



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/05078

Date and time of decision: 6 July 2018 11:06:00

M Brereton, 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 Shi'a Hazara from Ghazni Province in Afghanistan. He departed Afghanistan in around July 2012 and travelled to [Country 1] and then [Country 2]. He departed [Country 2] by boat and arrived [in Australia] on [date] November 2012. On 3 November 2016, 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 24 May 2018.
2. The applicant claimed to fear harm from the Taliban because: his uncle was a member of an opposition political party and was killed fighting the Taliban; the Taliban believed the applicant's family stockpiled weapons; his father was beaten by the Taliban and permanently paralyzed; and the applicant's brother was abducted by the Taliban and is presumed dead. He also claimed to fear harm from two local residents who work for the Taliban and who have threatened his life. He also claimed to fear harm as a Shi'a, Hazara, and as a returned asylum-seeker who has been in the West.
3. The delegate was prepared to accept that the applicant is a Shi'a Hazara from Ghazni. The delegate found that the applicant is not a credible witness and did not accept any of the personal claims. The delegate considered the applicant's claims as to ethnicity, religion and being a returned asylum-seeker from the West against country information and found that the applicant did not face a real chance of serious harm or a real risk of significant harm for any of those reasons. The delegate found that the applicant is not a person in respect of whom Australia owes protection obligations.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. The applicant, through his migration agent, provided a submission in two parts on 26 and 27 June 2018. This submission refers to issues that were before the delegate and makes argument in respect of those issues and aspects of the delegate's decision. To that extent I am satisfied that it is not new information and I have considered it.
6. The agent has provided the IAA with four tranches of documents comprising media reports that post-date the delegate's decision. Two of these tranches refer to incidents in Kabul and Mazar-e-Sharif/Balkh province. For the reasons I have given below, I have found that the applicant can return to his home province in Ghazni. I also note that there is other information before me, from a variety of government and credible non-government sources that considers the recent situation in Afghanistan generally and also provides assessments of that situation. Having regard to all of these circumstances I am not satisfied that there are exceptional circumstances to justify considering these two tranches of media reports.
7. The other two tranches contain recent media reports relating to the security situation in Ghazni province and incidents during the current claimed ceasefire. As noted above, these post-date the delegate's decision and as they relate directly to Ghazni and also provide current reporting of the ceasefire situation, I am satisfied that there are exceptional circumstances to justify considering them.

Applicant's claims for protection

8. The applicant's claims as put before the delegate (prior to the post-interview admissions and explanations) are:
- He is an ethnic Hazara and his religion is Shi'a Muslim.
 - He was born in [year] in the village of N, in Malestan District, Ghazni Province
 - The Taliban thought his family might have stockpiled weapons because his uncle BH had been a member of the Hizbe Nasr group. BH was killed whilst fighting against the Taliban in 1995.
 - In about 1999, the Taliban approached the applicant's father twice and asked him to hand over weapons and ammunition. His father did not own a gun and told the Taliban he had no weapon to hand over to them.
 - His father was taken by the Taliban and badly beaten. He was found on the road by a passing driver and he was subsequently taken to hospital where he remained for two or three months and he was permanently paralysed.
 - The applicant's brother AA was abducted from his shop by the Taliban during the period his father was in hospital in 1999. The family have never seen or heard from AA since and they presume he is dead.
 - The applicant believes his AA's abduction and death was linked to the Taliban's search for the weapons to which his father had been linked.
 - The applicant ran AA's shop after his disappearance.
 - Two local residents, AK and S worked for the Taliban. The applicant blamed them for AA's death because they reported to the Taliban that his family had stockpiled guns.
 - When the Taliban regime collapsed, AK and his family moved to Kabul.
 - In mid-2012, the applicant went to Kabul to confront AK because he wanted to know for sure if AA was alive or dead. He managed to contact AK on his mobile phone and told him that he wanted to see him. AK gave him an address to meet up.
 - The applicant met AK and asked AK about his brother. AK did not give a direct answer and they argued and fought before two men pulled them apart.
 - AK telephoned the applicant that afternoon and threatened that the applicant would not make it home alive. The applicant took the threat seriously and was frightened. His mother told him to leave Afghanistan, which he did around 1 August 2012.
 - He fears that he will be killed or otherwise harmed by the Taliban or Daesh if he returns to Afghanistan because of the threat made by AK, who along with other family and associates, is connected with the Taliban.
 - He fears he will be targeted in Afghanistan by the Taliban and Daesh because of his Hazara ethnicity and because of his Shi'a religion.
 - He fears he will be killed, kidnapped or otherwise harmed by the Taliban or Daesh if he returns to Afghanistan because of being a returned asylum-seeker from a western country

Factual findings

9. At the interview with the delegate the applicant was confronted with evidence that refuted, or at least cast significant doubt on, many of his claims. This included evidence that his brother AA (who he claimed was dead) was alive and living in Australia. The applicant maintained that this was not true, even when confronted by information showing that AA had been sending money to the applicant in Afghanistan and was currently living in the same house as the applicant.
10. The delegate also put information to the applicant about a person (AS), who the applicant also denied knowing. The delegate put to the applicant that AS was the applicant's cousin, was the son of BH, lived with the applicant in the same house in Australia, and that the applicant was married to AS's sister. The applicant denied all of these suggestions and said that all of the information being put to him was completely false.
11. In a post-interview statutory declaration the applicant admitted the identities of, and his relationship to, AA and AS. He also admitted that he had provided false information, made false claims and embellished other claims throughout the visa application process, including at the interview. He admitted that he knew AA was not dead or missing when he made his application and that he (the applicant) had not confronted AK about AA's disappearance. He said that he would now provide truthful information and raised a new claim that he had witnessed the assault on his father and that was the reason he had confronted AK. He claimed that he was therefore at risk of harm from AK and S because of this.
12. The applicant also provided statutory declarations from AA and AS (the deponents). The deponents both admitted that they had made false and misleading statements in their own previous applications for protection visas and purported to now provide the truthful information. AS also stated that his own protection application "omits to mention an important matter", being his father's (BH) involvement as an anti-Taliban fighter and [an officer] with the Hizbe Wahdat/Hizbe Nasr – claims made by the applicant but not AS. AS claimed that he had not been informed about his father's previous history before but has now learnt his father's history, which he states is as claimed by the applicant apart from BH's date of death (the applicant had claimed that this occurred in 1999. He now admits this was a false statement and that BH died in 2009).
13. I have considered the timing of the declarations as well as the deponents' admissions to, and explanations for, having provided false or inconsistent information in their own previous applications. I do not consider AS's explanation as to not knowing his father's (BH) history to be credible and I find that the evidence in the declarations which purports to corroborate the applicant's personal claims has been fabricated in order to support the applicant's explanations for his previous false statements, and to strengthen his claims.
14. The applicant's agent submits that the delegate did not afford "any credit" to the applicant or the two deponents for correcting the "wrong" information that had been provided to the Department. I reject that submission on a number of grounds. The information provided to the Department is not merely wrong, it is (on the admission of all deponents) false information. It was not provided in error or because of misunderstandings – again, all three individuals make statements which lead me to conclude that the false information was deliberately and knowingly provided in order to mislead the Department as to the true facts.
15. I consider that the applicant's own conduct indicates that he has been an untruthful and deceptive witness, even when confronted with irrefutable evidence of his false information.

He consistently denied knowledge of his brother and cousin, even when shown photographs of them, and claimed that the persons he lived with (his brother and cousin) were unrelated persons he had met on the boat or at work. He vehemently denied all of the evidence that the delegate put to him, to the point of accusing the delegate of falsifying the evidence (although he apologised and withdrew that comment shortly after when the delegate noted it was a serious allegation). Even after being made aware of these issues and being given time to consult with his migration agent, the applicant returned to the interview and maintained his denials, and only admitted the truth of the matters six days after the interview.

16. I consider that the submission overlooks the overarching expectation that applicants are honest with the Department from the earliest interactions. The delegate explained both this expectation and the consequences of not being honest to the applicant on a number of occasions during the interview, including when confronting the applicant with proof that some of his information was false or misleading. I do not accept that the belated admissions and the additional statements which purport to corroborate aspects of the applicant's personal claims are matters that weigh in the applicant's favour in relation to his credibility or previous conduct.
17. Having regard to all of the above, I am not satisfied that the applicant is a witness of truth in relation to any of his previous personal claims. I do not accept that the two deponents have provided credible information or plausible explanations as to the circumstances of the false information and inconsistencies between the applicant's claims and the deponents' own evidence. I do not accept any of the applicant's claims as made in the SHEV application in relation to his personal fears or experiences in Afghanistan.
18. I have proceeded to consider the following claims:
 - He faces harm from AK and S because he is a witness to their crime.
 - He is a Shi'a Hazara from Ghazni province in Afghanistan.
 - He fears generalised violence in Afghanistan.
 - He fears harm as a returned asylum-seeker who has been in the West, and from an imputed anti-Taliban opinion.

Refugee assessment

19. 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

20. 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.
21. The applicant has admitted providing false information in relation to his family composition but he has consistently claimed to be a Shi'a Hazara from Ghazni. He has provided personal identification documents in support of this and there is no other information in the review material which indicates that the applicant is not from this part of Afghanistan. I am prepared to accept that he is a Shi'a Hazara from this part of Afghanistan and that Afghanistan is the receiving country for the purpose of this review.
22. The applicant claims that he departed Afghanistan using his own passport but the passport was taken from him by a people smuggler in [Country 2]. This is plausible and I am prepared to accept this explanation.

Fear of AK and S

23. The applicant claims that he faces harm from AK and S because of their crime against his family. The only crime that he has referred to is the beating of his father. There was some confusion as to the date of this incident. The applicant initially stated in his SHEV application that it occurred in around 1999. At the interview he said that it happened in 2006 or 2007. The applicant's brother, AA stated in his 2018 statutory declaration that it occurred around 1999. I am prepared to accept that the applicant may have been confused with dates and as both his initial statement and AA's declaration are consistent on the year 1999, I find that the claimed incident, if it occurred, took place in 1999. On that basis, the applicant would have been [a young child].
24. The applicant has not at any time claimed that he (or any other member of his family) actually witnessed the beating of his father. The claimed incident took place nearly 20 years ago when the applicant was a young child and the applicant remained in the same village and same house until he left Afghanistan in 2012. He has not claimed that he was ever approached, intimidated, threatened or had any contact whatsoever with AK or S during this period. He has not explained why, nearly 20 years later, he would suddenly travel to Kabul to confront AK. While he claims that he now fears harm as an adult and as the "oldest able male" in the family, he turned [age] in 2007 and became the oldest able male member of the family when AA left which, according to information in the review material, was in April 2009. Further, the applicant has not claimed that AK or S, or any persons related to or associated with them, has approached his family (who remain in the same village and same house) to ask about his whereabouts, or that any person has expressed any interest in him or made any threats against him since he left Afghanistan. I also take into account that these claims to fear personal harm as a witness and oldest able male were not raised until the applicant admitted that his earlier claims in relation to confronting AK about his brother were false. Having regard to all of the above, I am not satisfied that the claims raised in the statutory

declaration are credible and I do not accept them. I am not satisfied that the applicant faces a real chance of harm from AK, S, or any of their family or associates for any reason.

Shi'a Hazara

25. The applicant claims to have been born and raised in the Malestan district, Ghazni province. His mother, wife and child remain in the family home in the applicant's village. The applicant also claims to own a second house in this district. The applicant has previously made claims in relation to incidents involving his father, uncle, brother and himself but as noted above, I have not accepted any of these claims other than that his father may have been beaten. Apart from those claims, the applicant has not claimed that his family has suffered any harm because of being Shi'as or Hazaras in Ghazni. He has not claimed that his mother, wife or child have been subject to any threats or harm, have been forced to leave their home or been dispossessed of land, or suffered any other adverse interest for any reason, including since the applicant's departure.
26. Information in the review material indicates that the situation in Afghanistan for Shi'as and Hazaras has been deteriorating generally in some areas. In particular, Kabul and Herat have seen bombings and other attacks specifically targeting Shi'a Hazara mosques, community centres and gatherings. These have been claimed by Islamic State (IS) and affiliated organisations such as Islamic State in the Khorasan Province (ISKP). In claiming responsibility, ISKP emphasised that the attacks were religiously motivated, using derogatory language against Shi'as and calling for further attacks on them.¹
27. While I note the increasing number of attacks against Shi'a Hazaras, as well as in Afghanistan generally, the information does not indicate this trend is reflected in all parts of the country. The applicant's province, Ghazni, is one which together with other Hazara-majority areas in Bamyan, Daykundi, Ghor, Uruzgan and Wardak provinces, forms that part of Afghanistan known as the *Hazarajat*.² Hazaras make up around 40 per cent of Ghazni province's estimated overall population of 1.2 million, which is 50 per cent Pashtun.³
28. According to the Australian Department of Foreign Affairs and Trade (DFAT), the security situation in the *Hazarajat* has been considerably better than in most other parts of Afghanistan in recent years. Hazaras comprise the vast majority of the population in most districts in these provinces, which reduces ethnic tension. As Hazaras are visually distinct, non-Hazaras have found it difficult to infiltrate these areas without detection. The mountainous terrain of the *Hazarajat* also offers a form of natural protection, with few routes for outsiders to traverse these provinces. That said, some areas of the *Hazarajat* are more secure than others and the southern areas of Daykundi province bordering Uruzgan province tend to be less secure than the rest of Daykundi province as this area forms an unofficial border between majority Hazara and Pashtun communities, increasing localised ethnic violence.⁴ I note that the applicant's home district, Malestan, also has a southern border with Uruzgan province but the DFAT report does not indicate if the unrest noted in Daykundi province has also manifested in Malestan district.

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017', 18 September 2017, CISED50AD5681, at p 10; DFAT, 'DFAT Country Information Report Afghanistan 18 September 2017', 18 September 2017, CISED50AD5680, at p 10.

² DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, at p 4.

³ DFAT, 'DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017', Department of Foreign Affairs and Trade, 18 September 2017, CISED50AD5681, at p 3.

⁴ DFAT, 'DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017', Department of Foreign Affairs and Trade, 18 September 2017, CISED50AD5681, at p 6.

29. According to the European Asylum Support Office (EASO), the Taliban is said to have a large presence in Ghazni province and there are also small pockets of IS activity, although there has been no IS activity reported in Malestan. As at March 2017, the Taliban conceded that Malestan was one of the districts in Ghazni that remained under government control, although the Taliban continued to carry out guerrilla attacks against the government and security forces. Other reports confirmed that Malestan, with a Hazara-majority population, was one of the districts described as having a better security situation than other parts of Ghazni. Ghazni reported 1,215 security incidents between 1 September 2016 and 31 May 2017, but there were no incidents reported in Malestan. The EASO report does not indicate that Shi'as or Shi'a Hazaras have been targeted or otherwise subject to persecution in Malestan.⁵
30. More recently the United Nations Assistance Mission Afghanistan (UNAMA) annual report for 2017 noted an increasing pattern of deliberate, sectarian-motivated attacks against Shi'as and Hazaras, nearly all of which were claimed by ISKP.⁶ As noted above, none of these attacks occurred in Ghazni and there is nothing in the UNAMA report which indicates that Shi'as, Hazaras, or Shi'a Hazaras have been targeted within the *Hazarajat*, including Malestan.
31. Other information in the review material⁷ notes that Malestan is almost 100% Hazara and has no Pashtun enclaves, because it is located further into the *Hazarajat* than other areas. Up until at least 2009 there was continuing tension between the Afghan government and certain Hazara political and paramilitary groups in relation to control of the district but Malestan was considered to be "out of the reach" of the Taliban, due in part to the power of the Hazara groups. Although there were reports of Hazara civilians being subjected to violence and intimidation by the Hazara groups, these tended to involve people associated with the Taliban or opposition parties. Apart from the applicant's claim in relation to his uncle (which I have not accepted), the applicant has not claimed that he or his immediate family was involved with any political or paramilitary group and he has not claimed that he or his family was ever targeted or harmed by Hazara political or paramilitary groups.
32. The media reports that the applicant has provided in relation to Ghazni (to the delegate as well as the most recent reports provided to the IAA) indicate that significant violence and tension continues to affect certain areas of Ghazni. Most of the violent incidents have involved attacks on police and security forces, government officials or government employees. I have considered these reports further in relation to generalised violence but I note that none of these reports indicate persons being targeted and/or harmed in Ghazni province for reasons related to religion or ethnicity. The applicant also referred to reports relating to the abductions of two Hazara returnees from Australia in Ghazni (one of whom was subsequently killed) in 2014. I have considered this particular issue further below in relation to accessing Malestan district.
33. The information above leads me to conclude that Malestan is a Hazara-exclusive district within the *Hazarajat* and is one of the more secure areas in Afghanistan. There are no reports before me of anti-Shi'a or anti-Hazara violence in this district and the information indicates that it is not subject to Taliban or IS control. The information does not indicate that

⁵ European Asylum Support Office (EASO), "Afghanistan: Security Situation December 2017", 1 December 2017, CISED850AD8102 at pp 118-123.

⁶ United Nations Assistance Mission Afghanistan (UNAMA), "Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017", 15 February 2018, CIS7B83941276, at pp 41

⁷ Cooperation for Peace and Unity (CPAU), "Conflict analysis: Jaghori and Malistan districts, Ghazni province", 1 April 2009, CIS17321 at p 12.

this situation is deteriorating. Having regard to all of the above I am not satisfied that the applicant faces a real chance of harm in Malestan because of his religion or ethnicity.

Generalised violence

34. As noted above, there were no security incidents reported in Malestan district during 2016-2017. The applicant has provided the IAA with one media report dated 14 June 2018 which refers to an explosion in a house in Malestan district but the motive behind the incident is reported as “not clear” and the victims, their ethnicity and religion is not identified. The other recent media articles that the applicant provided to the IAA report significant and ongoing violence in Ghazni province targeting the government or security forces. This includes the assassination of a district governor (not Malestan district), an attack on the Moqur District police headquarters, battles between the Taliban and security forces in the eastern districts of Ghazni (outside the *Hazarajat*), and the house explosion referred to above. There is also a report relating to a Taliban blockade of the highway from Ghazni city to Paktia province, in the east.
35. The information provided in relation to the ceasefire is all very recent (June 2018) and notes a mortar attack, kidnappings, and attacks on soldiers in other provinces, as well as a suicide blast in Kabul. There is nothing in these articles that refers to the situation in Ghazni or that indicates that there has been any upsurge in violence in Ghazni, or in particular Malestan district, in recent weeks.
36. Other information⁸ in the material indicates that civilians have been killed and injured as bystanders during attacks on the police or security forces, from roadside bombs and other Improvised Explosive Devices (IED), and from the premature detonation of explosive devices. As already noted, there were no such incidents reported in Malestan district.
37. I accept that Afghanistan remains a dangerous place and that civilians have been harmed and killed by generalised violence. The information above however leads me to conclude that this risk is lower in Malestan than many other areas of Afghanistan. Although I cannot completely rule out the chance that the applicant may be harmed in generalised violence or as a bystander, I consider that in Malestan this chance is remote, and therefore not a real chance. I am not satisfied that the applicant faces a real chance of harm in Malestan because of generalised violence.

Accessing Malestan

38. At the interview, the applicant and his agent both referred to road closures and the dangers of travelling in the Qarabagh district of Ghazni. According to information in the review material, Malestan province is in the west of Ghazni and borders Zabul and Uruzgan provinces. DFAT reports that returnees from western countries almost exclusively return to Kabul⁹ and while many choose to remain there, many others choose to return to their home districts. I note from the review material that there is no air access to Malestan district or Ghazni city from Kabul.
39. The 2017 DFAT Thematic Report on Hazaras confirms that abductions of Hazaras have continued to be reported in provinces bordering the *Hazarajat* but it does not report any abductions in Ghazni since 2015. DFAT has assessed that ethnic targeting can play a role in

⁸ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102 at pp 118-123.

⁹ DFAT, 'DFAT Country Information Report Afghanistan 18 September 2017', 18 September 2017, CISED50AD5680, at p 31.

the selection of victims once an abduction is in progress and has noted that there have been recent cases in which Hazaras have been singled out for special attention during an abduction, as well as reports of 'spotters' at bus stations calling ahead to tell insurgents or criminals which buses are carrying Hazaras. DFAT assessed that it is unclear whether the targeting of Hazaras is due to their ethnicity, because of a perceived association with the government or international community, because they are perceived to be more wealthy than other ethnicities (and therefore more likely to be able to pay ransoms), or because Hazaras represent a lower risk target from the abductors' perspective than other ethnicities. DFAT assesses that Hazaras remain likely to be selected for abduction or violence if a vehicle carrying a mix of ethnic groups is stopped and that Hazaras travelling to and from the *Hazarajat* are particularly at risk in this regard.¹⁰

40. Information in the review material indicates that the nearest airport to Malestan district is Bamyan city. There are two airlines offering civilian flights between Kabul and Bamyan.¹¹ Bamyan is one of the provinces that form the *Hazarajat*. The delegate's research (which has not been challenged or otherwise referred to by the applicant in his IAA submission) indicates that in order to travel from Bamyan to Malestan, the applicant would pass through parts of Bamyan and Maidan Wardak provinces and then cross Nawur district in Ghazni. I note that Bamyan is a Hazara-majority province and the two districts traversed in Maidan Wardak (Hesa-e-Awal-e-Behsud and Markaz-e-Behsud) are Hazara-majority districts.¹² Nawur is an exclusive Hazara-district in Ghazni province that has been assessed to be under government control and to have a similar security situation to Malestan.¹³ I consider that the applicant will therefore be travelling within Hazara-dominated and government-controlled areas. I also note that this route avoids Ghazni city and the district of Qarabagh, which have both been highlighted by the applicant as dangerous areas.
41. The material before me refers to only one security incident along this route, which was a Taliban attack on security checkpoints in September 2017.¹⁴ While I note the DFAT information cited above referred to abductions of Hazaras in Maidan Wardak province, it reported that these abductions were attributed to land disputes between local Hazaras and Kuchi tribal members, rather than to the targeting of Hazaras transiting through Hazara-majority districts.¹⁵ I have not located any other information relating to abductions of Hazaras travelling within the *Hazarajat*.
42. The applicant claims to be a wealthy man who owns two houses in Malestan and has over [amount] in savings. I am satisfied that he would be able to fund an air ticket from Kabul to Bamyan. I have considered the information about road travel and while I cannot rule out completely the chance of the applicant suffering harm while accessing Malestan, I take into account that he would be travelling within the *Hazarajat* and Hazara-majority/government-controlled areas, as well as the small number and type of reported incidents along the route he would take. Having regard to all of these factors, I consider that the chance of the applicant being stopped and then targeted for harm while travelling from Bamyan airport to Malestan district is remote, and therefore not a real chance.

¹⁰ DFAT, 'DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017', Department of Foreign Affairs and Trade, 18 September 2017, CISED50AD5681, at pp 7-8.

¹¹ CI160122171700849 Afghanistan - Airlines operation from Kabul to Daikundi and Bamiyan , 1 February 2016, CRO9DEFA36; EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102 at p 95.

¹² EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102 at p 253.

¹³ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102 at p 120.

¹⁴ "Taliban suffer casualties in central Afghanistan", BBC Monitoring, 30 September 2017, CISED50AD8190.

¹⁵ DFAT, 'DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017', Department of Foreign Affairs and Trade, 18 September 2017, CISED50AD5681, at p 8.

43. I have also considered information in the review material in relation to the general security situation in Kabul.¹⁶ While I accept that there have been attacks in and around Kabul, including the airport, in the past, I consider that any period of time that the applicant would need to spend in and around Kabul airport would be brief and only for the purpose of arranging his travel on to Bamyan and that there is only a remote, and therefore not a real chance, that he will face harm at Kabul airport.
44. Having regard to all of the above, I am not satisfied that the applicant will face a real chance of harm accessing Malestan district.

Returned asylum-seeker from the West/imputed anti-Taliban opinion

45. The applicant claims to fear harm as a returned asylum-seeker who has spent time in the West. This includes a claim that he will be imputed as anti-Taliban for this reason.
46. The information before me does not indicate that returnees who have made unsuccessful claims for asylum attract any adverse attention from the Afghan authorities, or from their own communities or families. I take into account that the applicant departed Afghanistan legally and has not claimed to have committed any crimes in Afghanistan before his departure or outside Afghanistan since then. While I note the applicant's evidence that he is a wealthy man, he has not made any claims to fear harm as a returnee linked to this wealth, or any perception of wealth. He has not claimed that his wealth is known or that it will be apparent to government officials or any other group or person, or that he will need to disclose it to anyone, should he return to Afghanistan.
47. DFAT is aware of occasional reports alleging that returnees from western countries have been kidnapped or otherwise targeted based on their having spent time in a western country. DFAT also notes that people who identified as having international associations face a high risk of being targeted by anti-government elements (AGE) and this may possibly include returnees from western countries; however most returnees take measures to conceal their association with the country from which they have returned and keep a low profile on return. DFAT assesses that people in this situation do not face a "significantly higher" risk of violence or discrimination than other Afghans with similar profiles.¹⁷ I am not considering whether the applicant faces a "significantly higher risk" but rather, whether he faces a real chance or real risk of relevant harm.
48. A more recent report from the United Kingdom Home Office (UKHO) notes that there are anecdotal accounts of experiences of returnees, some of which reportedly included violent incidents. However, there is no evidence that these alleged violent incidents were a consequence of being 'Westernised'. There is no general indication that incidents of violence against returnees are due to any apparent 'Westernised' demeanour. In contrast, there are reports indicating that many returnees from the West are welcomed back into their families and society, particularly if they are seen as having made a success of themselves. UKHO states that in its opinion, there is little, if any, evidence that 'discrimination and stigma' reportedly faced by returnees results from the person having become 'Westernised'; but in most cases it is due to feelings of shame and failure of having sought and failed to gain

¹⁶ DFAT, 'DFAT Country Information Report Afghanistan 18 September 2017', 18 September 2017, CISED50AD5680, at pp 10-11; DFAT, 'DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017', Department of Foreign Affairs and Trade, 18 September 2017, CISED50AD5681, at p 7.

¹⁷ DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680, at p 31.

asylum and therefore failing to meet their family and community's expectation of their migration.¹⁸

49. The applicant has not claimed to have had any connection, or profile arising from contact, with the Afghan government, military or security forces, or the international community. He has not claimed that he dresses, speaks or carries himself in a manner that will draw attention to him as a returnee from the West. He has not claimed that he has any particular physical characteristics that will mark him out as having returned from the West, or that he will need (or want) to carry or display any documentation in relation to his asylum claims or his time in the West. I do not accept that the applicant will behave in a way that will identify him as having returned from the West or that he will be otherwise identifiable as having this profile. Further, as I am not satisfied that he will be identified as having returned from the West, I am not satisfied that merely being a returned Shi'a Hazara would give rise to an imputed anti-Taliban opinion. I also take into account that once he arrives in Malestan, he will be within a Hazara-exclusive area within the *Hazarajat* that is not considered to be under Taliban control. Having regard to all of the above, I am not satisfied that he faces a real chance of being identified as having returned from a western country and suffering harm as a result, including for any imputed anti-Taliban opinion.
50. Having regard to all of the claims and evidence above, I am not satisfied that the applicant faces a real chance of harm: from AK, S or any of their family or associates; because of his ethnicity or religion; from generalised violence; or as a returned asylum-seeker who has spent time in the West.

Refugee: conclusion

51. 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

52. 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

53. 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.

¹⁸ United Kingdom Home Office (UKHO), "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January 2018, OG9EF76792, at pp-5-7.

54. I have found above that the applicant does not face a real chance of harm: from AK, S or any of their family or associates; because of his ethnicity or religion; from generalised violence; or as a returned asylum-seeker who has spent time in the West. As 'real chance' and 'real risk' equate to the same threshold¹⁹ and for the same reasons as given above, I am satisfied that he does not face a real risk of significant harm for these reasons.

Complementary protection: conclusion

55. 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.

¹⁹ MIAC v SZQRB (2013) 210 FCR 505.

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.