



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN
IAA reference: IAA21/08937

Date and time of decision: 7 April 2021 16:20:00
M Currie, 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 an Afghan citizen of Pashtun ethnicity and an adherent of the Sunni faith. He arrived in Australia in December 2012 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in August 2017. In March 2021, a delegate of the Minister for Immigration decided under s.65 of the Migration Act 1958 (the Act) to refuse the visa, finding that Australia did not owe protection obligations to the Applicant. On 12 March 2021, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
2. This is a *de novo* decision; my task is to consider the applicants claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate, or the IAA.

Information before the IAA

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

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He is an Afghan citizen of Pashtun ethnicity and an adherent of the Sunni faith who was born in [Year]. He lived with his family in Kandahar Province. Around 2001, after the US invasion of Afghanistan, the applicant and his family fled to Pakistan, where they resided thereafter. Life was difficult in Pakistan, as the family had no official recognition or status.
 - In around 2009, the applicant and his family returned to their village in Kandahar, Afghanistan. Around six months after their arrival, the applicant's mother became unwell. His father and brother took her to the Hospital in Kandahar City for treatment. However, all three were killed when the Taliban conducted a suicide bomb attack near the hospital. After the applicant's parents and brother were killed, he decided he would return to Pakistan. He did so around two months later, residing in Pakistan with his sister and her family.
 - In 2010, a sister who had remained in Afghanistan informed him that her husband had been killed. He arranged for his sister, her children, and another to travel to Pakistan, and he met her at the border. There after the applicant lived in Pakistan until he came to Australia.
 - He fears that if he is returned to Afghanistan, he will be forcibly recruited by the Taliban to forced to perform violent Jihad. He fears that he refuses, the Taliban will kill him.
 - He fears that if returned to Afghanistan, he would be considered a spy, given he has lived in Australia for such a long time, he believes he would be detained, interrogated, tortured and/or killed by the Taliban, or by unspecified criminal groups.
 - He fears that if returned to Afghanistan, that he would be perceived as being wealthy due to his time in Australia and that he would be kidnapped for ransom and tortured.
 - As all of his remaining family members live in Pakistan, he is scared that he will not be able to survive alone in Afghanistan, especially considering he had never worked in that country, and had relied on my family for financial support. He says that his poor education

would make it extremely difficult to find work. He says he would not be able to support himself or obtain food and shelter.

- He fears that if he were to return, as a failed asylum seeker he will be tortured and/or even killed by the Taliban and/or other extremist groups.
- He asserts that the Afghan Government would not protect him, as the authorities struggle to maintain any power over Afghanistan and militant groups, including the Taliban have much more control. There is nowhere in Afghanistan where he could relocate safely.
- He notes that the Taliban and other extremist militant groups such as Islamic State continue to attack many parts of Afghanistan, including major cities such as Kabul. He is fearful, that he, like his parents and brother, will become a victim to of indiscriminate violence.

Factual findings

5. This applicant has not provided any documentary evidence in support of his identity, nationality or citizenship as part of his SHEV Application. He says he never obtained any such documents. During his Protection Visa Interview in February 2021, the applicant did indicate that he would attempt to obtain copies of his father's Afghan identity documents, but to date, he has not done so. During the period this applicant has spent in Australia, he has advanced a generally consistent series of verbal claims about his identity.
6. He says he is an Afghan citizen of Pashtun ethnicity and an adherent of the Sunni faith. He says he is a member of the '[Name]' tribe, and that he was born around [Year] in [Village], in the Spin Boldak District of Afghanistan's Kandahar Province¹. The applicant says he lived in Afghanistan from his birth, until around 2001, when fighting broke out after the invasion of Afghanistan by the United States. Due to the fighting, the applicant's family went to Pakistan. According to his SHEV Application, he spent the next decade living abroad in Pakistan prior to his travel to Australia, except for a period of around eight to nine months in 2009, during which he and his family returned to Afghanistan. The applicant has lived longer in Pakistan than in Afghanistan.
7. These factors, combined his lack of any documentary evidence of Afghan citizenship, give rise to concerns that the applicant is not actually of Afghani nationality but may in fact be a Pakistani national. This issue was canvassed briefly by the delegate in the s.65 decision. I have considered these factors, and the applicant's overall identity claims. While I do have some residual concerns about these issues, the applicant has established his identity to my satisfaction. I accept that he is an Afghan citizen, of Pashtun ethnicity who adheres to the Sunni faith, as he asserts. I accept that he was born in [Year] in Spin Boldak District of the Kandahar Province of Afghanistan. For the purposes of this decision, I find that Afghanistan is his receiving country.

Pakistan

8. As I have noted, this applicant lived in Pakistan for around 10 years of his life. Throughout his visa application process and at interview, the applicant has indicated that his life in Pakistan was very difficult. He says his lack of official status in Pakistan meant it was hard to find work and live in that country. Says he faced routine harassment, even from the Police, and was forced to pay bribes; he says he had "*no rights*" in Pakistan. Nevertheless, this applicant asserts, and I have accepted that he is an Afghan citizen. He says he has no official links or residency or status in Pakistan, and I have found that Afghanistan is his receiving country. In the circumstances, the

¹ Also referred to as 'Boldak' District by the applicant.

applicant's assertions in relation to his life in Pakistan have no further relevance to my considerations in this decision. I will not consider them further.

Death of Parents/Sibling

9. According to this applicant, he and his family returned to Afghanistan from Pakistan in around 2009. After their return they lived in their village in Kandahar Province. Around six months after their return, the applicant's mother became ill. The applicant's father and his [brother] took his mother to a hospital in Kandahar City, which at interview, he said was around [distance] away from his village. At this time, the Taliban conducted a suicide bombing near the hospital. The applicant claims that his mother, father, and [brother] were all killed the suicide bombing.
10. The applicant has not provided any independent evidence to corroborate his claims about the death of his parents and brother, but he has consistently indicated this cause of death since his arrival in this country. I am willing to accept that the applicant's parents and his [brother] were killed in a suicide bombing attack as claimed.
11. Nevertheless, while I accept that this event would have been extremely difficult and upsetting for the applicant and his remaining family members, I note that on the applicant's own account, the deaths of his parents and brother were the consequence of an isolated episode of generalised violence, not an attack which specifically targeted his family or himself and the applicant himself was not present. Furthermore, his family's involvement in this incident was contingent upon his mother falling ill, not upon factors such as their ethnicity, religion, nationality, political opinion or their membership of a particular social group. In these circumstances, this event, while terrible for the applicant, would not appear to have any broader applicability or relevance to his personal profile in Afghanistan.

Refugee assessment

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

Well-founded fear of persecution

13. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and

- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

14. According to the applicant he no longer has any family in Afghanistan as his remaining siblings all live in Pakistan. However, at interview, he indicated that he does have cousins and uncles who remain in Kandahar. In this context I note that when he returned to Afghanistan in 2009 with his family, they returned and resided in Kandahar. I observe that the applicant does not appear to have links to any other part of Afghanistan, and according to his account, all the time he lived in Afghanistan, he lived in Kandahar. Country information before me indicates that if returned to Afghanistan, the applicant would most likely be returned to Kabul². However, considering the factors above, I conclude that he would return and reside in his village in Kandahar.

Pashtun Sunni in Kandahar, security & generalised violence, forced recruitment, perceived wealth

15. This applicant fears that if he is returned to Afghanistan, he will be forcibly recruited by the Taliban and forced to perform violent Jihad. He fears that if he refuses, the Taliban will kill him. He also believes he would be detained, interrogated, tortured and/or killed by the Taliban, or by unspecified criminal groups.

16. Afghanistan is an ethnically diverse and multilingual country with a population of approximately 36.6 million³. There are 14 recognised ethnic groups in Afghanistan. Demographic data for Afghanistan is unreliable, but most sources agree that Pashtuns are the country's largest ethnic group constituting approximately 40 per cent of the total population⁴. Dari and Pashto are both recognised as official languages. Afghanistan is still a predominantly rural society, with only an estimated quarter of its population living in cities⁵. Virtually all Afghans (approximately 99 per cent) identify as Muslim and around 85 per cent of the Muslim community is Sunni⁶. Pashtuns mainly live in the south and east of Afghanistan⁷.

17. Kandahar Province is located around 280 southwest of Kabul⁸. It borders Uruzgan and Zabol to the north, Helmand to the west, and Pakistan to the south and east⁹. Kandahar City is the Provincial Capital and is the main trading centre in southern Afghanistan¹⁰. Historically a range of militia groups operated in Kandahar, and it is identified as the 'birthplace' of the Taliban and is of symbolic importance for this reason¹¹. Kandahar has a population of around 1.4 million, mainly Pashtun residents¹². Kandahar is divided into 18 separate districts and is connected to

² Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Afghanistan 27 June 2019", 20190627113333

³ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁴ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁵ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁶ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁷ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁸ Canadian Department of Foreign Affairs and International Trade, 'District Assessment: Kandahar-city, Kandahar Province', Canadian Department of Foreign Affairs and International Trade, 1 November 2009, CIS28802

⁹ European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

¹⁰ Canadian Department of Foreign Affairs and International Trade, 'District Assessment: Kandahar-city, Kandahar Province', Canadian Department of Foreign Affairs and International Trade, 1 November 2009, CIS28802

¹¹ European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; Canadian Department of Foreign Affairs and International Trade, 'District Assessment: Kandahar-city, Kandahar Province', Canadian Department of Foreign Affairs and International Trade, 1 November 2009, CIS28802

¹² European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

Kabul by the ring road, the major highway of Afghanistan¹³. Spin Boldak district is located in the eastern part of the Province, and borders Pakistan. Spin Boldak township (the district centre) is one of the three biggest is the only legal border crossing to Pakistan¹⁴. Spin Boldak district, like Kandahar City remains under the control of the Government¹⁵.

18. I have found that the applicant would be returning to Kandahar, a locality where the majority of people would be Pashtun Sunni's like himself. At interview, the applicant indicated that he has uncles and cousins who remain in Kandahar, and he has not suggested that these persons face harm for their ethnicity or their religion. Country information indicates that the Taliban are primarily a Pashtun Sunni organisation¹⁶, and so it would not seem that these factors, on their own, would lead to targeting in Kandahar. According to his own account, this applicant was personally known to, or interest to, the Taliban, or any other organisation, or anybody else. He would return to Afghanistan unaffiliated with the Afghan Government, the Security forces or the international donor community. He would return as a civilian. In the circumstances, I am not satisfied he has a profile which would be of interest to any anti-government elements, or other insurgents or criminal groups. I am not satisfied he would face a real chance of any harm due to his ethnicity, or his religion in Kandahar.
19. Recruitment by the Taliban can arise from coercion and pressure applied to families¹⁷, but there are other principal incentives for recruitment including the desire to earn money, the level of insecurity, ideology, grievances against the government and a desire for honour and pride¹⁸. According to EASO reporting directly addressing this issue, the concept of 'forced recruitment' is frequently misapplied in the Afghan context and most recruitment is by persuasion and the other inducements cited above¹⁹. The Taliban typically recruit young males from rural communities who are unemployed, educated in madrasas and ethnically Pashtun²⁰. Usually recruitment occurs via the Taliban's Military Commission and outreach in mosques, as well as through personal networks and families of fighters²¹. EASO reports that the Taliban "*have no shortage of volunteers/recruits*" and "*only make use of forced recruitment in exceptional cases*"²². Overall, while forced recruitment can occur, the weight of evidence indicates that this is uncommon in Afghanistan and the vast majority of recruitment is voluntary. This applicant has not indicated he was ever the subject of recruitment pressure in the past. He indicates that he

¹³ European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

¹⁴ Canadian Department of Foreign Affairs and International Trade, 'District Assessment: Kandahar-city, Kandahar Province', Canadian Department of Foreign Affairs and International Trade, 1 November 2009, CIS28802

¹⁵ European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

¹⁶ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838; European Asylum Support Office (EASO), "Afghanistan Recruitment by Armed Groups", EASO, 15 September 2016, CIS38A80122067; European Asylum Support Office (EASO), Afghanistan, Anti-Government Elements (AGEs)', 10 August 2020, 20200811101258; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

¹⁷ European Asylum Support Office (EASO), "Afghanistan Recruitment by Armed Groups", EASO, 15 September 2016, CIS38A80122067

¹⁸ European Asylum Support Office (EASO), "Afghanistan Recruitment by Armed Groups", EASO, 15 September 2016, CIS38A80122067

¹⁹ European Asylum Support Office (EASO), "Afghanistan Recruitment by Armed Groups", EASO, 15 September 2016, CIS38A80122067

²⁰ European Asylum Support Office (EASO), Afghanistan, Anti-Government Elements (AGEs)', 10 August 2020, 20200811101258

²¹ European Asylum Support Office (EASO), Afghanistan, Anti-Government Elements (AGEs)', 10 August 2020, 20200811101258

²² European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

has no desire to join the Taliban. After consideration of the evidence before me, I am not persuaded that this applicant would be subject to forced recruitment if returned to Afghanistan.

20. The applicant says that if returned to Afghanistan he would be perceived as wealthy due to the time he has spent in Australia. He asserts that he would be kidnapped for ransom and tortured for this reason. At interview he expanded on this claim to assert that he would be of interest to unspecified criminal groups in Afghanistan. He said that these criminal groups work together with insurgent groups and abduct and extort money from returnees.
21. According to country information reports before me, kidnapping of people perceived to be wealthy can occur in Afghanistan²³. Criminals and insurgents on roads are asserted to target people who appear wealthy or are associated with the government or the international community. These incidents can include kidnapping for ransom and people from all ethnic groups are vulnerable to these attacks²⁴. DFAT reporting indicates that it can be difficult to ascertain the motivation for attacks, and to separate criminal attacks from insurgent activity²⁵, though the UNHCR has reported that historically, though, the primary motivation for insurgent kidnappings related to targets of "*civilian Government workers and contractors, family members of Government workers, persons perceived to be supporting the Government or security forces, as well as ANP with civilian status and former Afghan security forces members*". Nevertheless, financial gain is also cited as a reason for kidnap²⁶. However, even considering this country information, the applicant's claim, in my view, is speculative. There have been around eight million returnees to Afghanistan since 2002²⁷, many from western countries. The applicant's circumstances would not be particularly unique or distinguishable from the many other returnees. He has not identified any specific groups he fears harm from or identified such groups operating in the area he lives. In these circumstances, the applicant's claims are not persuasive and in my view, there is only a remote, and not a real chance that this applicant would be perceived to be wealthy or would face kidnap or extortion, or any other harm for this reason if returned to Afghanistan.
22. The applicant says that the Taliban and other extremist militant groups such as Islamic State continue to attack many parts of Afghanistan, including major cities such as Kabul. He is fearful, that he, like his parents and brother, will become a victim to of indiscriminate or generalised violence. Generalised violence is a problem in Afghanistan. Country information before me, shows that compared to Australia, Afghanistan is a violent society with frequent conflict related violence occurring for more than 40 years²⁸. There have been a large number of civilian casualties

²³ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3; DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

²⁴ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

²⁵ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

²⁶ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

²⁷ European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

²⁸ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838; UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3; European Asylum Support Office (EASO), "Afghanistan Recruitment by Armed Groups", EASO, 15 September 2016, CIS38A80122067; European Asylum Support Office (EASO), Afghanistan, Anti-Government Elements (AGEs)', 10 August 2020, 20200811101258; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

throughout this period, including many thousands of civilian deaths²⁹. The Taliban and other insurgent groups such as Islamic State are engaged in an ongoing violent insurgency against the Government of Afghanistan. The Taliban maintains a presence in Kandahar³⁰, as does Islamic State³¹. The Taliban have been unable to launch large scale attacks on the city of Kandahar; however, terrorist attacks and targeted killings have occurred. In 2020, the EASO reported that four districts of Kandahar Province were categorised as under Taliban control and eight other districts were contested. Spin Boldak was not considered to be under the control of the Taliban and remains under government control³². In 2020 EASO also found that *“indiscriminate violence is taking place in the province of Kandahar, however not at a high level and, accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm”*.

23. There is ongoing violence in Afghanistan and given the ongoing contest for control between government forces and the Taliban for control, this seems likely to continue. Both the Taliban and the Government have been identified as being responsible for the deaths of civilians in the Province³³. Nevertheless, recent EASO reporting about the security situation in Kandahar indicates that the level of violence in the province has fallen over the last 12 months, and that violence against civilians makes up a very small proportion of violence in the province³⁴.
24. Though this applicant’s principal fears relate to generalised violence from the Taliban and other actors like Islamic State, he personally has not put forward any evidence to indicate that he has had any direct personal interactions with such groups, or is known to them, or has otherwise come to their attention. I have found he would return and reside in his village, in rural Kandahar, not in one of Afghanistan’s major cities where these types of attacks are more frequent. I conclude that the applicant is not personally known to any insurgent groups, or of interest to them at the time of his departure. I do not accept he would be of any interest now, around 12 years after he departed his home country. His fears in relation to generalised violence seem, primarily, to derive from the deaths of his parents and brother. On its face, such a response is understandable, but I have already noted that this event was not targeted against the applicant or any member of his family, so I am not satisfied it has any wider relevance to his personal profile. While indiscriminate violence does occur in Afghanistan, after considering the recent evidence before me, I conclude that the applicant would only face a remote, and not a real chance of harm in an episode of indiscriminate or generalised violence.
25. I have carefully considered this applicant’s claims about the risks and challenges he would face if returned to Afghanistan. The applicant asserts that it would not be safe for him to return to Afghanistan. However, I have found that this applicant was not of adverse interest to the Taliban, or other party. I have found that the applicant would return to Afghanistan unaffiliated with the

²⁹ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333; European Asylum Support Office (EASO), ‘Afghanistan: Security situation’, EASO, 28 September 2020, 20200929084838; European Asylum Support Office (EASO), “Afghanistan Recruitment by Armed Groups”, EASO, 15 September 2016, CIS38A80122067; European Asylum Support Office (EASO), Afghanistan, Anti-Government Elements (AGEs)’, 10 August 2020, 20200811101258; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949; UN High Commissioner for Refugees, “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan”, 19 April 2016, UN6C8EFBB3

³⁰ European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949; Canadian Department of Foreign Affairs and International Trade, ‘District Assessment: Kandahar-city, Kandahar Province’, Canadian Department of Foreign Affairs and International Trade, 1 November 2009, CIS28802

³¹ European Asylum Support Office (EASO), ‘Afghanistan: Security situation’, EASO, 28 September 2020, 20200929084838

³² European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949

³³ European Asylum Support Office (EASO), ‘Afghanistan: Security situation’, EASO, 28 September 2020, 20200929084838

³⁴ European Asylum Support Office (EASO), ‘Afghanistan: Security situation’, EASO, 28 September 2020, 20200929084838

Afghan Government, the Security forces or the international donor community. He would return as a civilian. I am not satisfied that the applicant has a profile which would be of interest to any anti-government elements, or other insurgents or criminal groups. While it is impossible to say there are no risks arising from the general level of violence in Afghanistan, even considering his profile, his home in Kandahar, and his claims, I conclude that the risks faced by the applicant in returning to, and living in Kandahar as a Pashtun Sunni are remote and do not rise to a real chance. On the evidence before me, I consider that there is no more than a remote chance that the applicant will be caught up as a bystander or otherwise harmed in violence in Kabul for the short period he would reside there prior to returning to Kandahar. I am not satisfied that the applicant would face a real chance of harm for any reason as a Pashtun Sunni in Kandahar. I am not satisfied that the applicant has a well founded fear of persecution.

Road Travel

26. Country Information I have cited above indicates that if returned to Afghanistan, he would most likely be returned to Kabul. However, I have found he would choose to return and reside in his village in Kandahar. Kandahar is located to the South West of Kabul, and is accessible via the Afghanistan Ring Road³⁵, the main highway in Afghanistan. While there are commercial flights between Kabul and Kandahar, these are expensive³⁶ and I conclude the applicant would likely return to Kandahar by road.
27. Road travellers in Afghanistan do face a range of security problems. Recent DFAT reporting indicates that roads in Afghanistan are generally poor and may become closed in winter. Driving practices in Afghanistan are reported to be unsafe leading to many accidents. Roads throughout Afghanistan are reportedly hampered by checkpoints which have been established by criminals and anti-Government elements such as the Taliban. These groups are said to target people who appear wealthy or are associated with the government or the international community. Some sources claim that ethnicity can also lead to problems on roads, and that persons of Hazara ethnicity suffer in this regard, and some reports indicate Hazara have been killed on rural roads merely for being Hazara, but this applicant is a Pashtun³⁷. However, DFAT also indicates that it is difficult to ascribe motivation for these types of security incidents on roads and that Hazara and other Afghans continue to travel routinely for many reasons³⁸. Recent EASO reporting has indicated increased presence of anti-government elements on major transit routes in Afghanistan, including highways between Kabul and Kandahar³⁹. Nevertheless, I note that the applicant himself has never indicated any road problems in the past. Above, I have found the applicant was not personally of interest to the Taliban in the past, I am not convinced he would be now. I also observe that recent reporting from EASO provided by the applicant also indicates that the Afghan National Army recognises the importance of road security in Ghazni, due to its strategic importance and road security has been improved⁴⁰. Having regard to the country information, I conclude that there is only a remote and not a real chance that the applicant would face any harm on roads returning to Kandahar.

Employment, capacity to subsist

28. The applicant fears that that he will not be able to survive alone in Afghanistan, especially considering he had never worked in that country, and had relied on my family for financial

³⁵ European Asylum Support Office (EASO), 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

³⁶ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

³⁷ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

³⁸ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

³⁹ EASO, 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

⁴⁰ EASO, 'Afghanistan: Security situation', EASO, 28 September 2020, 20200929084838

support. He says that as all of his remaining family members live in Pakistan, he could not rely upon receiving any support from family. He asserts that his poor education would make it extremely difficult to find work and that as a consequence, he would not be able to support himself or obtain food and shelter in Afghanistan.

29. Country information before me indicates that the poor security situation and limited development of resources mean that job creation has been unable to keep up with population growth, and few Afghans have access to productive or remunerative employment. The Afghan economy struggles to absorb the high numbers of people entering the workforce each year in addition to the high numbers of Afghans returning from neighbouring countries⁴¹.
30. Nevertheless, I have already noted that this applicant does have some members of his extended family in Kandahar, including uncles and cousins. I further note that the applicant is a Pashtun, and that in Afghanistan, persons of Pashtun ethnicity live under the auspices of the customary Pashtun law, the Pashtunwali, which obligates family members to provide support to family members in need⁴². In these circumstances I do not accept his assertion that he could not rely on any family support.
31. I do accept that this applicant did not work during the period he lived in Afghanistan, but I have some concerns about the applicability of this claim to him now, since I note that when he departed Afghanistan in 2001, he was around [Age] years of age and even his SHEV Application describes him as “*too young to work*” during this period. Though I have doubts, I am willing to accept that he did work during the eight or nine months he returned to Afghanistan in 2009, but I note according to his SHEV Application and his Protection Visa Interview, he has routinely found work during the periods he lived in Pakistan and Australia. His capacity to find employment in these two foreign countries does not appear to have been unduly hampered by his lack of education, so it is not clear to me why he asserts that this would be a factor preventing work upon return to Afghanistan, where he grew up and speaks the language. The applicant has not described any other factor which would prevent him working in Afghanistan. Country information before me does indicate that the employment market in Afghanistan is different to Australia. Nevertheless, the applicant has not pointed to any specific credible information which might support his claim that he could not find work in Kandahar Province. In the circumstances, I am not satisfied he would be unable to find work in his home country, or that he would not be able to subsist; I am not satisfied that he faces a real chance of harm for these reasons.

Failed Asylum seeker, Returnee from the West, Spy

32. He fears that if returned to Afghanistan, he would be considered a spy, given he has lived in Australia for such a long time. He fears that if he were to return, as a failed asylum seeker he will be tortured and/or even killed by the Taliban and/or other extremist groups. At interview he indicated he would be considered as convert.
33. Country information before me, including that submitted by the applicant, does indicate that there are risks associated with being perceived to be a supporter of the Afghan Government, the West or of Western interference in Afghani affairs. Militants, including the Taliban have conducted many attacks on the infrastructure provided by international donors over the years of fighting in Afghanistan⁴³. The United Nations Human Rights Commission (UNHCR) publishes

⁴¹ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

⁴² European Asylum Support Office (EASO), “Afghanistan Recruitment by Armed Groups”, EASO, 15 September 2016, CIS38A80122067

⁴³ UN High Commissioner for Refugees, “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan”, 19 April 2016, UN6C8EFBB3

credible reporting about the situation in Afghanistan. In 2016 and again in 2018, it reported that the principal targets of insurgent attacks (including those by the Taliban and ISKP) were persons seen as having some relationship to Government⁴⁴. The new information provided by the applicant about conditions in Afghanistan further supports that Government affiliation can still lead to targeting by insurgents. Furthermore, it noted that individuals might come under suspicion for a variety of other reasons, including being a member of the Afghan Government or military forces, working in the judicial sector or being a teacher or otherwise speaking out against the Taliban, or for the Government⁴⁵. This is consistent with a range of other reporting before me⁴⁶.

34. Since the Taliban was overthrown, more than 20% of Afghanistan's population⁴⁷, over eight million Afghans, have returned to the country⁴⁸. According to DFAT, the number of displaced people moving in and out of Afghanistan has ebbed and flowed considerably in recent years, dependent largely on perceived security and economic conditions in Afghanistan and policy changes in neighbouring countries. The numbers returning from Pakistan rose dramatically in the second half of 2016: the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that more than 600,000 people (370,000 documented and 230,000 undocumented) returned to Afghanistan by the end of 2016— an average of 4,300 returns per day since mid-July. Many of those returning from Pakistan had lived outside Afghanistan for decades⁴⁹. DFAT is aware of occasional reports alleging that returnees from western countries have been kidnapped or otherwise targeted based on their having spent time in a western country. DFAT has consistently reported it has no information to suggest that returnees from western countries attract negative attention from state authorities for having sought and failed to gain asylum⁵⁰. People who identified as having international associations face a high risk of being targeted by anti-government elements. This may possibly include returnees from western countries.
35. The applicant has never worked for the Government in Afghanistan and has not expressed any desire to do so. He is not a teacher and has never spoken out against anti-Government elements. He has never worked in the security or judicial sectors or the media. He departed Afghanistan in late 2009. I have found that he was not personally of interest to the Taliban, other insurgent groups or the Government at the time of his departure. In my view, he does not have any particular political profile in Afghanistan.
36. This applicant's departure from Afghanistan was to Pakistan, where his immediate family remains. He has not indicated that he maintains contact with any person outside his family in Afghanistan, so it is not clear that anybody, beyond his family, from his home country would know he has spent time in the West. DFAT understands that most returnees take measures to conceal their association with the country from which they have returned, and keep a low profile on return, and assesses that returnees from the West in this situation do not face a significantly

⁴⁴ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

⁴⁵ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

⁴⁶ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

⁴⁷ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

⁴⁸ European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

⁴⁹ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁵⁰ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

higher risk of violence or discrimination than other Afghans with a similar ethnic and religious profile⁵¹. Above, I have considered the applicant's ethnic and religious profile. I accept that the applicant's time in Australia would be known by members of his family, with whom he maintains regular contact, but the applicant's immediate family lives in Pakistan and have done so since before he arrived in Australia. Other than members of his extended family, he has not indicated any contact with anybody else who remains in Afghanistan. The applicant has not claimed that his current circumstances are known to anybody outside his immediate family. Beyond family members, it is not clear that anybody in Kandahar, or Kabul, or any other part of Afghanistan would know about his time in Australia unless he decided to declare it to them, and the applicant has not indicated any desire to do so. When asked about this issue at interview I note that the applicant said his dress or style might indicate some western affiliation, but this seems doubtful given the many images of Afghans in western style clothing which abound in the country information before me. Noting the comments by DFAT, I observe that the applicant himself has not offered any other evidence about how other people would be aware that he has returned from the West other than by questioning him. I do not accept that the applicant will behave in a way that will identify him as having returned from the West or that he will be otherwise identifiable as having this profile. In any case, in light of the country information about the volume of returnees to Afghanistan, even if it did become known, I am not satisfied that the applicant's time in the West would distinguish him from the many other returnees in that country.

37. The applicant has also claimed that his absence from Afghanistan by would lead to him facing increased problems upon return as he would be presumed to be westernised or a spy or infidel or supporter of the west, or as a convert. However, to my mind, the large volume of returnees to Afghanistan suggests that his circumstances would not be particularly unusual. Furthermore, millions of Afghans have returned to reside in Afghanistan in the last two decades. In this context I note that his most recent departure from Afghanistan was to Pakistan and he had previously returned to Afghanistan in 2009, without facing problems associated with his travel. I am satisfied that should he return to Afghanistan he faces only a remote, and therefore not a real chance, of being identified as having returned from a western country and suffering harm as a result. As he is a practising Muslim, I do not accept that he would be considered a convert.
38. I have considered all of the evidence before me. The applicant has no direct links to the Afghan Government, or international donors. I have not accepted the applicant was ever personally of interest to the Taliban or any other anti-Government elements in Afghanistan at the time of his departure. I am not persuaded he would be of interest to them now, around 12 years after his departure from Afghanistan. I am not satisfied that he would be distinguishable or would be perceived as a western supporter, or spy, or would otherwise face a real chance of harm arising from his long absence from Afghanistan.
39. Overall, I am not persuaded that a person in the applicant's circumstances and with his particular profile would be at a real risk of harm. I am not satisfied that the applicant would face a real chance of harm arising from his time spent in Australia, or his attempt to claim asylum in this country. I am also not satisfied that there is a real chance that the applicant, a Pashtun Sunni who has spent extended periods outside of Afghanistan, would be imputed as a western spy or would face any harm arising from these issues. I am not satisfied that the applicant has a well founded fear of persecution, arising from his travel to Australia, or the time he has spent in this country, or his attempt to claim asylum here.

⁵¹ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

Refugee: conclusion

40. 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

41. 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

42. 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.

43. 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.

44. I have found that this applicant would not face a real chance of harm for any of the reasons he has put forward in SHEV Application. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that he would not face a real risk of significant harm for these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

Complementary protection: conclusion

45. 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.