



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

AFGHANISTAN  
IAA reference: IAA21/08855

Date and time of decision: 4 March 2021 16:28:00  
C Wilson, 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 Kabul, Afghanistan. He arrived in Australia as an unauthorised maritime arrival [in] November 2012. He applied for a Temporary Protection Visa (TPV) on 23 February 2016.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 18 October 2016. The delegate found the applicant was not a credible witness, and had given false information about his age, family composition and level of education. The delegate did not accept the applicant had been abducted by the Taliban in Qarabagh. The delegate accepted the applicant faced a real chance of persecution as a Hazara Shia in Qarabagh, Ghazni, but found it would be reasonable for him to relocate to Kabul where there would not be a real chance of serious harm or real risk of significant harm.
3. The IAA affirmed the delegate's decision on 22 May 2017.<sup>1</sup> The applicant sought judicial review, and [in] December 2020 Judge [A] quashed the IAA decision and remitted the matter to be redetermined.

### 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).
5. On 14 November 2016 the applicant's previous representative provided a written submission containing comment on the delegate's decision and new information in the form of two extracts from a UNHCR report 'Repatriation of Afghan Refugees from Pakistan' dated 28 October 2016. I accept this new information could not have been provided to the delegate before the decision was made, because it post-dates the decision. It is not credible personal information that may have affected the consideration of the claims. The applicant has not provided any reasons why I should be satisfied there are exceptional circumstances to justify considering these extracts. Having regard to the fact the report was published more than 4 years ago, that only small extracts have been provided without further context, and that the report itself is concerned with repatriations from Pakistan, I am not satisfied there are exceptional circumstances to justify considering this new information.
6. On 4 April 2017 the previous IAA reviewer obtained new information on the security situation in Afghanistan for Hazara Shias, including copies of reports and articles from numerous sources from 2016, and new information concerning Mazar-e Sharif. The security information from 2016 is now dated, and I am not satisfied there are exceptional circumstances to justify considering country information from 2016. The new information concerning Mazar-e-Sharif was provided in relation to the reasonableness of relocating there. The issue of relocation does not form part of this decision and for this reason I am not satisfied there are exceptional circumstances to justify considering new country information on Mazar-e-Sharif.
7. The applicant provided a submission and new information on 17 April 2017 in response to an invitation letter from the previous reviewer to comment on the new information they had obtained. The new information included reference to the US State Department Travel Advice dated 21 March 2017. I accept the information could not have been provided to the delegate

---

<sup>1</sup> IAA/16/01191.

before the decision was made. The information provided is country information, it is not credible personal information that may have affected the consideration of the claims. Having regard to the date of the new information, now nearly 4 years ago, and that I am not considering the new information in the letter from the previous reviewer that this new information is being provided in response to, I am not satisfied there are exceptional circumstances to justify considering this new country information.

8. The applicant provided new information on 27 April 2017 regarding an attack by the Taliban on a military base in Mazar-e-Sharif. I accept this could not have been provided before the decision was made. It is not credible personal information that may have affected the consideration of the claims. Noting that this attack occurred nearly 4 years ago and that the security situation in Mazar-e-Sharif is not relevant to the applicant's claims, I am not satisfied there are exceptional circumstances to justify considering new country information.
9. On 16 December 2020 the applicant's representative provided a 46 page summary of new country information, and four other reports or articles: a UNHCR report Afghanistan: Compilation of COI Relevant for Assessing the Availability of an Internal Flight, Relocation or Protection Alternative to Kabul, December 2019; an opinion from Professor Maley, On the Return of Hazaras to Afghanistan, 4 March 2020; a Wikipedia entry for the village of Tamaki; and a report dated 2 September 2020 of a Taliban attack in the Tamaki area.
10. The summary of country information referred to and provided extracts from 27 reports. It is divided into the following sections: Hazaras, Ghazni, Qarabagh, Shia, relocation, and returned asylum seeker who spent time in the west. The applicant says this information could not have been provided to the delegate before the decision was made because it all post-dates the decision. I accept this. There is no claim it is credible personal information that may have affected the consideration of his claims, and having regard to the nature of the information, that is country information, I am not satisfied it is credible personal information. The applicant says there are exceptional circumstances to consider the new information because it is recent, relevant to his claims, and replaces information relied on by the delegate. Some of the sections of the summary now have little relevance to the applicant's claims, given his concession in February 2021 that he is in fact from Kabul not Ghazni. Taking into account the long period of time since the delegate's decision I am satisfied there are exceptional circumstances to justify considering new country information relevant to the assessment of the applicant's claims to be a Hazara Shia from Kabul who is a returning asylum seeker from the west, and I will consider the new country information provided under the headings of Hazaras, Shias, and returned asylum seeker who spent time in the west. Since this summary of country information was provided to the IAA the applicant has admitted his original claims were false, and that although he was born in Qarabagh, he is from Kabul. Even though I accept there has been a long time period since the delegate's decision and some of this information may replace information relied on by the delegate, the security situation in Qarabagh and Ghazni are no longer relevant to his updated claims. In the circumstances I find the new country information under the headings Ghazni and Qarabagh are not sufficiently relevant to the assessment of his current claims for me to be satisfied there are exceptional circumstances to justify considering it. In relation to the new information under the heading 'relocation' I have taken into account that some of the information under the heading 'relocation' may in fact be relevant to the security situation in Kabul. However, this information is merely presented as a series of extracts without analysis or explanation of how it is relevant to his claims to fear harm in Kabul, and much of this information is repeated in other recent sources of country information either provided to me by the applicant or obtained by me as new information. In all the circumstances I am not satisfied there are exceptional circumstances to justify considering it.

11. The UNHCR report dated December 2019 could not have been provided to the delegate as it postdates the decision. It is not credible personal information that may have affected the consideration of his claims. It is a compilation of country information for internal flight, relocation or return to Kabul for Afghans who originate from elsewhere in Afghanistan. This is not the case for the applicant, who would return to Kabul as a person from Kabul. The applicant has not provided any submission on the relevance of this report or why I should be satisfied there are exceptional circumstances to justify considering it beyond stating it is recent and relevant. In circumstances where on its face the report is not relevant to the applicant's circumstance, and nor have submissions been made explaining how or what parts of it are, I am not satisfied there are exceptional circumstances to justify considering it.
12. The applicant provided an opinion from Professor Maley dated 4 March 2020. I accept this document could not have been provided to the delegate as it postdates the decision. It is not credible personal information that may have affected the consideration of his claims. It is a general opinion by Professor Maley, not an opinion sought in the applicant's particular circumstances. The applicant has not indicated why there are exceptional circumstances to justify considering it, although I may infer from the summary of country information provided at the same time that he relies on it being recent and relevant. I acknowledge Professor Maley's qualifications, but the applicant has not satisfied me there are exceptional circumstances to justify considering an opinion that is now 12 months old. Although the opinion postdates the delegate's decision, it is not recent information and the applicant has not explained its relevance or why there may be exceptional circumstances to justify considering it, and in all the circumstances I am not satisfied that there are.
13. The applicant provided a translated article about a hostage incident by the Taliban in the Tamaki area of Qarabagh reported September 2020 and a Wikipedia entry about the village of Tamaki. There was no explanation provided with this as to its relevance to the applicant's claims. I accept this information could not have been provided to the delegate as it postdates the decision. I do not accept it is credible personal information that may have affected the consideration of his claims. It may be recent information about an incident in Afghanistan but the applicant has not satisfied me as to its relevance. In all the circumstances I am not satisfied there are exceptional circumstances to justify considering it.
14. On 19 January 2021 the applicant provided further new country information, including a number of articles about road safety in Jaghori, Malistan and Ghazni, and abductions of civilian by the Taliban in Ghazni. The applicant says the information could not have been provided to the Department because it post-dates the decision and there are exceptional circumstances to consider it because it is recent and relevant to his claims. I accept the articles could not have been provided to the delegate, as they all date from December 2020 and January 2021. I do not accept the article are credible personal information that may have affected the consideration of his claims, as the articles are not about identified individuals. In relation to whether there are exceptional circumstances to justify considering this information, the applicant merely says there are because the information is recent and relevant. I accept it is recent, but I question the relevance to his claims. Since providing this information to the IAA the applicant has now admitted he is from Kabul, not Ghazni. I do not accept that merely because a significant time period has passed since the delegate's decision that there would be exceptional circumstances for any updated or recent information about Afghanistan, particularly when the information is of little relevance to his claims. I consider the chance that he may choose to travel outside of Kabul is too speculative to elevate this new information to being relevant to his claims. I find this new information about road security and abductions in areas outside of Kabul is not of sufficient relevance to this review to satisfy me there are exceptional circumstances to justify considering it.

15. On 1 February 2021 the applicant provided a statutory declaration providing the following new information: his claim about being from Qarabagh was incorrect; he was born in Qarabagh but moved to Kabul when he was [a child]; his father passed away when he was an infant; in Kabul the family lived in orphanages at first but later moved to rental accommodation; his claim to have done only three or four years of education was incorrect; he did 12 years of schooling and then studied English; his claims to work as [an Occupation] and to have been captured by the Taliban were fabricated; he never worked in Afghanistan; his brothers live in [Country 1], [Country 2] and [Country 3]; his sister lives in Qarabagh; and his claim that his sister fled to Pakistan is incorrect. This new information corrects previous fabrications in his TPV application and I do not accept it could not have been provided to the delegate before the decision was made. I accept however it is credible personal information that may have affected the consideration of his claims. I use the term 'credible' in the sense of being capable of being believed. Having regard to the necessity to have corrected information for a full and real assessment of his claims, I am satisfied there are exceptional circumstances to justify considering it.
16. In the statutory declaration the applicant also raised a new claim that he would work as an interpreter in Afghanistan, because he knows English and could get better money for this than working in construction, and that he would be targeted for this reason. I do not accept this information could not have been provided to the delegate before the decision was made. It could amount to credible personal information that may have affected the consideration of his claims, in the sense that on its face it is personal information that is capable of being believed. However, there is nothing before me to support this assertion that he would work as an interpreter. The applicant is well educated, and I do not accept the inference that interpreting or construction are his only employment options. He did not work as an interpreter before in Afghanistan when he learned English, there's no evidence he has worked as an interpreter in Australia, and no evidence of any qualifications or of his ability to undertake this work. The applicant has not given any reasons why I should be satisfied there are exceptional circumstances to justify considering this new information. Taking into account the lateness in raising this claim, and the lack of evidence or information to support it, I am not satisfied there are exceptional circumstances to justify considering it.
17. On 10 February 2021 the applicant provided a copy of his taskera with translation. This version of his taskera is different to the one provided to the Department, in particular it provides a different age. There is no explanation why this taskera could not have been provided to the delegate before the decision was made. I accept it is credible personal information, in the sense that on its face it is capable of being believed to be a credible taskera, and that the information in this document may have affected the consideration of his claims, including consideration of his age. I am satisfied there are exceptional circumstances to justify considering it as the applicant's identity and personal history are important details. The applicant also provided copies of taskeras for his parents and his sister to the IAA. These had been already been provided to the Department and are not new information.
18. On 11 February the applicant provided more new country information. There was no explanation provided with the material as to why it could not have been given to the Department or why it is credible personal information that may have affected the consideration of his claims, or why it is relevant to the review. Under the Practice Direction dated 1 May 2020 such an explanation must accompany any new information given to the IAA. The applicant was advised by letter dated 27 January 2021 that the IAA may not accept any new information provided that is not in compliance with the Practice Direction. For these reasons I have decided not to accept this information.

19. On 17 February 2021 I obtained the following four reports as new country information on the security situation in Kabul and the treatment of western returnees: DFAT Country Information Report Afghanistan 27 June 2019; EASO Afghanistan Security Situation September 2020; UK Home Office Afghanistan: Afghans perceived as “westernised” January 2018; and UNAMA Afghanistan Third Quarter Report on Protection of Civilians in Armed Conflict September 2020. I am satisfied there are exceptional circumstances to justify considering these reports because of the relevance to his claims and the need for updated country information given the delegate’s decision was made more than 4 years ago. I provided copies of the reports to the applicant and invited him to comment on highlighted adverse country information from them.
20. On 23 February 2021 the applicant responded to an invitation to comment on new and adverse country information obtained by the IAA by providing new country information. I accept this information could not have been given to the delegate before the decision was made as it postdates the decision. In circumstances where I have invited him to comment on new country information I obtained, I am satisfied there are exceptional circumstances to justify considering this new country information.
21. This application was remitted by Judge [A] of the FCCA because the IAA has assessed the applicant was likely to return to Kabul, based on information from [Social media], whereas the delegate had accepted he was likely to return to Qarabagh. In all the circumstances Judge [A] found it was unreasonable not to invite further comment or information from the applicant in relation to the previous reviewer’s preliminary conclusion he was from Kabul. I am not satisfied in the present circumstances there is a need to invite the applicant to an interview or to provide comment or new information on this issue. The applicant is aware of the issue and has squarely addressed it in his statutory declaration dated 1 February 2021 where he admits he is from Kabul and that it is Kabul he fears returning to. He is aware of the information on the [Social media] posts, which were shown to him at the TPV interview, and he has not denied the truth of any of those posts but rather has confirmed it. I note also the applicant has not requested an interview nor indicated he has further new information to put to me in an interview or in writing. For these reasons I have decided not to exercise my discretion to invite him to an interview or invite him to provide new information.

### **Applicant’s claims for protection**

---

22. The applicant’s claims can be summarised as follows:
  - The applicant is a single man from Kabul, Afghanistan. He was born in Qarabagh, Ghazni, but relocated to Kabul with his mother and siblings as a young child.
  - The applicant is a Shia Muslim of Hazara ethnicity. He fears the Taliban or other Sunni extremists will target him for reason of his religion and ethnicity, for an imputed political opinion of being opposed to the Taliban, and also because he is a returnee from the west who will be imputed as wealthy.

### **Factual findings**

---

23. In his TPV application the applicant claimed to be from a village near Qarabagh, Ghazni where he lived in basic accommodation with his parents and sister, with no other family or relatives. He claims to have helped his father farm for 2 years and then work as [an Occupation] from 2008 until he left Afghanistan. He claimed he fled Afghanistan after being captured and beaten by the Taliban. He claimed to have escaped capture and that the Taliban would pursue him on

return for this reason and because he was accused of reporting two Taliban members who were apprehended by the Army whilst at his [Workplace]. At his TPV interview the applicant maintained his narrative that he was the only son, but eventually conceded he had 3 brothers after the delegate showed him photographs from [Social media] that appeared to show young men with his mother who appeared to be his brothers. Whilst he conceded the information he had put in his written application about his family composition was false, he did not take the opportunity to correct any other information. Although he had put a date of birth in [Year 1] in his TPV application, making him [Age] years old on arrival in Australia in 2012, he maintained at the TPV interview that his taskera was correct and he was only [a minor] in 2012. Apart from accepting the applicant was from Qarabagh, the delegate found the claims about being poorly educated, a minor when he came to Australia, impoverished, and being abducted by the Taliban, were not credible and that the applicant was not a credible witness.

24. The applicant provided new information about his personal history in a statutory declaration dated 1 February 2021. He now claims he was born in Qarabagh, but moved with his mother and siblings to Kabul when he was [a child]. His father died when he was an infant. He is well educated, having completed 12 years of school and then studying English courses before coming to Australia. He never worked as [an Occupation] or in any other occupation in Afghanistan. The claim about the Taliban abducting him was fabricated.
25. The admission by the applicant that he was from Kabul and was in education until the time he left Afghanistan is more consistent with information obtained by the delegate from the applicant's [Social media] account, and is more consistent with his presentation at interview. For these reasons I accept he is well educated and from Kabul.
26. The applicant says his sister lives in Qarabagh and his three brothers live outside of Afghanistan. The applicant had previously claimed his sister fled to Quetta in Pakistan but says that is incorrect. He says brother M left Afghanistan 20 years ago and lives in [Country 1] where he was accepted as a refugee. Brother A is said to have left Afghanistan 15 years ago and lives in [Country 2] where he was accepted as a refugee. Brother Z is said to live in [Country 3] where he went in 2004 on a scholarship. No documentary evidence has been provided to support any of this. Having regard to the [Social media] information put to the applicant at the TPV interview, I accept the applicant has brothers. Having regard to the applicant's inconsistent evidence about his brothers, including deliberately concealing them in his written application, in the absence of documentary evidence to support the new claims I do not accept the applicant's claims about his brothers' periods of residency in [Country 1], [Country 2] or [Country 3], or their alleged refugee status. In relation to his sister, due to the applicant's inconsistent evidence on her place of residence, including a now retracted claim that she had fled to Pakistan, I cannot be satisfied on the information before of me where she may be living. I accept the applicant has three brothers and one sister, but I am not satisfied on the unsupported information before me of their current locations.
27. The applicant claims to be of Hazara ethnicity and Shia religion. I accept from the photographs of the applicant provided to the Department that he appears to have facial features consistent with having Hazara ethnicity. I accept he speaks Hazaragi fluently. I note also Hazaras are almost exclusively Shia. For these reasons I accept the applicant is of Hazara ethnicity and Shia religion.
28. The applicant has consistently claimed to be a citizen of Afghanistan. In support of this he has provided his national identity card or taskera. There are two versions of his taskera before me: one he provided to the Department in 2012, and the other provided to the IAA. The applicant admits the one he provided to the Department is a bogus document. He says he arranged for

the taskera to be altered to make himself appear under the age of 18. He says he did this because he heard on the boat he would not be sent for offshore processing if he was a minor. I consider his willingness and ease with which he provided a bogus taskera raises doubts about whether the taskera now provided is a genuine document. I give little weight to the taskera as evidence of his Afghan nationality or his age. However there is no evidence before me to indicate the applicant is a national of any other country. For the purpose of this assessment I have assessed him against Afghanistan as his receiving country.

29. As referred to above, the applicant has previously lied about his age to appear as a minor when he arrived in Australia and has given inconsistent dates of birth. In the TPV application he put [Year 1] as his year of birth, consistent with an age assessment by the Department that he was not a minor on arrival. At the TPV interview he relied on his bogus taskera and said he was [a minor] in 2012, giving him a birth year of [Year 2]. In his statutory declaration dated 1 February 2021 the applicant claimed to be [a young adult] when he arrived, which fits with the [Year 1] birth year. However, in a subsequent statutory declaration dated 9 February 2021 he said his declaration that he was [a young adult] when he arrived was wrong, and that he said this in error because he is not good at remembering dates and years. He now says he was born in [earlier years], as per the taskera provided to the IAA, which would have made him [age] when he arrived in Australia. I do not accept his explanation that he gave the wrong age in his earlier statutory declaration because he is not good at dates. The applicant is well educated. I consider he would have known whether he was around [Age] or [Age] when he left Afghanistan for Australia. I consider the inclusion of an incorrect age in his statutory declaration dated 1 February 2021 is consistent with his lack of credibility generally and his willingness to change or conceal details according to the narrative he is adopting at that time. On the information before me, including the taskera that for reasons given above I am not satisfied is genuine, I cannot make a conclusive finding on the applicant's age.

## Refugee assessment

---

30. 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

31. 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.
32. The applicant is a Hazara Shia from Kabul. He claims to fear harm in Kabul because he says Hazara Shias are targeted there by the Taliban and other Sunni extremists, and because he will be imputed to be wealthy as a returnee from Australia.
  33. Hazaras are one of 14 recognised ethnic groups in Afghanistan and account for around 10% of the population of Afghanistan. Hazaras make up the majority in Bamiyan and Daykundi provinces, but most major cities in Afghanistan have sizeable Hazara populations. In Kabul the Hazara population is estimated to be 40 to 50% of the population, making them the largest ethnic group in Kabul. Most Hazaras in Kabul live in the west of the city.<sup>2</sup>
  34. The takeover of Afghanistan by the Taliban in 1996 marked a period of considerable violence and repression for Hazara, although they have made significant social, political and economic gains since the fall of the Taliban in 2001. DFAT says Hazaras in Kabul participate in a variety of economic roles. With their traditional focus on education, they are well qualified for roles in government and the international community, but are under-represented in senior positions. They are perceived to be supporters of the government, and the Taliban and other insurgent groups openly target Afghans of all ethnicities who are working for or supporting the government and/or international community. Whilst historically Hazaras have faced discrimination in Afghanistan, the applicant has not identified any specific examples of discrimination experienced by his family. Although most Hazaras are Shia, DFAT reports there has not traditionally been a significant sectarian divide between Sunni and Shias in Afghanistan. The conflict between communities had been along ethnic or political lines.<sup>3</sup>
  35. DFAT reports that since 2016 militants have conducted a series of major attacks against Shia targets, including religious gatherings and political demonstrations. In addition to the Taliban, Islamic State has also claimed responsibility for a number of attacks against Shias. In Kabul in July 2016 two suicide bombers targeted a peaceful political protest, killing at least 85 people, in a religiously motivated attack. There were two other significant attacks in Kabul on Shia mosques or communities in 2016. In 2017 there were four significant attacks against Shias in Kabul. In April 2018 at least 60 civilians were killed in a suicide attack outside a taskera distribution centre in Kabul.<sup>4</sup>
  36. In 2018 the UNHCR reported that while Hazaras had made significant economic and political advances since 2001, there had reportedly been a significant increase in harassment and killings at the hands of the Taliban and other anti-government elements.<sup>5</sup> The UK Home Office also reported attacks by insurgent groups had significantly affected the Hazara population in 2018. Islamic State had targeted places where Hazara/Shias gathered in Hazara dominated neighbourhoods in Kabul.<sup>6</sup> However Islamic State security-related incidents in Kabul have decreased since 2018, due to continued raids and pressure by Afghan security forces which have disrupted the group's activities and ability to conduct high-profile attacks.<sup>7</sup>

---

<sup>2</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>3</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>4</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>5</sup> UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018.

<sup>6</sup> UKHO, Afghanistan: Anti-Government Elements, June 2020.

<sup>7</sup> EASO, COI Information Report: Afghanistan – Security Situation, 28 September 2020.

37. EASO reported in September 2020 that although the city of Kabul is under government control, it remains a target for anti-government elements who continue to carry out attacks in the city. Militant groups conduct attacks in Kabul to attract international media attention, create the perception of widespread insecurity, and undermine the government as well as the population's confidence in the Afghan security forces. EASO highlighted the following suicide and complex attacks carried out in Kabul from 2019 to mid-2020: an Islamic State claimed suicide attack targeting the Ministry of Communication in April 2019; a Taliban claimed suicide attack against NGO Counterpart International in May 2019 killing 8 civilians; a Taliban claimed suicide attack against the Ministry of Defence in July 2019 with 6 killed and more than 115 injured; an attack at Kabul University in July 2019 killing 10; an Islamic State claimed suicide bombing of a bus with employees from the Ministry of Petroleum and Mines in July 2019 killing at least 11; a Taliban claimed suicide bombing in Green Village in the east of the city in September 2019 killing at least 16; in March 2020 Islamic State opened fire on a ceremony commemorating the murder of an Hazara leader, with dozens killed; and an attack targeting the maternity ward of an MSF hospital in the Hazara populated neighbourhood Dasht-e Barchi in May 2020, killing 24 people. The most deadly attack in 2019 was an Islamic State suicide attack on the Dubai City Wedding Hall in Kabul in August 2019. The wedding was largely attended by Shia Muslims, with at least 63 people killed and scores more injured. However high profile attacks like these are becoming less frequent as insurgents shifted toward targeted assassinations. Such assassinations have targeted prosecutors and judges, people in the media, high school principal, government employees, police, and international workers. The Afghan security forces were also the targets in several attacks in 2019 and 2020.<sup>8</sup>
38. UNAMA reported a 35% decrease in civilian casualties from sectarian-motivated attacks in 2019, and a 48% decrease in civilian casualties from attacks targeting places of worship and religious leaders.<sup>9</sup> These figures are consistent with the shift away from high profile attacks to targeted attacks.
39. In September 2020 UNAMA reported a 30% reduction in civilian casualties in Afghanistan compared to the same period in 2019. UNAMA reports these are the lowest number of civilian casualties in Afghanistan since 2012. UNAMA says the reduction in casualties is due to fewer suicide attacks from anti-government elements and the steep drop in airstrikes by international military forces since March 2020.<sup>10</sup>
40. The applicant is a Hazara Shia, but he is not high profile or otherwise associated with common targets for extremists. That is, government institutions, political figures, Afghan and international security forces, demonstrators, foreign diplomatic missions, and international organisations.<sup>11</sup> There is no claim before me that he was ever personally targeted in Kabul, nor that he ever faced any harm in Kabul. There is no evidence his family suffered harm in Kabul. He claims two of his brothers have refugee status in European countries but has provided no evidence or detail to support that. That the applicant decided to concoct an elaborate story of living as a poor, uneducated, only son working as [an Occupation] in Qarabagh who was abducted by the Taliban, suggests he had no protection claims to make in relation to his actual circumstances in Kabul when he arrived in Australia. I find the applicant is an ordinary Hazara Shia from Kabul and does not have a profile that would attract personal targeting from the Taliban or any other extremist group operating in Kabul. He claims he would be imputed with a political opinion as being opposed to the Taliban, but I consider such an opinion could be

---

<sup>8</sup> EASO, COI Information Report: Afghanistan – Security Situation, 28 September 2020.

<sup>9</sup> EASO, COI Information Report: Afghanistan – Security Situation, 28 September 2020.

<sup>10</sup> UNAMA, Afghanistan Third Quarter Report on Protection of Civilians in Armed Conflict, 2020.

<sup>11</sup> DFAT, Country Information Report Afghanistan, 27 June 2019; UKHO, Afghanistan: Anti-Government Elements, June 2020.

imputed to every Hazara Shia and does not give him an elevated or different profile to that of ordinary Hazara Shia.

41. There have been attacks targeting ordinary Hazaras and Shias as a group in Kabul, as described above. In June 2019 DFAT assessed Shia Muslims faced a high risk of being targeted by Islamic State and other militant groups for reason of their religion when gathering in large and identifiable groups, such as during demonstrations or attending major religious festivals. There is no evidence before me that the applicant is politically active or intends to participate in demonstrations. Whilst I accept he may attend mosque or religious festivals, I note the recent significant decrease in targeting of places of worship.<sup>12</sup> As DFAT described in 2019, the security situation in Afghanistan is dangerous, complex and highly fluid, and I accept further attacks targeting groups of Hazara Shias, particularly where they gather in large groups and in Hazara neighbourhoods, may occur. However recent reporting from EASO and UNAMA indicates such violence decreased in 2019 and 2020, and that in recent years the targets of the Taliban and other extremists have been those working with the Afghan government or international forces, rather than ordinary Hazara Shias, and that there has been a shift away from high-profile attacks toward targeted assassinations.<sup>13</sup> The Afghan security forces have also made a concerted effort to dismantle militant groups that were active in and around Kabul, and have arrested or killed prominent leaders of the Islamic State and other militant groups. Having regard to the decreasing number, scale and frequency of attacks targeting groups of Hazara Shias, in the context of the applicant living in a city of over 4 million people where more than 40% of the population are Hazara Shia, I consider the chance of the applicant as an ordinary Hazara Shia getting caught up in such sectarian violence, even if he lives in an Hazara dominant neighbourhood in Kabul, is too remote to amount to a real chance.
  
42. The applicant claims that in returning from Australia he'll be targeted for being a western returnee and will be imputed as wealthy. The UNHCR stated in 2018 that there were reports of individuals who returned from western countries being threatened, tortured or killed by anti-government elements because they were perceived to have adopted western values or to be spies for western countries. However the UNHCR guidelines did not provided detailed reports of the number and scale of such incidents.<sup>14</sup> I have had regard to the report provided by the applicant with his TPV application<sup>15</sup> of a Hazara man who was captured and tortured by the Taliban in Ghazni in 2014 after being returned from Australia to Afghanistan, and another man who was killed in Jaghori when travelling with an documents identifying him as Australia. I have also had regard to the country information provided by the applicant on 16 December 2021 and 23 February 2021. The most recent report cited in this material was of a returnee from Germany being killed in around February 2017.<sup>16</sup> In January 2018 the UK Home Office reported that since 2008 nearly 40,000 Afghan nationals have been returned to Afghanistan from European countries, and that 10,000 returns occurred in 2016. The UK Home Office concluded that given the handful of reported attacks compared to the large number of many thousands of returns, there appeared to be a very low risk of violent attack or abduction for reason of being a western returnee.<sup>17</sup> The applicant will be returning to Kabul, and sources indicate the treatment of western returnees in Kabul is more favourable than western

---

<sup>12</sup> UNAMA, Afghanistan Third Quarter Report on Protection of Civilians in Armed Conflict, 2020; EASO, COI Information Report: Afghanistan – Security Situation, 28 September 2020.

<sup>13</sup> UKHO, Afghanistan: Anti-Government Elements, June 2020; UNAMA, Afghanistan Third Quarter Report on Protection of Civilians in Armed Conflict, 2020; EASO, COI Information Report: Afghanistan – Security Situation, 28 September 2020.

<sup>14</sup> UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018.

<sup>15</sup> The Saturday Paper, Hazaras Face Death on Return to Afghanistan, 8 November 2014.

<sup>16</sup> Asylos Research for Asylum, Afghanistan: Situation of young male 'Westernised' returnees to Kabul, 2017.

<sup>17</sup> UKHO, Afghanistan: Afghans perceived as westernised, January 2018.

returnees to conservative rural areas in Afghanistan. Kabul has a diverse society with young educate urbanites who are seen as more liberal.<sup>18</sup> In addition to seeking asylum abroad, with large scale migration in and out of Afghanistan in recent decades, many Afghans travel abroad for employment. The applicant conceded at the TPV interview that his brothers had travelled back to Afghanistan to visit their mother, and the brother who went to [Country 3] came home to work before moving back to [Country 3]. Although he claims that brother was threatened for working as an interpreter, there is no claim he or any of the other brothers faced harm or harassment for living in the west or being perceived as wealthy. The applicant has raised the issue of criminal activity in Kabul<sup>19</sup> but DFAT advises western returnees do not face a significantly higher risk of violence than other Afghans with a similar profile. In returning to the capital Kabul I do not accept the applicant's time in the west will be of adverse interest to extremists or any other persons in his community and I do not accept he faces a real chance of harm, including kidnapping, for returning from the west or being imputed as wealthy.

43. The applicant also claimed at the TPV interview he may be imputed as a Christian for spending time in a western country. He confirmed at the interview he has not converted to Christianity nor left his Shia faith. I do not accept merely spending time in the west imputes a Shia Muslim as converting to Christianity, and nor does any country information before me indicate that it does. I find the applicant does not face a real chance of harm for this reason because I do not accept he will be imputed as a Christian on return to Kabul because he spent time in Australia.
44. The delegate found that whilst not expressly claimed, it was implicit on the facts that the applicant was a member of the particular social group 'young Afghan males'. I note the 'facts' before the delegate included the claim that the applicant was [a minor] when he arrived in Australia and only [Age] years old when he was interviewed by the delegate in 2016. The applicant now concedes he is older than that. On the applicant's most recent claims he would now be [Age]. Noting DFAT's advice that Afghanistan has one of the youngest populations worldwide, with nearly two-thirds of Afghans being under the age of 25, it is not apparent to me that a man in his [age range] would fall within the group 'young Afghan males'. The applicant has not provided any information to suggest he would be perceived as a young Afghan male or targeted for this reason. I am not satisfied on the information before me that the applicant is a member of the particular social group 'young Afghan males' or that he would be perceived to be or targeted for this reason.
45. The applicant claims to fear harm in travelling to Qarabagh to visit his sister. He says it would be dangerous to travel from Kabul to Qarabagh as a Hazara Shia returnee from Australia. I have inferred he means travel by road would be dangerous. For reasons given above, I am not satisfied the applicant's sister lives in Qarabagh. There is no information before that he ever had the need to travel to Qarabagh after leaving that city when he was [a child] to move to Kabul. I am not satisfied on the information before me that the applicant would or has a need to travel to Qarabagh, and therefore I am not satisfied he faces a real chance of harm for this reason.

### **Refugee: conclusion**

46. 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).

---

<sup>18</sup> EASO, Information on the treatment of Afghan nationals perceived as 'westernised' (2018-2020), 2 September 2020.

<sup>19</sup> Asylos Research for Asylum, Afghanistan: Situation of young male 'Westernised' returnees to Kabul, 2017; INews, A new onslaught of violence in Kabul leaves Afghans in despair after decades of war, 4 February 2021.

## Complementary protection assessment

---

47. 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

48. 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.
49. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
50. I have found the applicant does not face a real chance of harm for reason of being Hazara Shia, a returnee from the west who may be imputed as wealthy or Christian, as a young Afghan male, or in travelling to Qarabagh. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above I do not accept he faces a real risk of significant harm for the reasons claimed.
51. The applicant claimed he would suffer degrading treatment on return to Kabul through the denial of social and economic rights. He further claimed he would be denied human dignity, basic needs, shelter, and employment. These claims were made in the TPV application when the applicant was presenting himself as an uneducated [Occupation] from a village in Qarabagh. The true picture of the applicant's circumstances in Afghanistan are that he is from a family with some means who lived in Kabul, and who had sufficient funds for all four sons to leave Afghanistan, one even obtaining a scholarship to study in [Country 3], and sufficient funds for the applicant to complete 12 years of schooling and never need to work as a young man to support himself or his mother or sister. Although he described the family as living in orphanages when they first arrived in Kabul, from the brief description given it appears his mother chose to do so as a secure place for a widow with children to live. The applicant's level of education and family circumstances do not indicate they lived in an orphanage because they were impoverished. There is no evidence before me the applicant, or any members of his family, ever suffered a denial of social or economic rights or otherwise suffered degrading treatment. Even in the event the applicant has no immediate family currently living in Kabul, he would be returning to a city that he knows and I do not accept he would have no relatives or friends left in Kabul from the nearly 20 years he lived there. I acknowledge Hazara Shias have suffered discrimination generally in Afghanistan, but it is not evident on the information before me that the applicant or his family have. I am not satisfied the applicant faces a real risk of harm including degrading treatment on return to Kabul for reason of his being Hazara Shia or any other reason.

**Complementary protection: conclusion**

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

**Decision**

---

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

## Applicable law

---

### ***Migration Act 1958***

#### **5 (1) Interpretation**

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.