



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN
IAA reference: IAA21/09043

Date and time of decision: 19 May 2021 08:36:00
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 Qizilbash ethnicity and an adherent of the Shia faith. He arrived in Australia in July 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in April 2017. In April 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 23 April 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.

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 Qizilbash ethnicity and an adherent of the Shia faith. He was born around [Year] and lived with his parents and this three sisters in [a] Village, in the Pul-e-Alam District of the Logar Province, Afghanistan.
 - He attended school at the nearby [High School], which was located around 30 minutes' walk from his home. There were Taliban in his area. Frequently while walking to or from school, the applicant faced harassment and threats from members of the Taliban who he encountered along the way.
 - This type of harassment by the Taliban was common; he was targeted because he was a Shia. The Taliban men would badger him about his faith and attempt to persuaded him to covert to Sunni Islam. He was called an infidel. On one occasion he was stopped and slapped.
 - After he reported this event to his family, his father advised him that he should depart Afghanistan. Arrangements were made and he travelled Iran. In Iran he lived in Tehran, with his maternal aunt.
 - Around two years after his arrival in Iran, the applicant's parents and a sister (S1) disappeared. Neither the applicant, nor any other family member has been unable to establish contact with his parents or with S1 since that time. He presumes they are dead.
 - Sometime after his parent and S1 disappeared, distant relatives advised him that the Taliban had burned down his family home in the village.
 - In 2013, the applicant departed Iran, and travelled to Australia.
 - The applicant fears to return to Afghanistan, because there are Taliban throughout Afghanistan, including in his village area. He believes the Taliban know his details and would target him upon return.

- He fears that as a Shia, he would face harm and persecution in Afghanistan, especially from the Taliban and the Islamic State. These groups operate throughout the country, and target Shia for violence. Shia have been targeted for violence throughout the country and nowhere is safe for them. Travel on roads is unsafe for Shia.
- If he returned to Afghanistan as a Failed Asylum seeker who spent time living in the West, he would face harm for this reason.
- Afghanistan is a very dangerous place, and nobody in that country can be safe from indiscriminate violence. The Government cannot protect people in Afghanistan.

Factual findings

5. As part of his SHEV Application, the applicant has provided a copy of an Afghan Taskira issued in his name, and an accredited translation of the Taskira. He has not provided any other Afghan documents in support of his identity.
6. Country information before me indicates that fraudulent Taskira are easily obtained in Afghanistan. This is concerning, as the translation for the Taskira provided by the applicant indicates that the Taskira he has presented was issued in January 2017, a period when the applicant was in Australia. The applicant has asserted his sister obtained the Taskira on his behalf. Of further concern, I observe that the photo attached to the Taskira appears to show the applicant, but the photograph is of him when he was much younger than he was in 2017 (around [age] years of age) and is not contemporaneous. The Taskira also indicates that the applicant's age at the time of issue was "*determined to be*" [younger], but the document does not record how this determination was made. A 2013 assessment by Departmental Age Determination Team, found he was [age] when he arrived, but according to the applicant, he does not know his exact age or date of birth, but at interview, he said was around [age] when he arrived in Australia in 2013. In the circumstances, I give the applicant's Taskira little weight as evidence of his identity.
7. Nevertheless, the applicant's verbal claims about his identity have been consistent throughout his time in Australia and so the applicant has established his identity to my satisfaction. I accept that he is an Afghan citizen, of Qizilbash ethnicity as he claims. For the purposes of this decision, I accept that he was born around [year], in Pul-e-Alam District of the Logar Province of Afghanistan. For the purposes of this decision, I find that Afghanistan is his receiving country

The Taliban

8. According to the applicant, he and his family lived in his village in Pul-e-Alam District of the Logar Province. The applicant attended school nearby, which according to his SHEV Application, he finished in 2007. He says that in the area where his family lived and worked, there was a Taliban presence. The Taliban in his area was known to have attacked schools and other facilities in his area. He says that while he was walking to and from his school, he would routinely come under harassment from Taliban members due to his Shia religion. They would call him an infidel; they would harass him, swear at him and insult him and encourage him to convert to the Sunni faith preferred by the Taliban. On one occasion, the Taliban men stopped him, grabbed him by the hair and slapped him, before one of the men told the others to release him. When he reported this incident to his family, his father advised him that he should leave the country and so the applicant made arrangements to depart. He travelled to Iran via Pakistan. Initially in Iran, the applicant lived in Tehran with his maternal Aunt. Around two years

after his arrival, the applicant's aunt returned to Afghanistan, and thereafter he lived in Iran on his own.

9. There are some reasons to doubt the applicants account regarding the events in Afghanistan which he says led to his departure. The applicant says that the specific incident of harassment that led to his departure occurred when he was on his way to school, but the applicants SHEV Application indicates he finished school in 2007 and the application indicates that the applicant travelled to Iran in 2008. While these dates are not impossible to reconcile, they do suggest that the applicant's departure for Iran was not as prompt or urgent as the applicant has claimed. In the Statement of Claims which accompanied the applicants SHEV Application, and in which the applicant asserted that he was still in school in 2008 and so in this version, there is no conflict between the time the applicant finished school, and his departure.
10. Nevertheless, the country information before me does indicate that in Afghanistan the Taliban and other Sunni groups are hostile to Shia and have been known to target members of the Shia community¹. The applicant's account of harassment is plausible, and I am willing to accept that as a Shia he suffered harassment of the type claimed on the way to and from school. I am also willing to accept that on one occasion, the applicant was physically mistreated, was grabbed by the hair and slapped. I also accept that this event was intimidating and afterward the applicant was afraid and that afterward he travelled to Iran. Despite this finding, the account provided by this applicant does not suggest that he personally, was ever of any particular or direct personal interest to the Taliban, or any other group. I do not accept that the applicant was personally known to the Taliban, or that he was personally targeted by that group, or of interest to them.

Missing family

11. The applicant claims that for the first two years he was in Iran, he maintained regular contact with his family. But around two years after his arrival in that country, the applicant's Father, Mother and one of his sisters (S1)² disappeared from their village. According to the applicant, they have not been seen since this time. He does not know what happened to them, but he presumes they are dead, and believes that the Taliban killed them due to their Shia faith. Around 2014 the applicant heard from an unspecified "*distant family member*" that his family home in the village in Afghanistan had been burned down by the Taliban. The applicant has not provided any further details about his missing family members nor has he provided any independent evidence about them which might corroborate these claims.
12. I have considered this claim carefully. Given the very limited information provided by the applicant, I have some doubts about the claim. Nevertheless, I willing to accept that the applicant's family members went missing around 2010. I further accept that he fears the Taliban is responsible. However, in the absence of any specific information about this event, or

¹ United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of Civilians in Armed Conflict Third Quarter Report: 1 January to 30 September 2020', 27 October 2020, 20201028071316; UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284; DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan: Protection of civilians in armed conflict 2019 (February 2020)', 22 February 2020, 20200224115345; United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of civilians in armed conflict first quarter report - 1 JANUARY - 31 MARCH 2020', 27 April 2020, 20200507100951; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan' European Asylum Support Office (EASO), June 2019, 20191125104658

² The applicant had three sisters. S1 disappeared in 2010, S2 is deceased, and S3 is married and is currently in [Country] with her husband and child.

specific details about what happened, I am not satisfied that the Taliban was responsible for the disappearance of the applicant's family. I do not accept that the Taliban targeted his family, or had any other interest in them.

Refugee assessment

13. 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

14. 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.
15. I have found that the applicant's receiving country is Afghanistan. Though he comes from the in Pul-e-Alam District of the Logar Province, he now asserts that he has no family there, and that his family home no longer exists. Country information before me indicates that returnees to Afghanistan are returned to Kabul. At interview, the applicant indicated that two aunts, all the remaining family he had in Afghanistan, both reside in Kabul. Given the applicant claims that he has no further family in Pul-e-Alam District and that he will be returned to Kabul where he does have family, I conclude that if returned to Afghanistan, he would return and reside in Kabul.

Ethnicity, Religion, General Security Situation

16. I have accepted that the applicant is a Qizilbash Shia. The applicant claims that in Afghanistan Shia face persecution and violence. He fears that if he returned to Afghanistan, he would face persecution and death due to his Shia faith. He also asserts that the general security situation in Afghanistan is so adverse, that it is unsafe for anybody to return.

17. Persons of Qizilbash ethnicity have resided in Afghanistan for generations³. They speak Dari, an official language of Afghanistan⁴. Approximately 50,000 Qizilbash are said to reside in Afghanistan and they are historically a Shi'a Muslim community⁵. At least one estimate suggests the Qizilbash population of Afghanistan may be as high as 200,000⁶. The Qizilbash have a tradition of being among the more literate groups and, therefore, were frequently members of the professional and governmental society. They are principally an urban people with greatest numbers in Kabul, but with significant settlement also in Ghazni, Kandahar and several other towns⁷. Qizilbash in Afghanistan live in urban areas, such as Kabul, Herat, Logar, Kandahar or Mazar, as well as in certain villages in central Afghanistan⁸. Since the creation of Afghanistan, they constitute an important and politically influential element of society⁹. DFAT reporting indicates that the applicant will most likely be returned directly to Kabul where Shia make up a plurality of the population¹⁰.
18. According to the applicant the Qizilbash are perceived to be similar to Hazara, and country information indicates that Hazara and Shia are often conflated in Afghanistan¹¹. Population estimates for Afghanistan are said to be unreliable, though in July 2017, a credible estimate indicated a total population of around 33 million¹². Most sources indicate that Hazara constitute around 10% of the total Afghan population and are the third largest ethnic group in the country¹³. There are at least three million Hazara in Afghanistan and some estimates suggest that the number of Hazara is much higher and may be up to 20% of the total population (i.e. more than six million)¹⁴. Kabul, where I have found the applicant would return, is estimated to have a population of around 5 million persons, of which around 40-50% are estimated to be Hazara who are said to be the most populous ethnic group in the city¹⁵. These factors suggest that there is more than three million Shia in Afghanistan and approximately two million Shia in Kabul. Sunni militant groups such as the Taliban and Islamic State view Shia unfavourably¹⁶.
19. Qizilbash are a recognised ethnicity in the Constitution of Afghanistan. A 2009 Shia Personal Status Law recognises different practices on issues such as marriage, divorce and inheritance among the Shia community and special laws have been written to incorporate Shia Islamic practice in Afghanistan including Article 131 of the Constitution which provides that Afghanistan's courts shall apply Shi'a jurisprudence in certain civil cases where all parties are Shia¹⁷.
20. Shia Afghans are also said to face difficulties in Afghanistan. Since mid-2016, there have been a number of attacks against Shia in Afghanistan including targeting religious and political gatherings¹⁸. This included attacks against demonstrations conducted by Hazara, Hazara

³ Naval Postgraduate School (NPS)- Program for Culture and Conflict Studies, 'Ethnic Identity in Afghanistan', 1 January 2009, CX221185; 'Ethnic groups', Afghanistan: Embassy of the Islamic Republic of Afghanistan - Warsaw, 1 January 2013, CX302212

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

⁵ 'Ethnic groups', Afghanistan: Embassy of the Islamic Republic of Afghanistan - Warsaw, 1 January 2013, CX302212

⁶ South Turkistan Word Press (Afghanistan), 'Qizilbash people of Afghanistan', 9 October 2009, CX24115

⁷ 'Ethnic groups', Afghanistan: Embassy of the Islamic Republic of Afghanistan - Warsaw, 1 January 2013, CX302212

⁸ South Turkistan Word Press (Afghanistan), 'Qizilbash people of Afghanistan', 9 October 2009, CX24115

⁹ South Turkistan Word Press (Afghanistan), 'Qizilbash people of Afghanistan', 9 October 2009, CX24115

¹⁰ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹¹ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹² DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹³ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹⁴ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹⁵ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹⁶ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹⁷ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

¹⁸ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

facilities and against Shia religious buildings, schools and celebrations¹⁹. Many Shia were killed during these attacks. Post-attack claims of responsibility indicate that the Islamic State is principally responsible for these attacks and that they had identified Shia as specific targets²⁰. Though DFAT reporting from 2017 indicated that this trend was waning²¹, the number of insurgent attacks against Shia increased in 2017 and 2018²². The spike in attacks on Shia in recent years has largely been confined to large cities, including Kabul²³. More recently, DFAT and others have suggested that Shia face a high risk of being targeted by Islamic State due to their religion, especially when gathering large cities in groups that are identifiably Shia, such as at religious gatherings, festivals or political demonstrations²⁴. The applicant has asserted that he is a practising Shia Muslim. He has asserted that he would be attacked by Islamic State or the Taliban in Afghanistan.

21. The Taliban remains engaged in a violent insurgency against the government of Afghanistan and the general security situation in Afghanistan is said to have declined in recent years. Broadly, the Government is said to retain control of the large urban conurbations, while the Taliban is said to be stronger in rural areas²⁵. Insurgent attacks have occurred throughout Afghanistan over the last decade²⁶. Though the applicant asserts that the Taliban is responsible for the disappearance of his mother, father and sister, I have not accepted that their disappearance can be attributed to the Taliban. Beyond this claim, the applicant has not suggested that he, or any other member of his family or any person he knows has been targeted by the Taliban, or Islamic State, or any other Islamist group. He says that two aunts are presently living in Kabul, and he does not suggest they face problems of this kind.
22. While it is clear from country information that insurgent groups, including the Taliban and Islamic State retain the capability to conduct large-scale attacks in Kabul²⁷. In 2019, and in 2020, the European Asylum Seeker Office (EASO) prepared reports for the purpose of assisting asylum seeker decision makers assessing the risks faced by Afghan asylum seekers. Both of those reports suggest that Shia can face harm and persecution²⁸, however, that *“not all individuals under this profile would face the level of risk required to establish well-founded fear*

¹⁹ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

²⁰ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

²¹ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

²² DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

²³ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

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

²⁵ European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan’ European Asylum Support Office (EASO), June 2019, 20191125104658

²⁶ United Nations Assistance Mission in Afghanistan (UNAMA), ‘Afghanistan Protection of Civilians in Armed Conflict Third Quarter Report: 1 January to 30 September 2020’, 27 October 2020, 20201028071316; UN High Commissioner for Refugees (UNHCR), “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan”, 30 August 2018, CIS7B839419284; DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333; United Nations Assistance Mission in Afghanistan (UNAMA), ‘Afghanistan: Protection of civilians in armed conflict 2019 (February 2020)’, 22 February 2020, 20200224115345; United Nations Assistance Mission in Afghanistan (UNAMA), ‘Afghanistan Protection of civilians in armed conflict first quarter report - 1 JANUARY - 31 MARCH 2020’, 27 April 2020, 20200507100951; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan’ European Asylum Support Office (EASO), June 2019, 20191125104658

²⁷ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan’ European Asylum Support Office (EASO), June 2019, 20191125104658

²⁸ European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan (December 2020)’, 1 December 2020, 20210209133949; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan’ European Asylum Support Office (EASO), June 2019, 20191125104658

of persecution” and that an individual’s personal profile needs to be considered. This is consistent with other advice from DFAT and the UNHCR²⁹

23. The applicant has not indicated that in Afghanistan he has any political affiliations or profile or that he is interested in or participates in large scale public events like those that have typically been targeted by insurgent groups in the past. I have already found he does not have any affiliation with the Afghan Government, judiciary or military. He is not a teacher or a journalist. I have found that this applicant was not personally of adverse interest to the Taliban, or anybody else. He has no links to the international donor community. He would return as a civilian. He does not, in my opinion, have any political profile which would lead to him being of interest to any party in Afghanistan, including the Taliban, or Islamic State, who he claims would target him.
24. I accept that if he returns to Afghanistan, the applicant would continue to practise his Shia faith and that Shia have been targeted in Kabul in the past. There were allegations that the government failed to provide adequate security for Shia, however, more recent reporting indicates that the Government of Afghanistan has taken steps to improve security. Furthermore, Kabul remains firmly in the control of Government forces. These factors suggest that the chances he would face harm by attending Shia religious gatherings are remote. Event taking into account the risks posed by insurgent groups, I am not satisfied that the applicant would face anything more than a remote risk of harm from insurgent groups in Kabul due to his Shia faith or his Qizilbash ethnicity.
25. The country information before me indicates that returnees to Afghanistan are at significant disadvantage, if they do not return to known locality, or to a location where they can obtain family support. However, this applicant has shown the capacity to relocate successfully twice before, first to Iran, and then to Australia. I also note that he reported to the delegate that two of his aunts currently reside in Kabul, and that he has received support from one of these aunts previously. I conclude he could rely on support from his family. According to his SHEV Application, this applicant speaks Dari, an official language of Afghanistan, and Hazaragi, and English. He has not argued that he would be unable to find employment, and I note he has experience as [an Occupation] and in the [Work] sector. Kabul’s size, centrality and status as the national capital means that it offers a greater range of employment opportunities than other areas of Afghanistan³⁰ and given the applicant’s skills and experience, I am not satisfied he would be unable to secure employment or shelter. I am not satisfied that the applicant would be unable to subsist in Kabul.
26. The applicant contends that it would not be safe for him to return to Afghanistan due to the ongoing violence and the deteriorating security situation and indiscriminate violence. Country information before me, shows that compared to Australia, Afghanistan is a violent society with frequent conflict related violence occurring for more than 40 years³¹. There have been a large

²⁹ UN High Commissioner for Refugees (UNHCR), “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan”, 30 August 2018, CIS7B839419284; DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

³⁰ DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333

³¹ United Nations Assistance Mission in Afghanistan (UNAMA), ‘Afghanistan Protection of Civilians in Armed Conflict Third Quarter Report: 1 January to 30 September 2020’, 27 October 2020, 20201028071316; UN High Commissioner for Refugees (UNHCR), “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan”, 30 August 2018, CIS7B839419284; DFAT, “Country Information Report: Afghanistan 27 June 2019”, 20190627113333; United Nations Assistance Mission in Afghanistan (UNAMA), ‘Afghanistan: Protection of civilians in armed conflict 2019 (February 2020)’, 22 February 2020, 20200224115345; United Nations Assistance Mission in Afghanistan (UNAMA), ‘Afghanistan Protection of civilians in armed conflict first quarter report - 1 JANUARY - 31 MARCH 2020’, 27 April 2020, 20200507100951; European Asylum Support Office (EASO), ‘Country Guidance: Afghanistan

number of civilian casualties throughout this period, including many thousands of civilian deaths³². I have already noted that insurgent groups, including the Taliban and Islamic State continue to engage in violent confrontations against the Afghanistan Government which has resulted in violent attacks throughout Kabul. EASO reporting from December 2020 indicates that though there had been a spike in attacks in Kabul around 2018, high profile attacks and suicide bombings have decreased in recent years in Kabul, probably due to increased security presence and that such attacks were becoming less frequent³³. UNAMA reporting from October 2020 indicated that throughout Afghanistan, year-to-date civilian casualties in had been the fewest in the last six years and that casualties caused by insurgent groups had dropped by 34%³⁴.

27. I have carefully considered this applicant's claims about the risks he would face if returned to Afghanistan, while it is impossible to say there are no risks arising from the general level of violence in Afghanistan, even considering his profile, I conclude that the risks of indiscriminate violence faced by the applicant in returning to, and living in Kabul as a Qizilbash Shia, are remote and do not rise to a real chance.
28. 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. I have concluded that the applicant would not face discrimination which would prevent him from being able to subsist if returned to Afghanistan. After considering all of the evidence before me, apart from some possible societal discrimination (while in Kabul), which I do not accept amounts to serious harm, I am not satisfied that the applicant would face a real chance of harm as a Qizilbash Shia in Kabul.

Data breach

29. This applicant was affected by a 2014 data breach in which the Department of Immigration and Border Protection inadvertently published his identifying details on its website. This applicant has not lodged any protection claims resulting from the data breach, but I observe that the delegate considered this issue, and so I will also consider it.
30. The Department has advised all parties affected by the data breach that the information released during the 2014 data breach was not easily accessible, was only available for a short time and included the applicant's name, date of birth, gender, nationality and some details about their period of immigration detention in Australia. Affected applicants have also been advised that no information about any specific protection claims made by them was available during the breach. The data released during the breach is information that would be

(December 2020)', 1 December 2020, 20210209133949; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan' European Asylum Support Office (EASO), June 2019, 20191125104658

³² United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of Civilians in Armed Conflict Third Quarter Report: 1 January to 30 September 2020', 27 October 2020, 20201028071316; UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284; DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan: Protection of civilians in armed conflict 2019 (February 2020)', 22 February 2020, 20200224115345; United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of civilians in armed conflict first quarter report - 1 JANUARY - 31 MARCH 2020', 27 April 2020, 20200507100951; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan' European Asylum Support Office (EASO), June 2019, 20191125104658

³³ European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949

³⁴ United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of Civilians in Armed Conflict Third Quarter Report: 1 January to 30 September 2020', 27 October 2020, 20201028071316

immediately apparent to Afghan authorities should the applicant be returned to Afghanistan (that is, information about his identity and that that he had sought asylum in Australia) and does not contain any information from which the scope of the applicant's protection claims could be inferred. There is no evidence before me to indicate the Taliban have viewed material from the Data Breach. In these circumstances I am not satisfied that the applicant would face a real chance of any harm arising from the 2014 data breach if returned to Afghanistan. In the circumstances, I am also not persuaded that the Departments Data Breach would contribute to his profile in Afghanistan. I am not satisfied that the applicant would face a real chance of any harm arising from the 2014 data breach.

Returnee from the West

31. The applicant says that he fears that his attempt to claim asylum in Australia and his time in the west would lead to him facing harm if returned to Afghanistan.
32. A range of Country information before me, indicates 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 Afghanistan³⁵. The United Nations Human Rights Commission (UNHCR) publishes credible reporting about the situation in Afghanistan and the risks faced in that country by Asylum seekers. In 2018, it reported that the principal targets of insurgent attacks (including those by the Taliban and Islamic State) were persons seen as having some relationship to Government³⁶. People who identified as having international associations are said to face a risk of being targeted by anti-government elements. This may possibly include returnees from western countries. Individuals might come under suspicion for a variety of other reasons, including being a member of the Afghani Government or military forces, working in the judicial sector, the media, or being a teacher or otherwise speaking out against the Taliban³⁷.
33. This applicant was a student at a high school in Logar Province. He has no discernible links to the Afghan Government, the Afghan military, the judicial sector, or the media. 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 2008 as a school student. 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. He does not have any particular political profile in Afghanistan.

³⁵ United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of Civilians in Armed Conflict Third Quarter Report: 1 January to 30 September 2020', 27 October 2020, 20201028071316; UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284; DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan: Protection of civilians in armed conflict 2019 (February 2020)', 22 February 2020, 20200224115345; United Nations Assistance Mission in Afghanistan (UNAMA), 'Afghanistan Protection of civilians in armed conflict first quarter report - 1 JANUARY - 31 MARCH 2020', 27 April 2020, 20200507100951; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan' European Asylum Support Office (EASO), June 2019, 20191125104658

³⁶ UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284

³⁷ UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284

34. Over the last forty years, Millions of Afghans departed the country with up to one million others internally displaced. The overwhelming majority of persons who departed, crossed the border to Pakistan, with smaller numbers travelling to Iran and other countries. In the five years after 2002, around 5.7 million Afghans returned to Afghanistan³⁸. Since then, many millions more have returned. It is assessed that around 400,000 Afghans return to the country each year³⁹. The UN has reported that more than 600,000 documented and undocumented people returned to Afghanistan in the second half of 2016 alone, an average of 4,300 returns per day⁴⁰.
35. The UN has reported allegations that returnees from western countries have been kidnapped or otherwise targeted based on their having spent time in a western country⁴¹. In the past, returnees have been accused of betrayal, or of opposing the Taliban⁴². Other reports indicate that returnees may face some problems, but that these usually occur in rural areas, and that in cities, like Kabul where I have found the applicant would return, this is not an issue due to the large volume of returnees residing there⁴³. DFAT has 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 asylum⁴⁴. Overseas returnees can face other difficulties if they lack family support upon return⁴⁵, but this applicant does have family in Kabul, and so I am not satisfied he would be affected by such issues.
36. This applicant's departure from Afghanistan was to Pakistan and from there to Iran. He has not indicated that he maintains contact with any person outside his remaining 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 higher risk of violence or discrimination than other Afghans with a similar ethnic and religious profile⁴⁶. Above, I have considered the applicant's ethnic and religious profile. I accept that the applicant's time in Australia would be known by the remaining members of his family, with whom he maintains contact. Other than family members, 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 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. Noting the comments by DFAT, I observe that the applicant himself has not offered any evidence about how other people would be aware that he has

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

³⁹ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁴⁰ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333

⁴¹ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284

⁴² European Asylum Support Office (EASO), 'EASO COI Query Response - Afghanistan - Afghan nationals perceived as 'Westernised'', 02 September 2020, 20200903082254

⁴³ European Asylum Support Office (EASO), 'Country Guidance: Afghanistan' European Asylum Support Office (EASO), June 2019, 20191125104658; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; EASO European Asylum Support Office, "EASO Country of Origin Information Report. Afghanistan. Individuals targeted under societal and legal norms", 12 December 2017, CISED50AD8181

⁴⁴ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333;

⁴⁵ European Asylum Support Office (EASO), 'EASO COI Query Response - Afghanistan - Afghan nationals perceived as 'Westernised'', 02 September 2020, 20200903082254

⁴⁶ DFAT, "Country Information Report: Afghanistan 27 June 2019", 20190627113333; UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, CIS7B839419284; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan (December 2020)', 1 December 2020, 20210209133949; European Asylum Support Office (EASO), 'Country Guidance: Afghanistan' European Asylum Support Office (EASO), June 2019, 20191125104658

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. Millions of Afghans have returned to reside in Afghanistan since 2001. To my mind, the large volume of returnees to Afghanistan suggests that this applicant's circumstances would not be particularly unusual. 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 the applicant continues to assert he is a practising Muslim, I do not accept that he would be considered an infidel.
38. I have considered all of the evidence before me. The applicant has no direct links to the Afghan Government, or to 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, over 12 years later. I am not satisfied that he would be distinguishable or would be perceived as a western sympathiser, 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.

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 any harm arising from his protection claims, or any other reason, if returned to Afghanistan. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that the applicant would not face a real risk of significant harm for these reasons, if returned to Afghanistan. I am also not satisfied that the applicant 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.