



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA18/05153

Date and time of decision: 12 December 2018 16:45:00

D Power, 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Hazara Shia from Afghanistan. On 22 November 2017 he lodged an application for a Safe Haven Enterprise visa.
2. On 15 June 2018 a delegate of the Minister for Immigration refused to grant the visa. The delegate found the applicant's claim to have been threatened by the family of his fiancé not to be credible. The delegate pointed to omissions regarding the applicant's family's whereabouts and composition and discrepancies in his evidence. The delegate accepted that the applicant may face harm in Kabul but found that the applicant could safely relocate to Parwan province. The delegate further found that the applicant would not face harm on account of his Shia Hazara ethnicity, imputed political opinion, perceived wealth or as a returning asylum seeker who has spent time in a western country.

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).
4. On 9 July 2018, the IAA received a submission from the applicant's representative which refutes a number of the delegate's findings. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates a number of claims made to the delegate.
5. The applicant has also provided a copy of what purports to be a public notification of his father's death and a photo of his father's tombstone. I concede that is not usual for a death notice or a tombstone to give details about the cause of death. Nonetheless, neither the death notice nor the tombstone gives any indication about the nature of the father's demise. Even if it is true that the applicant's father has passed away, this evidence does nothing to establish that the applicant's father was killed in the manner set out in his claims for protection. The agent also provides no explanation as to why this evidence could not have been provided to the delegate earlier. I note that the delegate particularly raised information with the applicant that suggested that the applicant's father was still alive after the date of his purported fatal beating. Given the delegate clearly raised this specific concern at interview, it is not clear why the applicant did not attempt to provide this evidence in the post-interview submission to the delegate (or even make reference to it). I note also that another six weeks passed between the agent's submission to the delegate and a decision being made, but no attempt was made to provide this evidence during that time or even to seek an extension. In light of this, I have serious concerns about the credibility of this information. Given the above, I am not satisfied there are exceptional circumstances to justify considering the information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - The applicant is a Hazara Shia from Kabul province.
 - The applicant was engaged to be married but found out that his fiancé was seeing another man.

- When he tried to break off the engagement his fiancé's male relatives became angry.
- They confronted the applicant's father when the applicant was not at home and killed him.
- The applicant subsequently received many death threats from his fiancé's family and fled the country soon afterwards.
- The applicant also expressed fears about the situation generally for Hazara Shias in Afghanistan.
- The applicant further expressed fears that he would be targeted because of his perceived wealth and the time he has spent in a western country.

Refugee assessment

7. 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

8. 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.
9. I accept that the applicant is a Hazara Shia and an Afghani national and that Afghanistan is the receiving country for the purposes of this assessment.
10. In their submission to the IAA, the agent states that some adverse information about the applicant should be discounted on the basis that the delegate has misidentified the applicant. In the decision, the delegate appeared to incorrectly substitute the birth year [specified year] at certain points in the decision, and at one point he erroneously identified the applicant as originating from Ghazni province. However, these errors appear to be relatively minor and isolated issues. The delegate prefaces the decision with the applicant's correct details. The discussion of the applicant's home area and the security situation correctly identify the applicant's home area and do not mention Ghazni. Looking at the decision as a whole, I do not consider that the errors referred to above reasonably give rise to a concern that the delegate

has confused the applicant with someone else or that these mistakes have materially affected the consideration of the applicant's claims.

Targeting by fiancé's relatives

11. The applicant claimed that he was engaged to be married in Afghanistan. The engagement lasted for about [number] months. However, the applicant found out the woman to whom he was engaged was in a relationship with another man. The applicant cancelled their wedding but his fiancé's family refused to let him break off the engagement. They threatened to kill the applicant if he did not go ahead with the marriage.
12. At interview, the applicant says that after he found out his fiancé was seeing another man his father and mother went to the fiancé's family. The applicant's parents told them that, under the circumstances, they wished to call the marriage off. He confirmed that the fiancé's brothers went to his house the very next morning. The applicant was absent at the time so they confronted his father instead. His father supported the applicant's stance that the engagement should be broken. The applicant then claimed that his father was beaten to death by the men, who used [specified items] to beat him.
13. Even allowing for the possibility that their intention was to beat the father rather than kill him outright, this seems an extremely rapid escalation of events given that just one day had passed since his family had attempted to break off the engagement. It also suggests that the attack was premeditated since the men came equipped with [specified items] to perform the attack. It is not clear why the men would suddenly escalate matters by brutally beating the applicant's father to death.
14. Regardless, the issue here is the contrast between the alleged treatment of the father and the treatment extended to the applicant and the rest of his family. The applicant stated in his written claims that his family received death threats. He stated that his [family members] moved to Parwan to escape these attentions. He also stated that his brother "fled" to [Country 1]. However, at interview the applicant stated that his [family members] moved to Parwan only briefly before moving back to Kabul. He says that his fiancé's brothers only wanted to find the applicant and were no longer interested in the applicant's family. The applicant claimed that the fiancé's brothers talked to his brother and stated that if the marriage did not proceed, they would kill the applicant. When the delegate pointed out that he claimed his brother had left for [Country 1], the applicant clarified that it was another brother [Mr A] that went to [Country 1]. However, this does not explain why one brother supposedly needed to leave for [Country 1] out of fear of repercussions yet another brother remained in Afghanistan without suffering harm.
15. The delegate questioned the applicant about the treatment of his family in the aftermath of the beating. The applicant indicated that his family were threatened but not directly harmed. This was the case even during the period the applicant was in hiding. No harm came to the family or direct physical pressure applied to them to reveal the applicant's whereabouts in ten days or so before he left Afghanistan or at any other time. It is difficult to believe that the same men who would beat a man to death would be so circumspect even with other male relatives.
16. The applicant also claimed that [a family member] of his fiancé worked for an Afghan intelligence agency. Part of his claimed fear of return to Afghanistan stems from the fact that this [family member] works in intelligence and has powerful friends in the government. In his written statement he says that following his father's death he received many death threats from the brothers and that "knew then that they would not hesitate to kill me if they found

me". These statements appear to clearly indicate that his life was already under threat and that he was already in hiding. At interview, the applicant confirmed that he immediately went into hiding after his father's beating. However, despite this he claims he was able to return home and transport his father to hospital, stay with him there all day until he passed away, arrange his father's burial, make arrangements to depart the country, and leave Kabul under a passport in his own name, all without being intercepted. He indicated in his entry interview that he had no issues departing the country. It is hard to reconcile this with the applicant's assertion that his return to Afghanistan would become known to his fiancé's brother through his government contacts and that the applicant would be found by him wherever he went in Afghanistan.

17. There is also the matter of the applicant's persistent failure to give truthful responses when asked about his family composition, the current whereabouts of family members, and various remittances to and from family members. The applicant did not disclose that he had a [family member] in Australia until three days before his interview. He stated that he was fearful that declaring this association might negatively affect his brother's immigration status. Despite admitting that his brother was in Australia, the applicant claimed he did not have any other siblings when asked by the delegate at the SHEV interview. He only admitted to the existence of his other siblings when the delegate informed him that the Department had evidence that he had been untruthful about his family composition. The applicant subsequently admitted to another [number] siblings. When asked why he had not admitted to these siblings earlier, he claimed that he was fasting at the time of the entry interview and wanted the proceedings to conclude as quickly as possible. This does not explain why he failed to mention them in his SHEV application some four years later or when the question was first asked of him at the SHEV interview. In subsequent explanations for these omissions, the applicant stated that he was influenced by others in making these false statements. These significant omissions, and the shifting explanations for them, do little to restore faith in the applicant's overall credibility.
18. At one point, the delegate asked the applicant about \$[amount] his brother sent him when the applicant was still in Afghanistan. The applicant stated that he did not recall ever having been sent such a sum. However, in the post-interview submission to the delegate, the applicant stated that the applicant did now recall receiving a sum of \$[amount] to cover their father's funeral. It seems unusual that the applicant would not recall receiving such a significant sum in reference to his father's funeral.
19. The delegate put information to the applicant that there was reliable information before the Department that he was residing in [Country 1] in 2012. The applicant denied that this was the case. However, a documented interview with [Mr B], whom the applicant has now admitted is his brother, listed the applicant and all of his other brothers as living in [Country 1] as at January 2012 (the date of the interview). [Mr B]'s Protection visa application dated June 2012 again lists the applicant as residing in [Country 1]. The family composition information set out in a partner visa application by [Mr B]'s partner [Ms C] clearly lists the applicant as still residing in [Country 1] as at June of 2013. This information casts further doubt on the applicant's claims to have been in Kabul continuously from his birth until his departure from Afghanistan in March 2013 and to have experienced harm there around that time. There was also information that the applicant's parents were living in [Country 2] in June of 2012. The applicant did not mention that his parents ever resided outside of Afghanistan. Although the applicant continued to deny the accuracy of this third party information, there is no suggestion or indication that it was supplied to the Department in bad faith.
20. The applicant was also presented with evidence that he had sent money to family members in [Country 2]. The applicant repeatedly denied that members of his family were ever in [Country

2]. In the submission to the delegate, the applicant presented a letter purporting to be from [Company 1]. The letter is signed but the person who signed the letter is not named. It is not witnessed or made in the form of a statutory declaration. The letter appears to deal with just a single transaction [in] January 2017 made to a person called [Mr D]. It is not clear how this letter explains the apparent multiple payments to family members in [Country 2] throughout 2016. I note that there are multiple points of reference that confirm the applicant as the person who sent this money to [Country 2] and is not based solely on a matching name. The applicant's agent then asserted that the applicant's account was used without permission. The applicant has provided no evidence from this and even the letter that purports to be from [Company 1] only deals with one transaction. The applicant did not explain why the [Company 1] would use his account without his permission simply in order to remit funds to his own family members. Further responses from the agent have attempted to assert that many of the apparent issues with the applicant's narrative stem from the fact that the delegate misidentified the applicant, as evidenced by the errors in the decision relating to the applicant's birth year and a single mistaken reference to Ghazni as the applicant's home region. As set out above, I do not consider that when the decision is read as a whole that these relatively minor errors give rise to any serious concerns that the applicant was misidentified. In any case, the information linking the applicant to the payments is compelling. The payment information provided comes from Australian government agency, and the payment themselves include the applicant's address, driver's licence details and, on some transactions, even list "Family Support" as a reason for payment. I am satisfied that the applicant regularly remitted money to family members who were residing in [Country 2] at the time.

21. Some of the applicant's omissions regarding his family composition and his own whereabouts have a direct bearing on his claims, while other omissions are not directly relevant to the matter at hand. I consider that the applicant's persistent pattern of withholding information about his family, or making admissions only when presented with direct evidence, casts doubt on his standing as a witness of truth. Compounding these concerns are implausibilities and inconsistencies in the applicant's narrative as a whole.
22. I accept that the applicant may have been engaged at one time and that this engagement may have ended. However, I do not accept that the engagement ended in the manner described. I do not accept that the applicant was targeted by vengeful relatives due to a failed engagement. I do not accept that his father was beaten to death in an attack linked to that same dispute. I do not accept that they would kill his father but no make no attempt to directly harm other male relatives, or that the applicant was ever sought out for this reason.
23. I am not satisfied that the applicant faces a real chance of harm from his fiancé's relatives in Afghanistan.

Hazara Shias in Afghanistan

24. The applicant has also made a claim to fear harm in Afghanistan as a Hazara Shia from the Taliban and other Sunni extremist groups.
25. The available country information does not support the view that Shia are targeted by the Taliban solely on the basis of their faith. The Afghan Analysts Network (AAN) has pointed to the Taliban's repeated denunciation of sectarian attacks as evidence that the group has no appetite for inciting sectarian violence¹. The Department of Foreign Affairs and Trade (DFAT)

¹ Borhan Osman, "With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War", Afghan Analysts Network (AAN), 19 October 2016, CX6A26A6E11358

notes that there have been Taliban attacks on both Sunni *and* Shia religious leaders, but these have generally targeted those seen as supportive of the government “rather than due to any religious motivation².”

26. Attacks that did focus on Shia were almost exclusively laid at the door of the Islamic State in Khorasan province (ISKP). None were claimed by the Taliban³. Country information notes the limited range and scope of the ISKP operations, with attacks deliberate sectarian attacks against Shia limited to Kabul, with unclaimed attack in Herat city and Balkh province⁴. The US Military assessed that “a combination of military pressure and lack of local support had caused IS to decline in size, capability, and ability to hold territory”⁵.
27. DFAT assesses that the key risk groups remain those associated with the government or international community (or seen as supporting them), those working for civil society (CSOs) and non-government organisations (NGOs), and journalists and other members of the media. Women also remain a group at risk, as do those actively advocating for women’s rights. The applicant has not indicated that he has any particular profile with any insurgent or anti-government elements (AGEs) in Afghanistan, and did not raise any claim to have been personally targeted by them. The applicant confirmed at interview that he had not experienced any harm in the past due to his faith or ethnicity. The applicant has family residing in Afghanistan and has not indicated that they have been targeted on the basis of their faith or ethnicity. He has made no claim to be politically active or to have made any public statements on Afghani politics (or any other matter).
28. The delegate found that the applicant would face a real chance of harm in Kabul. The agent submitted information outlining attacks in Kabul from a number of reputable sources, such as Al-Jazeera, the Washington Post, and The Diplomat. The information submitted by agent is echoed to a large extent by the 2017 DFAT report on Afghanistan that lists more than a dozen attacks in Kabul in 2016 and the first half of 2017⁶. Given the frequency of attacks, it raises questions as to whether the applicant would face a real chance of harm on account of his ethnicity or religion if he were to reside in Kabul. However, even accepting this to be the case, I am not satisfied that the applicant has a well-founded fear of persecution in relation to all areas of Afghanistan. For the reasons given below, I am not satisfied the applicant faces a real chance of any harm in [District 1] in Parwan province.
29. Parwan province is immediately adjacent to Kabul and there are a number of roads leading into Parwan⁷. Although there are some risks travelling on roads in Afghanistan⁸, the applicant would need to make the journey just once. I consider that, given the relative infrequency of incidents on these roads, the relatively short distance the applicant would need to travel and the fact that the applicant only needs to make a single journey, the risk of harm to the applicant does not rise beyond remote.

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

³ Ibid

⁴ UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201

⁵ United States Department of Defense, "Enhancing Security and Stability in Afghanistan June 2017", 19 June 2017, CISED50AD4660

⁶ DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680

⁷ Program for Culture and Conflict Studies. Naval Postgraduate School, "Parwan Provincial Overview", 1 November 2017, CISED50AD6111

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

30. While EASO noted occasional road closures in Parwan, it did not note any conflict related abductions⁹. Parwan province as a whole recorded just 40 civilian casualties (13 deaths, 27 injuries) in the first six months of 2017, a drop of 40% compared to the same period in 2016¹⁰. EASO did not highlight any sectarian attacks on Hazara Shias in Parwan. In regard to [District 1], the European Asylum Support Office (EASO) recorded just a single security incident there between September 2016 and May 2017¹¹. EASO particularly noted that the Taliban has itself stated that it “does not have any territory under its control in Surkh-e Parsa”¹².
31. Parwan province as a whole is majority Pashtun and Hazaras make up only 11% of the population¹³. However, that nonetheless sizeable contingent of Hazaras is concentrated in just two districts – Shekhali and Surkhi Parsa¹⁴. Given the significant Hazara Shia presence in [his region], and the relative absence of sectarian violence or indeed any sort of conflict related violence in the area, I consider that the likelihood of the applicant being persecuted there on account of his faith or ethnicity alone, or as a consequence of generalised violence, does not rise beyond remote.

Returnee from a western country

32. The applicant also claims to fear harm on return to Afghanistan because he has resided in a non-Muslim country (Australia). He also claimed that he would be targeted because he would be perceived as wealthy. I accept that the applicant may be regarded as a returnee from a western country.
33. The 2017 DFAT Country Information report notes that DFAT has no information to suggest that returnees from western countries attract negative attention from state authorities for having sought and failed to gain asylum¹⁵. The applicant has raised concerns that his fiancé’s [family member] will know of his return because of his connections to the government and the intelligence services. However as set out above I have found this claim not to be credible.
34. DFAT assesses western returnees as not facing a significantly higher risk of violence or discrimination than other Afghans with a similar ethnic and religious profile¹⁶. I note that the applicant has never claimed to have come to have been personally targeted by AGEs in Afghanistan. For the reasons given earlier, I am not satisfied the applicant faces a real chance of harm for reason of his ethnicity or religion in [District 1].
35. EASO states that a number of sources indicated to them that returnees are often looked up to or received positively by their families and communities¹⁷. The UK Home Office states that there is no general indication that incidents of violence or discrimination against returnees are due to the person being ‘Westernised’ on account of having spent time in a Western country¹⁸. Overall it supports the view that the mere fact of returning to Afghanistan from a western country is not sufficient to give rise to a real chance of serious harm. As set out above, I do not

⁹ EASO, "Afghanistan: Security Situation December 2017", 01 December 2017, CISED50AD8102

¹⁰ UNAMA, "Afghanistan- Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852; cited in EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102;

¹¹ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102

¹² Ibid

¹³ Ibid

¹⁴ [Deleted.]

¹⁵ DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680

¹⁶ Ibid

¹⁷ Ibid

¹⁸ UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as “Westernised”, 1 January 2018, OG9EF76792

accept that the applicant was previously targeted by a family with powerful government connections. The applicant has not claimed that he has any particular profile with the Afghani Government for any other reason. As stated at interview, he remains an observant Muslim. Although it is possible he has acquired an accent while abroad he maintains weekly contact with his family in Afghanistan and a familiarity with Hazaragi as it is currently spoken there. He has made no claim to be politically active or to have any sort of public profile in Australia that would attract attention on return, nor has he claimed to have been personally targeted by any non-state armed groups in Afghanistan before he left.

36. I note that the applicant has been able to amass significant savings here in Australia. He claims to fear being targeted due to his perceived wealth. In the submission to the delegate, the applicant's agent stated that it was dangerous to carry around a large amount of cash in Afghanistan. Carrying around large sums of cash is hardly a risk-free endeavour anywhere. However, I note that the applicant has regularly and successfully remitted funds abroad, including back to Afghanistan. The applicant did not make any indication that any of his family members had difficulties accessing the cash that he sent them or that they received adverse attention when doing so. He has acknowledged receiving the sum of \$[amount] from his brother while in Afghanistan and did not indicate that he had any particular problems managing the receipt of that significant sum of money. There have been sporadic, unverified accounts of violence against returnees reported by the Refugee Support Network, including incidents of robbery or theft¹⁹. However, that same organisation reported that the main challenges for a group of 25 returnees they monitored on return were financial difficulties, inability to live in Kabul, and inability to live with family members. Targeted crime was not listed as a concern²⁰.
37. It should also be noted that these generally isolated reports arise in the context of very substantial numbers of people returning to Afghanistan. The Voice of America reported that in 2016 more than one million Afghans returned home²¹. While this has led to resourcing pressures in some cities, it has not led to widespread reports of returnees being targeted. The International Organisation for Migration's (IOM) national programme manager on return, reintegration, and resettlement for Afghanistan says that IOM "had not documented any specific cases" of returning Afghans being targeted on the basis they 'westernised'²². There is always a chance that the applicant may be caught up in general criminal activity. However, I am not satisfied that, given the relatively low number of reported incidents, the evidence supports a finding that the risk to the applicant is other than remote.
38. I am not satisfied that the applicant would face a real chance in [District 1] due to perceptions that he is wealthy, or because he is a Shia Hazara returning from a western country.

Capacity to subsist and other matters

39. The applicant made claims that his capacity to subsist would be threatened on return. He said he has no familial connections anywhere except [District 1] and could not live in [District 1] because he does not want to put the lives of his [family members] in danger. He also claims that his fiancé's [family member] will target him anywhere in Afghanistan. However, as set out above I do not accept that he was ever targeted due to a failed engagement. I do not therefore accept that his former relationship would give rise to a real chance of any harm in [District 1]. At interview, the applicant indicated that his [family members] were now residing in Kabul

¹⁹ UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January

²⁰ Ibid

²¹ "Over 1 Million Afghan Refugees Return Home", Voice of America (VOA), 16 November 2016

²² UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January

province, which I accept to be the case. In any event, for the reasons set out above, I do not accept that the relatives of his former fiancé pose any threat to the applicant or his family members regardless of where they reside.

40. Nor do I accept that the applicant will be unable to subsist in [District 1]. I am satisfied that, given his employment skills and his demonstrated adaptability and resilience that the applicant would be unable to find employment and accommodation or otherwise sustain himself in [District 1], even without familial assistance. The applicant has acquired English language skills, has skills as a [Occupation 1] and gained further experience in [Occupation 2] and [Occupation 3] since his arrival in Australia. He has started one business and has an interest in another. He has managed to do all this in a country where he was not originally fluent in the language or familiar with the culture.
41. The applicant also has demonstrated considerable financial means in the recent past, including at least \$[amount] in savings as at the date of his SHEV interview in April this year, as well as interests in at least two businesses. The delegate highlighted this in his decision, and the applicant has made no claim since that his savings have substantially reduced or that he no longer has access to these funds.
42. Taking into account all the applicant's circumstances, I am not satisfied that there is a real chance that he would be unable to find employment or otherwise support himself in [District 1] or that it capacity to subsist would be threatened or otherwise amount to or lead to serious harm.

Refugee: conclusion

43. 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

44. 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

45. 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.

46. I have found that the applicant does not face a real chance of harm as a consequence of a former relationship and for the same reasons, I am not satisfied he faces a real risk of significant harm on this basis. I have also concluded that even if it can be said that the applicant may face a real chance of persecution in Kabul as a Hazara Shia that risk does not extend to the entire country. I have concluded that the applicant does not face real chance of any harm in, or in accessing, [District 1] from the Taliban, Sunni extremists or other AGEs on account of his profile as a Hazara Shia the general security situation, his time spent in Australia, due to him being a returning asylum seeker, or because he would be unable to subsist. Based on the same information, and as the real chance standard is the same as that for real risk, I am not satisfied the applicant does has a real risk of suffering harm, including significant harm, in [District 1].
47. In accordance with s.36(2B) of the Act, there is taken not to be a real risk of significant harm if it would be reasonable for the person to relocate to another area of the country where there would not be a real risk of significant harm. In this case I am satisfied that it would be reasonable for the applicant to relocate to [District 1] where he does not face a real risk of significant harm.
48. The applicant's argument in relation to being unable to relocate to [District 1] centre on the threat from the applicant's fiancé's [family member], who the applicant claims is in the intelligence services and would find him in Parwan province (or anywhere in Afghanistan). As set out above, I do not accept that his fiancé's relatives have ever targeted him.
49. The applicant says in his SHEV application that he could not relocate anywhere else in Afghanistan because he has no family contacts except in Parwan province where his [family members] live. In submissions the agent has asserted the applicant would also be unable to relocate to Mazar-e Sharif.
50. At interview, the delegate put a number of factors to the applicant which he felt would assist him to relocate, including:
- The applicant is a young, able-bodied male with work skills
 - The applicant has a valid taskera which will help him source accommodation and employment
 - The applicant has managed to secure employment, find accommodation and support himself in a foreign country
 - The applicant has shown the ability to live alone apart from his family in a foreign country
 - The applicant arranged and undertook travel to Australia
 - The applicant has managed to save money while in Australia.
51. The delegate put this information to the applicant in the context of relocating to Mazar-e Sharif (although the delegate ultimately determined he could relocate to [District 1]). The applicant responded on that basis, stating that he had no nothing in Mazar-e Sharif, no connections there and that it was very hard to live there and find work. He stated that the five years he had lived in Australia would also make it hard to return to Afghanistan. The applicant also said that if he went to Mazar-e Sharif, he would need to take his mother with him or he would need to travel back to Kabul to visit his mother and that his fiancé's [family member] would know about it and terrorise him or kill him. As stated above, I do not accept that he was

ever targeted by relatives over a failed engagement and do not accept that the relatives of his former fiancé present any barrier to the applicant relocating or travelling within Afghanistan.

52. The agent has asserted that the resilience the applicant has shown in making a very dangerous journey to Australia and establishing himself here cannot be compared to the challenges of returning to Afghanistan. The applicant has also noted that his five year absence from the country would make readjustment to life in Afghanistan difficult. The applicant did not raise any other objections to relocating to [District 1] other than those raised in regard to relocation generally in various submissions and in relation to Mazar-e Sharif. Relocating back to his home country after an absence of some years will pose challenges for the applicant. However, I do not accept that the considerable resilience the applicant has shown in journeying to and sustaining himself in Australia has no relevance or applicability to question of the applicant's ability to return to and relocate within Afghanistan. I note that the applicant is fluent in Hazaragi and retains a familiarity with Hazaragi as it is spoken in Afghanistan through regular contact with his family. I also consider that the resilience and adaptability he has shown in moving to a country where he did not speak the language and whose way of life was unfamiliar to him will stand him in good stead readjusting back to life in the country of his birth, where he will have the advantage of speaking the language and some familiarity with the people and culture. Although his family now reside in Kabul, and he may not see be able to see them regularly, the applicant has managed to live apart from his family for five years and support himself. I note that his family have also shown the capacity to journey between Kabul and [District 1] (where they previously resided for some time) and I do not accept that they would not do so again in the future.
53. Parwan province has at least one hospital, 59 health clinics, a university and a range of other educational institutions²³, which would allow the applicant to attend to his health needs or undertake further study if he desired. Basic medical treatment is free²⁴, and although medicines can be expensive²⁵, I consider that the applicant's pool of savings will greatly assist him in this regard. DFAT has stated that it is "not aware of any official policy of discrimination against Hazaras or any other group based on ethnicity"²⁶. There is no information before me to suggest that the applicant would be denied access to any of these services based on his ethnicity or for any other reason.
54. The applicant has shown the ability to successful integrate into a country with a very different culture and whose language he did not speak on arrival. He has been able to not only sustain himself but remit money back to his family. He is in apparent good health. He has considerable experience as a [Occupation 1] and [Occupation 2] and experience operating his own business. I consider that all these factors will assist him in securing employment. He also appears to have access to funds, which will assist him in procuring accommodation and other necessities on arrival. I am satisfied it is reasonable, in the sense of practicable, for the applicant to relocate to [District 1].
55. I am satisfied that in the circumstances it is reasonable for the applicant to relocate to [District 1], an area of the country where there is not a real risk that he will suffer significant harm.

²³ Program for Culture and Conflict Studies. Naval Postgraduate School, "Parwan Provincial Overview", 01 November 2017, CISEDB50AD6111

²⁴ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017", 18 September 2017, CISEDB50AD5681

²⁵ Ibid

²⁶ Ibid

Complementary protection: conclusion

56. 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

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.