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THE SUPREME ADMINISTRATIVE COURT

[KHO:2011:25](#)

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Alien – Residence Permit – International Protection – Humanitarian protection – Armed conflict – Access to a Safe Area - Specific and Accurate Country of Origin Information

A person, who had applied for international protection, originated from such a district in Afghanistan where there were, according to updated country information, areas that could be considered safe. Upon examination of the requirements for alternative forms of international protection one had to consider whether a person returning to the country in question, actually can arrive safely to that area. The road connection could not be considered safe, and no other suggested travel alternative could be considered realistic for the applicant. Since the person in question did not have an internal flight alternative, he should be granted residence permit on the grounds of humanitarian protection needs in accordance with 88a § of the Aliens Act.

The stages of the case

The Finnish Immigration Service has 27.10.2009 rejected the Afghan national A's application for international protection and residence permit. The Immigration Service has further decided to return him to Afghanistan.

The Finnish Immigration Service has given the following reasons for its decision:

Granting of international protection for aliens residing in Finland is regulated in section 87, 88 and 88a of the Aliens Act. According to section 87, subsection 1 of the Aliens Act aliens residing in Finland are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.

An alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under section 87 are not met, if he or she would face a real risk of being subject to death penalty or execution, torture or other inhuman or degrading treatment or punishment or serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts in the country of origin or country of former habitual residence. Additionally it is required that the person is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country.

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An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if the requirements under section 87 or 88 are not fulfilled, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation.

The Finnish Immigration Service does not consider the applicant to owe a well-founded fear of being persecuted in accordance with 87 §. Neither does he seem to face a real risk of being subjected to serious harm in his home country in accordance with 88 § (1).

The applicant is hazara and originates from the Jaghori district in the Ghazni province. All inhabitants in Jaghori are hazaras, consequently the applicant does not belong to a minority. The turmoil in Afghanistan has been concentrated to the eastern and southern provinces. In its statement from July 2009 UNHCR notes that Taliban activity has increased in the Ghazni area (*UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan June 2009*). According to the Afghanistan NGO Safety Organization Ghazni is, however, overall controlled by the Afghan Government (*The ANSO Report, Issue 34, 16-30 September 2009*). According to the UNAMA Report a majority of the civilian victims in Afghanistan has been killed by air attacks by the Coalition forces or by rebels targeting the Coalition forces or other foreigners (*UNAMA: Afghanistan Mid Year Bulletin on Protection of Civilians in Armed Conflict, 2009*). According to relevant country information there is no serious rebel activity in the Ghazni area. In the whole Ghazni area only six Coalition soldiers died last year (<http://icasualties.org/oef/ByProvince.aspx>).

According to the Immigration Service the security situation in Jaghori in the Ghazni province is not such as to grant persons originating from that area protection in accordance with 88a § only due to the general situation. In the present case, this is supported by the fact that the applicant has returned to his home area from abroad about three years ago, when the security situation was even worse. The applicant has neither referred to the security situation in the area during the asylum process. The Immigration Service further thinks that the applicant has a possibility to settle down in the capital Kabul. The applicant has stated that he moved to Iran when he was 13 years old. There he lived and worked as a mechanic until he returned home. Since the applicant has managed to find a job and settle down for a long time in a foreign country, it can be reasonably assumed that he could, if he wants, settle down also in another area in his home country.

The Immigration Service claims that the applicant does not owe a well-founded fear of being persecuted in accordance with 87 §. Neither does he seem to face a real risk of being subjected to serious harm in his home country in accordance with 88 § (1) or to be in need of humanitarian protection in accordance with 88a §.

According to 52 § of the Aliens Act, aliens residing in Finland are issued with a continuous residence permit if denying a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position. The Immigration Service does not consider the case to present such grounds that would grant him residence permit in accordance with 52 §.

The applicant has not presented any grounds in accordance with the Aliens Act that would grant him residence permit. Continued presence in Finland requires a residence permit, which he has not been granted.

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Upon returning the applicant the Immigration Service has taken into account all facts presented in the decision as well as other relevant facts and the overall circumstances, such as the purpose and the length of the applicant's residence, his connections to Finland and his cultural, social connections to his home country and his family ties.

The Immigration Service considers that the applicant can be returned to his country of origin Afghanistan without being subjected to inhuman treatment in accordance with article 3 of the European Convention of Human Rights or any other treatment in accordance with section 9, subsection 4 of the Finnish Constitution or section 87, subsection 1, section 88, subsection 1 or section 88a, subsection 1 of the Aliens Act or without the risk of being sent to such an area.

The decision by the Administrative Court of Helsinki

The Administrative Court has rejected the appellants request for an oral hearing.

The Administrative Court has rejected the appellant's appeal of the asylum and subsidiary protection decision by the Finnish Immigration Service.

The Administrative Court has reversed the decision in other respects and returned the decision to the Immigration Service for a re-examination, claiming that A should get a residence permit on humanitarian protection grounds in accordance with 88a §.

In the reasoning of the Administrative Court it is demonstrated that the applicant is a Shia Muslim. He has lived in Jaghori in the Ghazni province in a big hazara village. He left Afghanistan in 1988 for Iran, where he lived 13-14 years. He does not currently have a residence permit in Iran.

The Administrative Court has in its reasoning described the presented asylum grounds and stated in its assessment that the applicant has not made in likely that he is owing a well-founded fear of being persecuted in accordance with 87 §. Neither does he seem to face a real risk of being subjected to serious harm in his home country in accordance with 88 §. Therefore, the applicant cannot be granted asylum or residence permit based on subsidiary protection needs.

Regarding residence permit based on humanitarian protection grounds the Administrative Court has presented the following:

The security situation in Afghanistan has deteriorated and violence has increased during 2009. UNHCR stated in October 2008 that the applicant's home province Ghazni is insecure in its entirety. Also the roads from Kandahar and Kabul are insecure (*UNHCR: Afghanistan Security Update Relating to Complementary Forms of Protection, 6.10.2008*).

According to country information the Taliban activity and the general insecurity affects civilians primarily in the southern parts of Ghazni, while the northern hazara majority districts are calmer (*Migrationsverket: Afghanistan December 2009, 22.1.2010*). The road leading to Jaghori is also mentioned as insecure in the Finnish Immigration Service report based on the fact-finding mission to Afghanistan in September 2009 (*Eurasil: The Current Situation in the Jaghori District of Ghazni, Situation Report, 10.12.2009*).

Relatives constitute the principal security and survival net in Afghanistan. UNHCR recommends states not to return asylum-seekers to other parts than to the home area or to an area, where the applicant has lived before or where he or she can get support from relatives or his or her clan

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(*UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan July 2009*). The applicant has stated during the asylum process that he has a brother living in Afghanistan.

Based on the explanations above, the applicant cannot be safely returned to his home area in the Ghazni province, since the overall situation there is still unstable and insecure for the local people due to the armed conflict. According to the country information, there are also districts in the Ghazni province considered safe, but travel to these areas is unsafe. It has not been established that the applicant has any other place in his home country where he could safely settle down. When considering the available country information regarding the Ghazni province, the Administrative Court claims that the applicant is in need of another sort of international protection. The applicant should be granted residence permit based on humanitarian protection needs in accordance with 88a §.

Examination in the Supreme Administrative Court

The Finnish Immigration Service has requested leave to appeal against the decision from the Administrative Court and required that the decision by the Administrative court is overturned and that the decision by the Finnish Immigration Service enters into force. Moreover, the Service has required that the case is returned to the Administrative Court for re-examination.

As a basis for its request the Finnish Immigration Service presents, inter alia, the following:

The Administrative Court has interpreted the concept of “bad security situation due to an armed conflict” as stated in 88a § by deviating from the preparatory work and by expanding the concept. The Administrative Court has not correctly applied the country information and it has made interpretations by wrongly applying the country information.

The Administrative Court has based its finding regarding the security situation in the Jaghori district on an old statement from UNHCR, on a published fact-finding mission report by the Swedish Migration Board (*Migrationsverket*) 22.1.2010 as well as on the Finnish Immigration Service’s fact-finding mission report 10.12.2009 *The Current Situation in the Jaghori District of Ghazni*. According to the Swedish report, the Taliban activity and general insecurity affect civilians primarily in the southern parts of Ghazni, while the northern hazara majority districts are calmer and Jaghori is one of these districts.

The Administrative Court has not motivated why Jaghori would not belong to one of the safe districts. Furthermore, the Administrative Court has wrongly interpreted the security situation report by the Immigration Service and stated that the road leading to Jaghori is unsafe. The report mentions that the dangerous road can be avoided by using a longer road through the Bamyan province and the Jaghatu area.

The administration committee of the parliament has in its report (HaVM 26/2008) stated in regard to the proposed 88a § of the Aliens Act that the proposed scope of application of 88a § should include the aliens currently falling under the scope of 88 §, that cannot return to their country of origin due to an armed conflict, even if the threat due to the indiscriminate violence cannot be considered to be individual as defined in the section on subsidiary protection. It can, for instance, concern a situation that is generally unstable and insecure for the local people due to an armed conflict.

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A bad security situation due to an armed conflict requires two or more parts. In addition, the armed conflict must take place in the area or affect the area in which the security situation is assessed. It must pose a real and serious threat to any person in the area. This requires a certain level of intensity of the violence that is, however, lower than the individual risk level stated in the ECJ Judgment 17.2.2009 Elgafaji. Sporadic and isolated violent attacks in the area do not yet imply that they pose a real and serious threat to any person in the area in accordance with 88a §.

The general security situation in Afghanistan is complex and varies locally. Most often the possibility for foreigners to act safely in the area has been used as an indicator of the security situation. International organizations do not have access to all areas and inaccessible areas may be classified as dangerous. Often, civilians may still live normally in these areas, without risk of being subjected to indiscriminate violence. The violence and rebel attacks in Afghanistan have mainly been targeted against state authorities, the army or international groups and organizations. The incidents are often quick and short where road bombs, grenades and rockets are used. On the other hand, the army and the international forces sometimes carry out air strikes against rebels. The amount, type, intensity of incidents as well as the number of civilian victims are better indicators of the security situation for civilians than foreigners' access to the area. Based on this information one can better assess whether it concerns such a situation as defined in 88a § of the Aliens Act.

According to available information there have only been a few attacks by Taliban or other rebels in the hazara majority districts in Ghazni. The Taliban are not active in the Jaghori district and they do not affect the civilians in the area. The incidents in the Ghazni province have been concentrated to areas next to the Kabul-Kandahar road that passes through the province where the Taliban are active. In the Jaghori district there are not at least two opposing parts as required for an armed conflict. Actually, there is no rebel group active there. No other incidents have either been reported that could imply a level of indiscriminate violence subjecting the local people to a real and serious threat. The security situation cannot always be assessed on a provincial level but, if needed, the assessment should be based on more specific information about a certain district.

A has provided an explanation and required, that the appeal by the Finnish Immigration Service is rejected. The Immigration Service has not managed to assure that the security situation in Ghazni has improved since 2008-2009. UNHCR does not publish any local security reports any longer, since the information is insufficient and the number of civilian victims is unclear and the conflicts vary from one month to another. If the provinces were secure, UNHCR would not have any problem to classify them as such. Other Nordic countries such as Norway and Sweden, classify Ghazni as an insecure area. Ghazni is the most ethnically divided area in Afghanistan. The capacity of the Taliban in the area is enough to control the infrastructure and the roads.

The Ghazni province consists of 16 districts and the security situation should be assessed as a whole since the insecurity in one district also affects calmer ones. The Jaghori district is small and mountainous and it has become isolated due to the insecure situation. The detour presented by the Immigration Service is not safe according to country information. In a report on the Jaghori and Malistan districts the Kabul-Kandahar road is considered dangerous but, in practice, the only way to get to Kabul from the area.

The Immigration Service has provided a response. The allegedly dangerous road from Kabul to Kandahar may be avoided by taking the road from Kabul that goes through the safe hazara majority areas in the north of the Pardak province to Bamyā city in the Bayman province and from there through the Wardak province via the Nawur and Malistan districts in Ghazni to Jaghori. It is also possible to go by a small plane to Jaghori. The incidents in the Ghazni province

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during summer 2010 did not take place in Jaghori, where two alleged Taliban attack attempts had been reported.

A has provided additional information, *inter alia*, updated comments from UNHCR 17.9.2010 regarding the Ghazni province. The comment reiterates the previous statements in the July 2009 report where UNHCR states that it is not in a position to specify areas in Afghanistan that automatically warrant international protection due to general violence. The international protection needs must be assessed individually based on the evidence presented by the applicant and by taking into consideration current and reliable country information. According to the comment, the most worrying situation is in the southern and south-eastern parts of the country, in parts of the western, eastern and northern as well as central parts, including the Ghazni area. The situations vary significantly and continuously between and within the districts and provinces. According to the comment, the attacks throughout the country have increased in 2010 and reached the worst level since 2001, and have been increasing since the US and UK forces initiated their operations in the south of Helmand in July 2009. Conflicts between government and anti-government forces have increased the insecurity and violence and they cause internal displacements in large parts of the country. The Taliban activity has increased in Ghazni and indiscriminate violence take place daily and cause civilian victims.

Decision by the Supreme Administrative Court

The Supreme Administrative Court grants the Finnish Immigration Service leave to appeal and examines the case.

The appeal is dismissed. The decision by the Administrative Court is not changed.

Reasoning

1. Question that need to be settled

The Administrative Court has dismissed A's appeal concerning asylum and subsidiary protection, but considered that he should be granted residence permit based on humanitarian protection needs. In the reasoning of the case, the security situation in Ghazni and the possibility of internal flight alternatives have been assessed in the light of country information

The Immigration Service has asked the Supreme Administrative court to decide whether the current security situation in the Ghazni province and especially in the Jaghori district is to be considered as fulfilling the criteria for residence permit based on humanitarian protection needs in accordance with 88a § in regards to the applicant. Moreover, the Immigration Service asks whether it is possible to safely access that area.

2. The rules and legal provisions to be applied and their background

2.1. Fundamental and human rights

According to 9 §, subsection 4 the right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

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According to article 3 of the European Convention on Human Rights no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

According to article 2 of the Charter of Fundamental Rights of the European Union everybody has the right to life. Article 18 concerns the right to asylum and article 19 concerns protection in the event of removal, expulsion or extradition.

2.2 The rules in the Aliens Act and its preparatory work

2.2.1. *The provisions of the Aliens Act*

According to 3 §, subsection 13, international protection means refugee status, subsidiary protection status or a residence permit granted on the basis of humanitarian protection.

According to 87 §, subsection 1 of the Aliens Act aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.

According to 88 §, subsection 1 of the Aliens Act an alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under 87 § are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country. Serious harm means:

- 1) the death penalty or execution;
- 2) torture or other inhuman or degrading treatment or punishment;
- 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.

According to 88a §, subsection 1 of the Aliens Act an alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under 87 § or 88 § for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation.

2.2.2 *The Governmental Proposal*

The Government proposal (HE 166/2007) regarding the Aliens Act states the following in regards to humanitarian protection:

“It has been proposed to add a new 88a § regarding humanitarian protection to the Aliens Act, according to which an alien residing in Finland would be issued with a residence permit on the basis of humanitarian protection, if there are no grounds for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of the current situation. International protection granted due to the current situation in the country of origin or country of former habitual residence is included in the existing 88 §, but a division into a separate section is proposed so the subsidiary protection

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in the Act would correspond to the definition in the Directive (The Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Qualification Directive). The Directive does not prevent member states from applying the article more extensively; it only aims for unity in regards to the central definitions of the Directive.

Residence permit on humanitarian grounds would be granted to aliens if return to the country of origin or country of former habitual residence is impossible due to current disorder, poor human rights and security situation, poor humanitarian situation or similar circumstances. All possible future situations are impossible to define in advance.

The conditions for possibly being considered as subject to a violation of the law does not have to relate to the individual itself, but the overall situation in the country may result in violations of the law for any person. Humanitarian protection may be granted i.e. to an alien, who only due to his or her residential area is at risk of being subject to indiscriminate armed violence. A distant possibility of threat cannot be considered as a risk, if the violence is taking place in other parts of the country.

2.2.3 The report by the administration committee of the parliament

The administration committee of the parliament has in its report (HaVM 26/2008) stated the following in regards to the proposed 88a § of the Aliens Act:

In addition to the implementation of the Qualification Directive the current grounds for granting international protection should remain. Therefore, and by referring to the general reasoning, the committee proposes to extend the current legislation and change the otherwise loose and by its content unclear subsection 1 to the following: “An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under 87 § or 88 § for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation”.

The proposed scope of application of 88a § by the administration committee should include the aliens currently falling under the scope of 88 § that cannot return to their country of origin due to an armed conflict, even if the threat due to the indiscriminate violence cannot be considered to be individual as defined in the section on subsidiary protection. When examining the international protection needs of the applicant one has to consider the application in regard to 87 § and 88 § first. Only after this one should consider the impact of the current general situation in the country on the applicant upon return. The difference to 88 § on subsidiary protection is consequently that the conditions for possibly being subjected to a violation of law is not directly related to the person him- or herself, but due to the armed conflict the situation in the country may subject any person to a violation of law. It may concern a situation that is insecure and dangerous for the local people overall due to the armed conflict.

By international or internal armed conflicts is meant, not only armed conflicts as defined in the Geneva Convention from 1949 and its additional protocol relating to humanitarian law, but also other armed violence and disorder that can be international or internal. Humanitarian protection can, for instance, be granted to an alien, who only due to his residential area risk facing

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indiscriminate violence due to an armed conflict, if he or she does not have an internal flight alternative.

The administration committee specifies that when assessing the return possibilities for the applicant one has to take into consideration the situation as a whole. Humanitarian protection can be granted if the situation in the country due to an armed conflict is objectively such that a return would subject the applicant to a real and serious risk. It cannot concern only a distant risk, where the violence and turmoil take place in other parts of the country. Then, the applicant's possibilities to get protection in other parts of the country must be considered. It is suggested to regulate internal flight alternatives in 88e §.

When assessing the situation in the country one must consider the nature of the violence and turmoil, the geographic occurrence and the intensity as well as the level of human rights and humanitarian law violations. In addition, one must pay attention to what extent the authorities are able to supervise their controlled areas and guarantee the security of the population, as well as to what extent the country's legal system manages to secure the peoples' fundamental rights.

According to the report by the administration committee the security situation in the country may also be such that foreigners cannot be returned, although it is not a question of a proper armed conflict. The security situation may still be so bad that return is not possible. Therefore, the committee suggests that 88a § should include humanitarian protection due to a bad security situation caused by a country's poor human rights situation. Solely a bad human rights situation, which can be noted in many countries, is not enough to grant residence permit on the basis of 88a §. The committee emphasizes, based on a report of the current practice, that residence permit has not been granted solely based on a difficult human rights situation but always in connection to a bad security situation. The proposed wording by the committee is broader than current legislation, but it is, however, in accordance with current practice.

If it concerns a mass flight and a temporary situation, one must consider the possibility to grant residence permit based on temporary protection needs.

3. Country Information on Afghanistan

The Immigration Service has 19.4.2010 published a report concerning the security situation in Afghanistan, replacing the previous report from December 2009. After the changed policy the Immigration Service grants residence permit on humanitarian grounds due to the security situation only to persons originating from the four southern and eastern provinces: Kandahar, Helmand, Khost and Kunar. According to the report violence occurs in many central and northern provinces but it does not reach the level of armed conflict.

In the situation report 21.1.2011 by the Immigration Service the Ghazni province was especially examined. The report states, *inter alia*, that the division better corresponding to the reality, than the provincial division, is the one between different clans in those provinces where different clans live mainly in their own villages and have little to do with each other. This regards the hazara area that crosses province and district borders in the mountainous central area of Afghanistan. Earlier in the report it is stated that UNHCR has in its guidelines 17.12.2010 noted a better security situation in Jaghori but questioned secure access to the area during wintertime, when the mountain road is not in use. On the other hand, flight possibilities have not been taken into consideration, nor the fact that the bypass is used even when the mountain road is not available. It has been estimated in the summary that the infrastructure enables a reasonably safe transfer from Kabul to any central hazara area in Afghanistan.

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In the report by the Austrian Immigration Service in December 2010 (*Bundesasylamt: Bericht zur Fact Finding Mission, s.7*) it is also stated that the central areas are one of the safest in Afghanistan. According to this report, ethnically closed areas are generally safer than other areas.

The Swedish Migration Board (*Migrationsverket*) has, based on its fact finding mission in December 2009, updated its information on the security situation in Afghanistan the 1.1.2010. It has considered that, in ten provinces including Ghazni, there is currently an armed conflict.

17.12.2010 UNHCR has updated its 11.7.2009 guidelines on assessing the protection needs for Afghans. Complementary forms of protection are handled on pages 33-40. It is stated in the report that the conflict related violence has in some parts of the country reached the level of generalized violence. The number of civilian victims has increased during the first half of 2010. Although the attacks by the government forces primarily target soldiers, public places, such as roads, have also been targeted. In addition to individual injuries, mines are preventing people from securing their livelihood by preventing access to their cultivations, running water and health care or education services. Ghazni is not mentioned among the places most affected by civilian victims. More than half of the incidences occur in the south and south-east, but in comparison to previous years they have been more geographically spread.

Due to the worsened security situation in some parts of Afghanistan and the increase in civilian victims the UNHCR report has estimated that the situation can be characterized as generalized violence in the following provinces: Helmand, Kandahar, Kunar, some parts of Ghazni and Khost. The estimation is based on the number of civilian victims, the intensity of the violence as well as on the number of fleeing people due to the armed conflict. Asylum-seekers from these areas may be in need on complementary forms of international protection,

According to the UNHCR Report one must, when assessing the possibilities for internal flight alternatives, take into consideration the actual possibilities to access safe areas including the existence of commonly used land mines and IED's as well as attacks and conflicts on popular roads. When assessing the possibilities one also has to consider that safe areas are difficult to define. There must also be a possibility to safely and legally access the area. The report also mentions in a footnote that the road between Kabul and Kandahar is very risky. Regarding safe routes reference is made to the UNHCR guidelines 23.7.2003 on internal flight alternatives.

5.11.2010 the UK Home Office has, in its country report on Afghanistan (point 20.03), examined the presence of mines in connection to the freedom of movement. The report makes reference to the Landmine Monitor Report (2009), according to which mines still constitute a serious challenge to the country's social and economic reconstruction which is central for stabilizing the political environment. The explosions have mainly occurred in the central and eastern provinces.

According to the yearly report published by UNAMA and AIHRC in March 2010 there were more civilian victims in 2010 than in 2009. The number increased especially in the south of Afghanistan, in Helmand and Kandahar. It is also mentioned in the report that the conflicts do not cause only civilian victims, but it also cause internal relocation, damages to property, restricted possibilities to move, insufficient food supplies and defective basic services such as health care and education. The report also states in subsection 2.1.2, that bigger IED have been placed at previously popular roads. Here, the victims have been civilians, especially families, which demonstrate the indiscriminate placement of the IED's. One explosion is said to have occurred in Ghazni.

4. Evaluation of residence permit based on humanitarian protection needs

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Fulfilling the requirements for humanitarian protection requires legal assessment as well as an assessment of the facts and updated country information regarding the security situation. In this regard, it concerns an assessment for a specific person, time and place. Updated information as well as development possibilities for the near future must also be taken into consideration.

The security situation in the Ghazni province has deteriorated during 2010. According to available country information an armed conflict cannot, however, be considered to prevail in the whole province. This is, for instance, the case in the hazara majority district Jaghori, from where A originates.

On the other hand, when assessing the possibility for a safe return one must take into consideration the same facts as when assessing the possibilities for internal relocation. As presented in the administration committee report (HaVM 26/2008 vp) the security situation in the country can be such that aliens cannot be returned, although it does not amount to a proper armed conflict.

Return to an area considered relatively calm, as the applicants home area Jaghori currently can be considered, also requires that the concerned person has a safe and in practice reasonable possibility to travel and get to that area.. When assessing the possibility of safe return one must also consider whether the possible turmoil in neighboring areas prevents or seriously affects the returning persons' possibilities to benefit from their fundamental rights. Return can neither be considered safe in the case that the area to where the person is returned is in danger of being isolated.

Finnish authorities would not accompany the asylum-seeker to his home area Jaghori. According to current and diverse country information the only means of traveling to Jaghori between Kabul and Kandahar is by a road not considered safe. The detour proposed by the Immigration Service, from Kabul via four provinces or by plane from Kabul to Jaghori cannot be considered feasible for the individual applicant.

The possibilities for internal relocation in accordance with 88e §, in view of A's individual circumstances, must further be taken into consideration. He has lived in a big hazara village in the Jaghori district in the Ghazni province in his home country. At the age of 13, around 1988, he moved with his father to Iran, where they stayed 13-14 years. Internal relocation to other parts of Afghanistan cannot be seen as a possible nor reasonable alternative for A. In view of the above, he should be granted residence permit on the grounds of humanitarian protection needs in accordance with 88a §.

On the basis of the above mentioned and when considering the requirements of the Supreme Administrative Court and the explanations presented in the case, there are no reasons to overturn the decision by the Administrative Court.