to attacks when assembling in large and identifiable groups, such as during demonstrations or when attending mosques during major Shia festivals.¹⁶ DFAT also assess that the Afghan government lacks the ability to adequately protect vulnerable groups in some areas of the country, particularly outside major urban areas and provincial capitals.¹⁷ DFAT's commentary is in relation to Afghanistan as a whole and does not indicate a level of risk for Shias living in [District 1].
28. Country information before me indicates that the Afghan government does not exercise uniformly effective control over all parts of the country, particularly in rural areas.¹⁸ I note that there have been attacks against Shia Hazaras in parts of Afghanistan in recent years.¹⁹ However, having regard to the country information before me, I find it does not support that Shia Hazaras are currently being targeted and harmed in ethnic or religious attacks, nor for other reasons, by the Taliban, Islamic State or other insurgent groups, in [District 1]. Given the lack of Taliban (or other insurgent group) penetration into [District 1], on the evidence before me, I am not satisfied that there is a real chance that the applicant would face harm from the Taliban, or other insurgent group such as Islamic State, in [District 1] for reason of his ethnicity or his religion, his imputed opposition to the Taliban, or as a Shia Hazara.

¹⁰ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597, p. 94-95

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

¹² UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201

¹³ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102, p.121

¹⁴ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.18, 4.5

¹⁵ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.6

¹⁶ Ibid, 3.9

¹⁷ Ibid, 4.1

¹⁸ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186; DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August 2016", 5 September 2016, CIS38A80121778; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 4.1

¹⁹ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

29. DFAT assess that returnees from western countries are almost exclusively returned to Kabul²⁰ and on the information before me, I am satisfied that the applicant would be returned there initially in transit to [District 1]. I accept that in order for the applicant to return to [District 1], he would be required to travel by road or air after arriving at Kabul airport.
30. Country information before me indicates there are risks to persons who seek to travel on the roads in parts of Afghanistan.²¹ In February 2016, DFAT reported that the roads linking parts of Ghazni suffered from a high level of insecurity. DFAT also reported that there had been incidents where Hazaras may have been targeted on the roads, in part due to their religious or ethnic background, citing serious incidents involving Shia Hazaras travelling in Ghazni Province and neighbouring Zabul Province in 2014 and 2015.²² Consistent with its 2016 report, in 2017 DFAT stated that people from all ethnic groups are vulnerable to attacks on the roads and it concurs with the assessment of UNAMA and other international sources that the primary motivations for these abductions include taking hostages for ransom or prisoner exchange, or to target those with connections to the government or international community. DFAT reiterate that ethnicity is rarely the primary motivating factor in these incidents, however it assesses that ethnic targeting can play a role in the selection of victims once an abduction is in progress. DFAT also noted a January 2017 incident reported by UNAMA where unidentified anti-government elements (AGEs) stopped a bus carrying mainly Hazara coal mine workers in Baghlan Province (northern Afghanistan). Several of the miners were killed but the motivation for the attack was unclear.²³ As noted above, UNAMA reported in February 2017 that there had been no documented abductions of Hazara civilians in Ghazni Province in 2016.
31. While the absence of recent abductions or attacks against the Shia Hazara population on the roads between Kabul and the Hazarajat does not preclude the possibility of future attacks, I consider the chance that the applicant would be involved in an incident or attack on the road, or put at additional risk because of his ethnic or religious profile in such an attack, to be remote.
32. I also note that there is a regular commercial flight connection between Kabul and the Hazara majority province of Bamyan²⁴, meaning that the applicant is not restricted to road travel when accessing the Hazarajat. Once he reached Bamyan by air, the applicant would be able to travel by road through the district of [District 2], and onto [District 1]. Like [District 1], the district of [District 2] is majority Hazara and there is little insurgent activity reported in this part of Afghanistan.²⁵ According to a 2011 report, the main security issue within [District 2] District relates [a specific regional issue]²⁶ and there is no indication that this issue affects Shia Hazaras transiting the district by road. I note the applicant's evidence in the SHEV interview that he has been working as [a particular occupation] since living in Australia and that he owns a [car]

²⁰ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186; DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.20

²¹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186; United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.35

²² DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.23, 2.27-2.30, 2.33

²³ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

²⁴ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597, p.66; DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, 4.31

²⁵ [Source deleted].

²⁶ [Source deleted].

outright. There is no evidence before me to suggest that he would not be able to afford a single airfare for travel between Kabul and Bamyan if he chooses.

33. I accept that the applicant would be required to transit Kabul airport whether he chose to access [District 1] by road or by first flying to Bamyan. I am aware that there have been reports of occasional insurgent attacks near Kabul airport in past years.²⁷ I have further taken into account information about mass-casualty attacks in Kabul in 2016 and 2017.²⁸ While serious, I am not satisfied these attacks are indicative of a threat of harm to the applicant in reaching the Hazarajat. Relevantly, I consider that any period of time he would need to spend transiting would be brief, and that the government and security forces maintain effective control in Kabul, including at the airport and I am satisfied that this will not change in the reasonably foreseeable future. I am not satisfied that the applicant would now, or in the reasonably foreseeable future, face a real chance of serious harm during any transit period. Accordingly, I am not satisfied the applicant faces a real serious chance of harm in accessing [District 1].
34. In his SHEV statement, the applicant claimed that he would find it difficult to survive without familial support or employment in Afghanistan, and that this would threaten his capacity to subsist. He also claimed that he would be rejected as a member of the local Hazara community because he had not lived in the country for many years.
35. On the evidence before me, I am not satisfied there are any significant vulnerabilities or barriers that would deny the applicant's capacity to earn a livelihood on return to [District 1], or that he will experience significant economic hardship, or will be denied access to basic services that threatens his capacity to subsist, now or in the foreseeable future. DFAT assess that official discrimination on the basis of religion is low and that any religious or ethnic discrimination faced by Shias in Afghanistan, including the Hazara community, is more likely to be societal in nature, at the community level, primarily as a result of the important role played by ethnic, tribal and familial networks in Afghan society and the dominance in many areas of the Sunni majority.²⁹ Societal discrimination generally occurs as a result of a positive preference for members of one's own family/tribal/ethnic/religious group, rather than negative discrimination against a particular group.³⁰ Hazaras are active in the Afghan community, particularly in politics, education, sport and civil society. Shias are represented in the government, holding major positions, and are free to participate fully in public life.³¹ DFAT assess those ethnic groups who are in the minority in the area in which they reside face a risk of societal discrimination which may include the denial of access to employment or housing.³² However, the population of [District 1] is exclusively Hazara and I note the applicant has not claimed that he has faced discrimination in the past on account of his religion or ethnicity, or for any other reason. While I accept that the applicant has been away from [District 1] since 2009 there is no evidence before me to indicate that he would be ostracised, or otherwise mistreated by other Hazaras in the community if he returned home. On the evidence before me, I am not satisfied that the applicant faces a real chance of suffering discrimination or rejection from the Hazara community on return. I am also satisfied that in [District 1] he would return to seek employment and accommodation in the place from where he originates and is

²⁷ DFAT, "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366

²⁸ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

²⁹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.4-3.5, 3.10; DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.3

³⁰ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.5; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.2

³¹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.51

³² DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.5

familiar, and in a Hazara majority area. While I accept that unemployment and underemployment is high in Afghanistan, I note the applicant has been in relatively continuous employment since 2006 in [District 1], Kabul and now Australia. On the information before me, I find that the applicant is able-bodied, of working age, who does not present with any health problems or other vulnerabilities that would impact his ability to seek and obtain employment.

36. In the SHEV submission, the applicant's representative claimed that the applicant had 'particular travel needs' and would be required to travel outside of his home area from time to time. Although no reasons are provided, the representative appeared to be referring to the applicant travelling on the roads in and around Kabul and the Hazarajat. It was also submitted that the applicant would need to travel on these roads to seek work and subsist.
37. I note that the applicant no longer has any immediate family in his home district, or in any other part of Afghanistan. His immediate family members now reside in [Country 1] and I am aware that the applicant lost contact with them when he came to Australia in 2013. I am not satisfied that the applicant would seek to travel on the roads outside of the Hazarajat once returned there, nor am I satisfied he would be required to do so in order to seek work and subsist. On the evidence before me, I am not satisfied that the applicant would seek to travel outside of [District 1] once returned there and I consider this would not be due to fear.
38. In his SHEV statement, the applicant claimed that he will come to the adverse attention of the Taliban or Islamic State on return because he will be imputed as a supporter of western society given his time spent in Australia. In the SHEV submission, the applicant's representative stated that the applicant faced harm on return to Afghanistan because he has "significant family connections in the west". She also stated that the applicant would face harm because he is "westernised" and referred to the 2016 UNHCR guidance that states: "Individuals perceived as "Westernized" AGEs reportedly target individuals who are perceived to have adopted values and/or appearances associated with Western countries, due to their imputed support for the Government and the international community".
39. DFAT advises that many Afghans travel abroad to Iran, Pakistan, Europe or other western countries to seek employment or educational opportunities, and that between 2002 and 2013 an estimated 5.8 million refugees returned to Afghanistan from Iran, Pakistan, as well as western countries.³³ DFAT assess that in general returnees from western countries are not specifically targeted on the basis of being failed asylum-seekers, although there were some reports in 2014 of returnees from western countries alleging they had been kidnapped or otherwise targeted on the basis of having spent time in a western country.³⁴ Some reports indicate that simply being identified as a returnee has put persons at risk as returnees face a general assumption that they have adopted values and/or appearances associated with western countries while abroad and are reportedly at risk of being mistaken for collaborators with the government and the international community. Other reports indicate that returnees from the west may be viewed as foreigners or spies and targeted.³⁵ However, the reports and incidents cited by UNHCR and DFAT do not refer to [District 1] as an area where returnees, or Shia Hazaras, are targeted on the basis of being perceived as western.

³³ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.30; DFAT, "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366, 5.17

³⁴ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.20; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.41

³⁵ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.41

40. The applicant has only spent the last five years of his life in a western country (Australia) and I do not accept that he would have lost his knowledge and practise of his Afghan culture in this time to any real extent. I am satisfied that any foreign or western mannerisms the applicant may have acquired in Australia would be minimal and would not put him at risk of harm. In 2018, the UK Home Office stated there was no indication of incidents of violence against returnees due to any apparent 'westernised' demeanour. There was some indication that returnees faced 'discrimination and stigma' due to a perception of shame and failure for having sought and failed to gain asylum, and therefore failed to meet their family and communities expectation of their migration. However, such treatment would not amount to serious harm.³⁶ In the applicant's circumstances, I am not satisfied he would face such treatment on return to [District 1] because he does not have family there, nor does he have any expectations put upon him by the local community.
41. In relation to Afghanistan more generally, DFAT, the UK Home Office, and UNHCR assess that returnees who are identified as having associations with the government or the international community face a high risk of being targeted by AGEs.³⁷ Apart from being a Shia Hazara returnee, I am satisfied the applicant does not hold any other such profile affiliated with the government or international community, nor any proximity to persons who are so affiliated and there is no information to indicate he would upon return.
42. In respect of the claim that the applicant has significant family connections in the west, I am aware that the applicant has [a relative] who has been living in Australia for 10 years. Apart from this, he has not indicated that he has any other family living in a western country and he has not claimed to have ever faced harm in Afghanistan in the past on this basis. The applicant's evidence in his SHEV application and in the SHEV interview was that his immediate family reside in [Country 1], and [Relative 2]'s family in Kabul. The country information before me does not indicate that returnees face harm in Afghanistan on the basis of having family living in a western country.
43. Country information does not indicate that in [District 1] (or in the wider province of Ghazni) there is systematic targeting of returnees, or Hazara returnees in Afghanistan, including those who return from Australia, or who are failed asylum seekers. Even accepting that the applicant may be identified as a former asylum seeker from Australia, the applicant does not have identifiable affiliations with international organisations or the Afghan government which would raise his profile and lead to him being specifically targeted by insurgents in and around his home area for a pro-western political opinion. On the evidence before me, I am not satisfied that returnees like the applicant, who have lived in a western country like Australia for several years and have sought asylum, are targeted by insurgents or other groups, targeted due to being a Shia Hazara, due to a pro-western political opinion, or as a returnee asylum seeker.
44. The delegate considered whether the applicant faced harm in Afghanistan due to generalised violence. Country information before me indicates that the population in Afghanistan, irrespective of their ethnicity and religion, are exposed to generalised and indiscriminate violence relating to conflict in the country. In terms of the general security situation in Afghanistan, I accept that the government does not exercise uniformly effective control over all parts of the country, particularly in rural areas. While I accept there have been challenges,

³⁶ UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January 2018, OG9EF76792

³⁷ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3; UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January 2018, OG9EF76792

the evidence before me does not support that Afghan government or security forces are losing control of [District 1]. While I accept that there have been sporadic incidents of violence in parts of Ghazni province, particularly in the provinces bordering the Hazarajat³⁸, taking into account the general security situation in [District 1], I find the chance that the applicant would be harmed as a bystander, or inadvertently caught up in an attack, or otherwise harmed through generalised violence is remote. I am also satisfied that any harm the applicant may possibly face in relation to generalised violence would also not be for the essential and significant reason or reasons of his race, religion, nationality, membership of a particular social group or political opinion, but rather a consequence of any ongoing insurgency or insecurity present in the country overall. Accordingly, s.5J(1)(a) and 5J(4)(a) of the Act would also not be satisfied.

45. I have found there is no real chance of the applicant facing persecution in [District 1] from [Relative 2], or on the basis of [Relative 1]'s profile, his religion, his ethnicity, his imputed political opinion, his time spent in Australia, his profile as a Shia Hazara, his western profile or links (including imputed links), as a returnee asylum seeker, or for any other reason. I am satisfied that the applicant would be able to subsist in his home area. The threats from AGEs, principally the Taliban, in Afghanistan has been against high profile targets such as persons and locations associated with the government, the military, and the international community. While certain high-profile and other vulnerable groups remain at risk in the country, I am satisfied the applicant has no association or proximity with those other risk profile groups, nor is there any suggestion he would have such an association or proximity when he returns to the country.
46. After having regard to the applicant's claims individually and cumulatively, I find that he does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

47. 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

48. 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

49. 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

³⁸ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102

- the person will be subjected to degrading treatment or punishment.

50. I have concluded that the applicant is not a person of interest to the Taliban, Islamic State, or any other insurgent group in Afghanistan, on account of [Relative 1]'s profile, his religion, his ethnicity, his imputed political opinion, or as a Shia Hazara, and does not face a real chance of serious harm on this basis. I have also concluded that the applicant does not face a real chance of serious harm from [Relative 2] in Kabul. I have further concluded that the applicant does not face a real chance of serious harm for any other reason including from generalised violence, the general security situation in [District 1], his time spent in Australia, or due to him being a returning asylum seeker who has resided in a western country. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm in [District 1].

51. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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