

1303843 [2013] RRTA 375 (27 June 2013)

DECISION RECORD

RRT CASE NUMBER:	1303843
DIAC REFERENCE(S):	CLF2013/21208
COUNTRY OF REFERENCE:	Afghanistan
TRIBUNAL MEMBER:	Gabrielle Cullen
DATE:	27 June 2013
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

statement of decision and reasons

application for review

1. The applicant, a citizen of Afghanistan, born in the Parwan Province, lived most of his life in Kabul with his family until his departure from Afghanistan in April 2012. He claims he is [age deleted: s.431(2)] and fears return to Afghanistan as he is a Hazara and Shia, as an unaccompanied minor, as he is perceived to be in opposition to the government of Afghanistan and opposition to insurgent groups in Afghanistan, as a member of the particular social group of children and young people in Afghanistan and as he has sought asylum in the west and is a returnee from the west
2. He claims his parents rented a house in a complex in [Kabul] owned by a Pashtun man. He claims in his statement that in April 2012 on returning from his work to the vicinity of his home he was told by his neighbours not to go to his home as Afghan authorities had found bombs for use in suicide attacks in his complex and that was the reason for the raid. He claims in his statement his neighbours did not know where his parents or siblings were and he claims he fled to the house of his father's friend [Mr A], who helped him to flee Afghanistan. He claims he will be detained and mistreated by the Afghan authorities because they believe that either he or his family were involved in plotting suicide attacks or that he will be harmed by his Pashtun landlord and his affiliates as he believes that either he or his family reported the bombs in his house to the Afghan authorities. He claims that he does not know if his Pashtun landlord has connections to the Taliban but the fact he was planning suicide attacks suggests that he has some connection to insurgent groups in the country.
3. [In] August 2012 the applicant was interviewed by the Department for the purpose of his entry interview. The Tribunal has considered the written notes on file of that interview and where relevant the evidence from that interview appears in this decision.
4. [In] 1 January 2013 the applicant was interviewed by the Department. The Tribunal has listened to the tape of that interview and where relevant the evidence from that interview appears in this decision.
5. The delegate refused to grant the visa [in] February 2013. The delegate accepted the applicant was credible as to where he was born in Afghanistan and that he moved to Kabul at an early age, and lived and worked where he claimed. However the delegate found the applicant to be not credible as to his claim of fleeing Afghanistan as a result of explosives being found at his house. In particular she found that the applicant's actions in leaving Afghanistan were disproportionate to the actual situation which occurred and did not accept he made no attempt to return to his family home to ascertain the situation or to find his family. She was of the view he changed his story as to where the explosives were found and his account was unconvincing and vague. She rejected his claims of serious harm on return as he is an unaccompanied minor as he has links with the Hazara community, has been residing there from a young age, has been employed and will be able to be employed and has shown independence and resilience. She did not accept [Mr A] was the only person he knew in Kabul. She did not accept he will face a serious or significant harm as a Hazara and Shia were he to return to Kabul
6. The applicant appeared before the Tribunal [in] May 2013 to give evidence and present arguments and where relevant the evidence from that hearing appears in this decision.

7. The issues to be considered in this case are as follows.
- Is the applicant credible as to his claim to be a citizen of Afghanistan?
 - Where is the applicant's home area in Afghanistan?
 - Does he have a right to enter and reside in any other country?
 - What is the applicant's date of birth and is he an unaccompanied minor?
 - Is the applicant credible as to his claims?
 - Does he have a well-founded fear of persecution in relation to Afghanistan and meet the protection obligation under the Refugees Convention?
 - Does he meet the protection obligations under the complementary protection provisions of the Migration Act?

Relevant law

8. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

REFUGEE CRITERION

9. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
- owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve ‘serious harm’ to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of ‘serious harm’ are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase ‘for reasons of’ serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a ‘well-founded’ fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a ‘well-founded fear’ of persecution under the Convention if they have genuine fear founded upon a ‘real chance’ of being persecuted for a Convention stipulated reason. A ‘real chance’ is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
18. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

COMPLEMENTARY PROTECTION CRITERION

19. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving

country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

20. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
21. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Discretion

22. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and Humanitarian - Complementary Protection Guidelines and PAM3 Refugee and Humanitarian - Refugee Law Guidelines – to the extent that they are relevant to the decision under consideration.

CONSIDERATION OF Claims and evidence

23. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. This includes, but is not limited, to the following.
 - The protection visa application of [January] 2013 and identity documents attached.
 - The statement of the applicant attached to the protection visa application dated [January] 2013.
 - Submissions of the applicant's representative dated [January] 2013, [May] 2013 and [May] 2013, including attached country information and newspaper articles.
 - Oral evidence of the applicant provided at the Department entry interview [in] August 2012, Department interview [in] January 2013 and the Tribunal hearing [in] May 2013.
 - Age Assessment reports conducted by the Department dated [August] 2012 and [September] 2012.

- Letter to the Red Cross Tracing Service seeking the whereabouts of his family dated May 2013.
- Department of Immigration – PAM3 Refugee and Humanitarian – Complementary Protection Guidelines and PAM3 Refugee and Humanitarian – Refugee Law Guidelines.

24. For the reasons that follow, the Tribunal has concluded that the decision under review should be affirmed

Is the applicant credible as to his claim to be a citizen of Afghanistan?

25. On the basis of the applicant's consistent evidence to the Department and the Tribunal as to where he is from in Afghanistan, and his knowledge of the area he comes from consistent with the map of Kabul city, I accept that the applicant was born in Parwan, Afghanistan and is a citizen of that country and lived, as he claimed, in Kabul from an early age until his departure from Afghanistan in April 2012. In making this finding, I have also taken into consideration that during the Department interview and at the Tribunal hearing the applicant spoke and understood fluent Hazaragi, which is one of the main languages spoken in Afghanistan.

26. I therefore find that as a citizen of Afghanistan his claims should be assessed against that country.

Where is the applicant's home area in Afghanistan?

27. Although the applicant was born in Parwan, I accept his evidence, as he has been consistent in this regard throughout the process, that he moved to Kabul at a very young age and lived there until his departure from Afghanistan in April 2012. Similarly, I accept his evidence that he attended school in Kabul, worked in Kabul and remembers nothing from his time in Parwan. I accept as he has been consistent as to this matter that he has no relatives left in Parwan.

28. On the basis of the applicant's evidence that he has spent almost his entire life in Kabul and it is from where he fled and from where he claims he fears return, and he has no connection to Parwan except being born there, I find his home area in Afghanistan from where his claims should be assessed to be Kabul.

Does he have a right to enter and reside in any other country?

29. There is no evidence to suggest he has a right to enter and reside in any other country in terms of s.36(3) – (5) of the *Migration Act*, other than Afghanistan.

What is the applicant's date of birth and is he an unaccompanied minor?

30. There has been much enquiry into the applicant's actual date of birth and whether he is an unaccompanied minor or not. At the hearing before me he indicated he did not know his exact date of birth, but that he was [age deleted: s.431(2)] when he departed Afghanistan in April 2012. He indicated that a Department age assessment team believed his date of birth to be [date deleted: s.431(2)]. He showed me his IHMS card which stated his date of birth to be [a similar date]. At the hearing before me the applicant agreed that this was probably correct and that he was [age deleted: s.431(2)].

31. On the basis of his evidence at hearing that he was [age deleted: s.431(2)] when he departed Afghanistan which is more than a year ago and his evidence before me that he is currently [age deleted: s.431(2)] and no longer an unaccompanied minor, I find the applicant to be [age deleted: s.431(2)].

32. I therefore do not accept for these reasons that he is an [unaccompanied minor].

Is the applicant credible as to his claims?

33. Due to the applicant's consistent evidence between the Department and Tribunal, particularly at the interview and hearing, I accept the following to be true.

- The applicant is Hazara and Shia. As to his religion and ethnicity, he has been consistent at all stages of the process. He further has been interviewed in Hazaragi at the Department interview and at the Tribunal hearing. As Hazaragi is a language of the Hazaras, this adds to my finding.
- The applicant was born in [year deleted: s.431(2)] in Parwan and lived there until he was [only a few] years old when he moved with his family to Kabul. He undertook four years schooling from when he was [age deleted: s.431(2)], and around this time he moved into a house in [Kabul].
- His family rented a room/home on a three room complex or house from a Pashtun landlord.
- He worked [in one job] when he left school until a year ago when he began working for a Tajik in [a certain] industry, which was situated [in Kabul] one and half hours walk from his home.
- His father was friends with a man named [Mr A] who owned the [vehicle] his father drove daily between Parwan and Kabul.
- He has no remaining relatives in Parwan or connection to the area.
- While he is not an unaccompanied minor, he is a member of the group, children and young people in Afghanistan.

34. I find for the reasons outlined below that the applicant is not a witness of truth as to the reasons which led him to flee Afghanistan in April 2012. I find the applicant's testimony is internally inconsistent and implausible, amounting to a fabrication for the reasons set out in the paragraphs below and that he is not a credible witness as to his reasons for departing Afghanistan in April 2012 and fearing return on that basis. I do not accept, for the reasons that follow that he faced the difficulties he claims, including finding bombs or explosives placed at his house and having to leave as he was scared of being arrested by the Afghan police or his Pashtun landlord and/or his associates including the Taliban. For the reasons below I do not accept as true that his family, including his father, mother and siblings, has disappeared or fled Afghanistan as a result of the bombs being found in his family's house or that he fled to the home of [Mr A] who sent him to Australia as he was at risk because bombs were found in his home.

35. It is the applicant's claim in his statement that on returning from his work in April 2012 as he got closer to his home he saw that the complex where he lived was surrounded by

police. He claims in his statement that a number of neighbours were on the street and they told him he should not go home as the Afghan authorities had found bombs for use in suicide attacks in their complex and that was the reason for the raid. He claims in his statement that his neighbours did not know where his parents or siblings were and after speaking to the neighbours, he became very afraid and fled to his father's friend, [Mr A]. At the hearing before me the applicant indicated and confirmed that he only spoke to one neighbour in the street before he decided to flee the scene, although there were other neighbours on the street. He said the only thing the one neighbour told him was that explosives had been found in his house and he had to escape. He indicated and confirmed that he did not talk to the one neighbour he spoke to about the whereabouts of his family, nor did he ask any questions about his family. I questioned the applicant as to his inconsistent evidence between the hearing and his statement. I noted that the evidence in his statement was quite different as he indicated in his statement that he spoke to neighbours plural and said his neighbours did not know where his family was, whereas he indicated to me that he did not ask the whereabouts of his family. He responded that he did not indicate previously that he asked the neighbours where his family was before fleeing the site and indicated that he had not changed his story and spoke to the son of a neighbour. I view this inconsistency to be significant and expect that the applicant would be consistent as to the exchange which occurred, whether he spoke to one neighbour or many neighbours, and whether he asked the whereabouts of his family or not. This is particularly so as I expect that the whereabouts of his family would be foremost on his mind when he saw his house surrounded by police. The applicant's lack of consistency as to who he spoke to and whether he asked about his family undermines the applicant's credibility.

36. As to the whereabouts of his family, the applicant has also been inconsistent in his evidence and his credibility is further undermined in this regard. As to whether he has any information as to where they are; he replied no, he does not know whether they are captive. He confirmed he had no information about them at all, although he talks to [Mr A] regularly. However at the Department interview, as noted in the delegate's decision submitted with his application to the Tribunal, the applicant indicated that his family is in Pakistan, he did not know when they went there but he was told this by [Mr A]. When I questioned him at the hearing before me as to why he did not indicate today that his parents were in Pakistan in contrast to the Department interview, he stated that he said that while he, the applicant, was in [detention] he spoke to [Mr A] in Kabul, who said not to worry that his family are out of Afghanistan but he did not know where they are. I would expect that if the applicant was genuine in his evidence as to the lack of knowledge as to the whereabouts of his family he would be consistent as to whether he knew where his family was or not, rather than providing confusing evidence at the hearing that he did not know where they were, then later saying at the hearing he was told they were out of Afghanistan and at the Department interview saying he was told they were in Pakistan. I expect that he would be consistent in his response at the hearing as to their whereabouts. The applicant's lack of consistency as to whether he knew where his family was undermines the applicant's credibility.

37. When I initially asked him at the hearing before me what he had done to find them; he indicated that he has not done anything and could not do anything. He later indicated that on his arrival in Australia he talked to his case manager and the case officer promised to put him in touch with an organization; however he received no follow up. His agent in the post hearing submission of [May] 2013 also stated that upon the applicant's arrival in Australia the applicant spoke to his case manager and he promised to put him in touch with an organization, the identity of which the applicant could not remember but he received no

follow up to this. He also said at the hearing that he talks to [Mr A] in Kabul two to three times per week and that the information from him when the applicant was in [detention] was only that he should not worry as his family was out of Afghanistan. He has provided inconsistent evidence to me as to whether he actually made any attempt to find them. Initially he said at the hearing before me that he has not done anything to find them and only when I continued to question him and questioned the difficulty I had understanding he would make no attempt to find them through the Red Cross Tracing Agency, other agencies or any Hazara contacts that he responded that he had spoken to his case manager while in [detention]. Further, when asked what he had done to find them he failed to identify that he had made enquiries with [Mr A] about the whereabouts of his family in their conversations. The applicant's lack of consistency as to whether he did something to find his family undermines the applicant's credibility.

38. Further, even if I accept that the applicant did talk to his [case manager], it would be reasonable to expect that if he did not know the whereabouts of his family he would have made attempts, beyond that to find them. His evidence as to seeking his family since April 2012, a period of over a year, was that he spoke to a case manager once and thought it was being followed up. The agent in the post hearing submission of [May] 2013 claims the applicant did not follow it up because he believed the organization would contact him. The Tribunal does not view this as consistent with a young man who had not seen his family since April 2012 in circumstances which he claims were extremely dangerous with the house surrounded by police. I expect that if he genuinely had not seen his family because of the events as he had described that he would have made numerous attempts to find them by following up and not relied on the conversation with one case manager soon after his arrival and the belief that he would be contacted. He also claimed he had spoken to [Mr A] while in [detention] who gave him some news that they had left Afghanistan but not their whereabouts. I expect that if he genuinely did not know where his family was he would have tried to get more details from [Mr A], asked [Mr A] (who he spoke to regularly) to make further enquiries, or even tried to ask other Hazaras he knows. When asked at hearing what he had done the applicant did not offer any of these, or any other, possible avenues of enquiry. The applicant's lack of initiative in looking for his family for over a year brings into question his claim not to know where they are and I find it undermines his credibility generally.

39. [In] May 2012, after the hearing, the applicant submitted a form to the Red Cross Tracing Agency dated [May] 2012 citing his family's last known address as the suburb they lived in, and left blank the section "the date and circumstances of last news" His attempt after the hearing of making an application to the Red Cross Tracing Agency [in] May 2012 is not consistent with a person genuinely seeking his family as I expect that if he truly was searching for his family he would have filled in the section "the date and circumstances of last news" rather than left it blank, by indicating he had been told they were either in Pakistan or out of Afghanistan or both together with when and how he had come across this information. Further I expect he could provide more evidence of their last known address than the suburb they lived in. I find this lack of initiative to give Red Cross Tracing Agency every assistance to find his family undermines his credibility in this claim and generally.

40. The applicant's evidence is that he fled to the house of [Mr A] who then paid \$15,000 and arranged for him to leave Afghanistan the next day and travel unaccompanied to Australia via [another country]. At the hearing before me he said that he was initially reluctant to tell [Mr A] about what had happened at his complex and waited until late that

night and [Mr A] told him not to worry and that all would be alright. However, he also claimed [Mr A] said it was not safe to enquire about the whereabouts of his family, the applicant was in danger and had to flee the country, and he feared the applicant staying with him because he may be investigated or arrested by the government.

41. When questioned as to the plausibility why [Mr A] would provide him with \$15,000, a considerable sum, and arrange for him to flee he said his father worked for [Mr A] and [Mr A] was not a poor man, and his (the applicant's) life was in danger and they had a close relationship. He also claimed the reason may be that [Mr A] feared the applicant staying with him because he did not want to be investigated and arrested by the government. He indicates he was [age deleted: s.431(2)] at the time and followed the instructions of [Mr A].
42. The applicant left Afghanistan the very next day without knowing what had happened to his family. His evidence is that he fled as he suspects the police have arrested his family or that the Pashtun warlord with links to the Taliban have harmed them or they have fled, as the Pashtun suspects them of telling the police about the bomb. There appears to be some inconsistency in the applicant's evidence about whether [Mr A] tried to find out about his family. In his statement he indicated [Mr A] was unable to find out what happened to his family and decided it was not safe for him to remain in Afghanistan so he should leave the next day. At the hearing he said [Mr A] made no enquiries of where his family members were as he feared trouble. He also said that [Mr A] told him their mobile was off but could tell him nothing more about his family and said for him not to worry.
43. Even taking into account all the applicant's explanations, including that [Mr A] may have feared for his own safety if the applicant stayed with him, I have trouble accepting that a credible response was for [Mr A] to organize, at significant expense, for the applicant, who claims he was a minor, to flee the country alone with no actual information as to what happened to his parents or whether the applicant was in fact at risk. I also have difficulty accepting as true that the applicant would flee the next day or that [Mr A] would organize for him to flee in such a particularly short space of time as overnight without any information, or making any enquiries, except from the [age deleted: s.431(2)] applicant who had only spoken to one neighbour, as to what had actually happened and whether the family were at risk or implicated or where they were.
44. Also, I can find no reasonable explanation, even were I to accept the closeness of their relationship, how it was possible that the applicant arrived at [Mr A]'s place, because of his reluctance (although there is no explanation for any reluctance) told him late at night about the incident, and [Mr A] was able to organize with a smuggler for his travel to Australia via [another country] and acquire and pay \$15,000 (which the applicant indicated was a considerable sum) the next day, particularly as the applicant said to me that while quite wealthy, [Mr A] was not rich.
45. While the Tribunal would not reject the applicant's claims solely on the basis of these implausibilities it does view them as adding to its concerns about the applicant's credibility.
46. The agent submitted that the applicant's actions are quite plausible, similar to a Middle Easterner in Bankstown finding police outside his home. While I accept he may have fled the scene, I view there is no reasonable explanation why [Mr A] would organise for him to flee his country in such an extremely short period of time, at such a considerable cost, without further investigation about the alleged event or the status of the applicant's legal guardians, even if he was in fear.

47. The applicant's credibility is also undermined as to his claims of poor interpretation at the Department interview. At the hearing before me and in the submission of [May] 2013 the applicant submitted that there were significant concerns with the interpreter at the Department interview as he did not speak Hazaragi but spoke [another language]. He claimed that he did not raise it at the time because of the time he had waited for an interview. He claimed that as a result there were extensive errors in the Department decision as a result of the poor translation.
48. However as I suggested to the applicant under the process outlined in s.424AA, he never complained about difficulty understanding the interpreter, rather confirmed he was able to effectively communicate with him. While I note there was a discussion that the interpreter was not an accredited Hazaragi interpreter, the information is he did interpret in Hazaragi. Further, as I suggested to the applicant via the process outlined in s.424AA at the end of the Department interview the agent submitted that she had discussed in the break initial concerns that the Hazaragi interpret was not accredited but submitted that the applicant had indicated it was not an issue today and that he had been able to communicate effectively. I also note as suggested to him via the process outlined in s.424AA that at the outset of the Department interview the applicant was asked whether he understood the interpreter and he replied yes and whether he had any objection and he said no. The Department delegate repeated the question and indicated that if he did not understand the interpreter a further interpreter could be obtained. I suggested to him that I had listened to the tape of over two hours and there did not appear much repetition and his responses were consistent with the questions asked.
49. When I suggested to the applicant under the process outlined in s.424AA that he was not being truthful as to his claim of not understanding the interpreter at the Department interview, and outlined the above, he responded orally at the hearing that it was true that he accepted the interpreter but when he was talking he did not understand and he only interpreted half what he said. The applicant referred to the example of whether his family lived in a house, room and compound. He said the interpreter was only interpreting 50% of what he was saying. He said he protested after the delegate said in his decision that he changed his story and he said he did not and this was a problem with the interpretation.
50. On the basis that the applicant indicated at the end of the Department interview to his agent that he was able to communicate effectively, as he did not question the interpretation and based on my own observations after listening to the Department interview, I do not accept the applicant is a witness of truth as to his claim that there were difficulties with the interpretation at the Department interview. This adds to my findings as to the applicant's poor credibility and his propensity to not tell the truth.
51. When each of the above matters as to the applicant's lack of credibility are considered together, this leads me to find that as a whole the applicant has not been a credible witness and has fabricated evidence regarding the reason he departed Afghanistan in April 2012. The Tribunal therefore does not accept that bombs were ever found at the applicant's home, that he fled Afghanistan for this reason, that he fled to [Mr A]'s place in fear of his life from police and insurgents because bombs were found at his house, that [Mr A] organized his trip to Australia for this reason, that his family no longer live in their home in Kabul and have disappeared and/or fled to Afghanistan and he does not know of their whereabouts as bombs were found in their home and they fear for their life.
52. In making this finding I have considered the agent's submission at the end of the hearing that the applicant's mental state is not flash. I have considered whether the applicant

might have been hindered in presenting his claims to the Department and Tribunal. Having had the opportunity to listen to the Department interview and his statutory declaration I am satisfied that he was able to participate effectively and articulate his claims to both the Department and the Tribunal. His answers to questions put to him were generally responsive and coherent and he retained his composure throughout both the interview and the hearing. I am not satisfied on the evidence before me that his mental state has impacted on his ability to give evidence to either the Department or the Tribunal.

Does he have a well-founded fear of persecution in relation to Afghanistan and meet the protection obligation under the Refugees Convention?

53. Considered together, the reasons discussed above lead the Tribunal to find that the applicant has not been truthful about his experiences in Afghanistan in April 2012 including bombs being found in his or his landlord's house. It follows as it does not accept this to be true that it does not accept he fled Afghanistan in April 2012 because he resided in a building which was raided and found to possess bombs. For the reasons above, I do not accept as a result his family has disappeared, were captured or fled, a neighbour or neighbours told him bombs were found in his house, he fled to [Mr A]'s house and [Mr A] assisted him to flee Afghanistan the next day as a result of bombs being found in his home. It follows that as the Tribunal does not accept he resided in a building which was raided and found to possess bombs, that he was and will be perceived to be opposed to the government of Afghanistan or that he was and will be perceived to be opposed to insurgent groups in Afghanistan because he will be perceived to have reported the presence of bombs in the landlord's house to the Afghan authorities. It does not accept he will be killed, physically abused or seriously discriminated against, his ability to subsist will be threatened by the government or the insurgents because he previously resided in a building which was raided and found to possess bombs for use in suicide attacks. Therefore, on the basis of the evidence before me, I am satisfied that the applicant does not now or in the reasonably foreseeable future have a well-founded fear of persecution on his perceived political views or any other Convention reasons as bombs were found in his home if he returns to Afghanistan.
54. He has also claimed that he will face serious harm were he to return to Afghanistan as a member of the particular social groups, "children and young people of Afghanistan" and "unaccompanied Afghan minors" In regard to the latter group much information was submitted as to the difficulties faced, including in the representative's submission of [January] 2013. However the Tribunal does not accept the applicant is a member of this group as he is over 18 and he will not be unaccompanied were he to return to Afghanistan. It does not accept his parents have disappeared, for the reasons outlined above, and does not accept he has provided any evidence which satisfies me to indicate why his parents have fled their home in Kabul. For the reasons above, and therefore, in the absence of any other information to the contrary, the Tribunal finds his family continue to live in Kabul. Therefore the Tribunal finds the applicant is not currently and will not be in the future a member of the group, "unaccompanied Afghan minors". The Tribunal is therefore satisfied that the applicant does not now or in the reasonably foreseeable future face serious harm as a member of the group "unaccompanied minors" were he to return to Afghanistan in the reasonably foreseeable future.
55. As to his claim that he will face harm were he to return to Afghanistan as a member of the particular social group "children and young people of Afghanistan", he stated at the hearing before me that as they will know he is alone, he will be forced to work day and night, become a dancing boy, implying sexual exploitation. His agent submitted country

information titled Children and Young People in Afghanistan, and included information referring to the prevalence of sexual exploitation and violence against children, and threats to the subsistence of displaced children. When my concerns were suggested to the applicant as to whether he will face serious harm as a result of this, he responded that in his last interviews he was shy in telling this but said one just has to look at Afghan culture and you tube and he has seen it with his own eyes and such behaviour and abuse is a reality in Afghanistan. He suggested that Afghanistan society is not like Australian society and once a boy turns 18 it does not stop. He said it would happen as he has no support in Kabul.

56. However the applicant is no longer a child, nor as I suggested to him did he indicate any concern of returning to Afghanistan as a child or young person in his statement. As the applicant is [not a minor] and there is no evidence to suggest, which I accept as true, that his family no longer continue to live in Kabul, I find were he to return he could reunite with them. As he has provide no evidence of past harm as a child or young person living in Kabul when he was similarly living with his family, I find as the situation as to his living conditions will not have changed were he to return, in that he will return to live with his family, I am satisfied he will not face a well-founded fear of persecution as a member of the group “children and young people of Afghanistan” or “children and young people” were he to return to Afghanistan now or in the reasonably foreseeable future. In fact as he is [over 18 years of age] I suggest the risk to him will be reduced.
57. As to his claims that he will face harm were he to return to Afghanistan as a Hazara/Shia, the independent information in the attached Appendix indicates that there has been considerable improvement in the situation for Hazaras in Afghanistan. With regard to the claimed threat from the Taliban, the Tribunal notes that DFAT advised in September 2011 that Hazara contacts described Kabul as safe and had not raised claims of persecution with them, although they indicated that persecution continued. In advice of October 2012, DFAT stated that it had no information suggesting that the security situation for Hazaras in Kabul differed significantly from that experienced by the general population and that it was not aware of any current targeting of Hazaras in the city. As the Tribunal has put to the applicant, independent information has indicated that the security situation in Kabul is relatively good and that the Afghan National Army (ANA) and the Afghan National Police (ANP) are more trained in security operations in Kabul and other big cities. In this regard, the Tribunal notes, for instance, the information from the May 2012 report of the Danish Immigration Service, cited in the Appendix. The Tribunal finds that the independent information indicates that Kabul is relatively secure and is safer than other parts of Afghanistan.
58. With regard to the situation for Shia Muslims, the Tribunal notes, for instance, the advice from the US Department of State to the effect that the Shia community continues to experience discrimination but that an increase in Shia representation in government has reduced the more overt forms of discrimination. The State Department has reported that Shia are generally free to participate in public life. In its 2012 report, the United States Commission on International Religious Freedom (USCIRF) stated that Shia Muslims were generally free to perform their traditional Ashura public processions and rituals in Kabul without incident.
59. The Tribunal has considered carefully the various submissions that have been made and the country information that has been provided in relation to matters such as the general security situation, the situation in Kabul, the situation for Hazaras and the situation for Shias. Reference has been made to information concerning the security situation in Afghanistan as a

whole. The Tribunal accepts that, as indicated by the independent information in the attached Appendix, there has been worsening violence in Afghanistan and that this has had an effect on the civilian population. The Tribunal accepts that, while the independent information clearly points to a safer and more secure environment in Kabul, such assessments are relative to the security situation in other parts of Afghanistan. However, even taking account of this, the Tribunal considers to be of significance the advice from DFAT that Hazara contacts have described Kabul as safe and have not raised claims of persecution with them. It also places weight on information from DFAT indicating that they are not aware of current targeting of Hazaras by the Taliban in the city. Such information points to a situation of safety for Hazaras in Kabul, even if more general assessments of security in the city are expressed in relative terms. While the Tribunal notes the view expressed by Ghulam Sakhi Darwish to the effect that the Hazara areas of Kabul are more vulnerable to Taliban attacks, there is nevertheless little evidence of such attacks having occurred. No evidence has been submitted by the applicant, which I accept as true, that either he or his family was in any way targeted in such attacks during his time living in Kabul.

60. The Tribunal accepts that Kabul is not entirely insulated from the violence. It accepts that there have been some attacks in Kabul, including attacks by the Taliban. As suggested to the applicant at the hearing before me, an assessment of reports of attacks in Kabul indicates that the vast majority of attacks have been targeted at Afghan military personnel, police officers and political figures, as well as government buildings, hotels and embassies. The Tribunal notes the attacks referred to in the submissions which included attacks on the headquarters of Kabul's traffic police, headquarters of Afghanistan's intelligence agency, a bomb blast on a bus, attack on the Hotel Spuzhami, attack on a secure residential compound and coordinated attacks in April 2012. The Tribunal also notes that information indicates there have been recent attacks at Kabul airport and on the Supreme Court in Kabul. It accepts that such attacks have occurred in Kabul and that there may have been incidents on the roads outside Kabul. It has also noted, for instance, the report of the incident in June 2011 when the corpses of 11 Hazara men were discovered in Khas Oruzgan. Nevertheless, there is little to indicate that the Hazara population in Kabul is being targeted and, as noted above, DFAT's Hazara contacts have described the city as safe. The Tribunal notes also the report of a clash between Hazaras and Tajiks in September 2012 following a traffic accident. Nevertheless the Tribunal finds that, considered in its totality, the independent information indicates that there is generally little ethnic or sectarian violence directed towards Hazaras in Kabul.
61. The Tribunal has also had regard to the information and submissions in relation to the position for Shias. It has also had regard to the attack on Ashura celebrations in Kabul and Mazar-e-Sharif in December 2011. It accepts that this was an attack on a Shia celebration. As the Tribunal put to the applicant, independent evidence indicates that this attack was carried out by a Pakistan group, Lashkar-e-Jhangvi. Sources such as the *Los Angeles Times*, CNN and BBC reports, referred to above, indicate that such attacks are rare. The Tribunal has had regard to the report concerning the arrest in November 2012 of two suicide bombers seeking to carry out attacks against Ashura celebrations and to violence involving Sunni and Shia students. The Tribunal accepts that there has been some violence against Shias. The Tribunal has had regard to this. Nevertheless, as was suggested to the applicant at the hearing before me, Shias are generally free to perform their traditional Ashura public processions and rituals in Kabul without incident.
62. The Tribunal has carefully considered all the evidence, including the submissions made on the applicant's behalf. However, as noted above, it considers to be accurate

information indicating that Shias are generally free to perform their traditional Ashura public processions and rituals in Kabul without incident. It accepts that there have been some violent incidents in Kabul but independent information indicates that such violence is largely directed at targets such as military and police personnel, government buildings, hotels and embassies. The Tribunal has had regard to advice from DFAT that Hazara contacts have described Kabul as safe and have not raised claims of persecution with them. It also places weight on information from DFAT indicating that they are not aware of current targeting of Hazaras in the city.

63. In making my assessment I have considered the applicant's response that if the Afghan police catch him as a Hazara, they will do anything they want. He indicated that behaviour against Hazaras is continuing and he has seen what has happened to his friends.
64. In making its findings the Tribunal has considered information on the future of Afghanistan after the withdrawal of international troops and information submitted by the applicant's representative in this regard. The applicant has also submitted that the situation in Afghanistan will return to what it was. The withdrawal of international troops from Afghanistan is by no means a matter of conjecture or surmise. The evidence is clearly to the effect that this will happen. While the withdrawal of forces lies in the future, it is without doubt something that is reasonably foreseeable. The applicant has claimed that the Taliban will torture, kill and persecute Hazaras. While the Tribunal has had regard to the situation before the arrival of international forces, changes that have taken place over the intervening period are nevertheless of some relevance. As the Tribunal put to the applicant, the Afghan National Army now has about 185,000 trained members and there are similar numbers of Afghan police who are less well trained. The Tribunal accepts that, in spite of this, the Afghan government has been unable to assert effective control over all of Afghanistan. However, as noted above, Kabul has become relatively stable in spite of the occurrence of some attacks in the city. While the bulk of international troops are withdrawing, the independent information indicates that elements of Western military presence are due to remain in Afghanistan after the ground combat mission has ended. Western countries, including Australia and Britain, have committed to providing ongoing support to Afghanistan. The Tribunal has had regard to reports that have been submitted in which concerns are expressed about potential future instability and the implications for groups such as Shia Hazaras. The Tribunal accepts that there is currently a level of violence in Afghanistan. It accepts that there is potential for further violence and conflict looking to the reasonably foreseeable future. However, it by no means follows from this that an individual Shia Hazara in Kabul will face a real chance of being persecuted by the Taliban. The Tribunal notes, for instance, the report from the BBC which notes various ongoing problems in Afghanistan and suggests that the Taliban will remain undefeated, but states that they are unlikely to pose a major threat in terms of taking Kabul.
65. The Tribunal notes that the material that has been submitted posits a range of possible future developments in Afghanistan. For instance, material has been submitted referring, on the one hand, to the implications of "reconciliation" between the government and the Taliban and, on the other, to the likelihood that the government will be unable to negotiate a settlement with the Taliban. It notes the comments of Niamatullah Ibrahimi, referred to in the submission of [January] 2013, concerning speculation about the effects of the 2014 withdrawal and the difficulty in predicting which speculations will prove true, or what will happen.

66. When the information was suggested to him the applicant responded that that all policemen are robbers and thieves. He claimed Hazaras are degraded and if caught by the Taliabn they can do anything. He claimed if he was caught by government his only option is to dance and do what they want because that is how police operate
67. Nevertheless, the Tribunal is required to have regard to the reasonably foreseeable future. It considers that the independent information indicates that Kabul is relatively secure, that there are now large numbers of trained army personnel and that Shia Hazaras in Kabul are generally safe from persecution. The evidence indicates that the applicant is one of a large number of Hazaras living in Kabul. As indicated in the independent evidence set out above, Hazaras are estimated to comprise more than a million residents or approximately 25 per cent of the population of Afghanistan. While the vast bulk of international forces are to leave Afghanistan, independent information indicates that some Western military presence will remain and western countries have committed to ongoing support. The Tribunal accepts that there is potential for further conflict and insecurity in Afghanistan. However, it must consider whether there is a real chance that the applicant in this case will suffer persecution. Having carefully considered all of the information before it, the Tribunal is not satisfied on the evidence before it that there is a real chance, looking to the reasonably foreseeable future, that the applicant will be persecuted by the Taliban or any similar group in Afghanistan. It is not satisfied that there is any real chance that he would be persecuted for reason of his race, his religion, an imputed political opinion or any other Convention ground. Nor is it satisfied that there is any real chance that he would, for reason of his race or religion or other Convention ground, be killed or physically harmed by Sunnis or members of other ethnic groups (including Tajiks, Pashtuns or Panjshiris) such as to constitute persecution. In making these findings the Tribunal has had regard to the applicant's history (including the problems experienced prior to departure for Iran), information about the Hazaras and their history and the forecast withdrawal of international troops.
68. Having carefully considered all of the available information, the Tribunal is not satisfied that there is any real chance that the applicant would be persecuted in Kabul by the Taliban or any other group or person for reason of his race or religion or any other Convention ground. Nor is it satisfied that there is any real chance that he would, for reason of his race or religion or any other Convention ground, be killed or physically harmed by Sunnis or members of other ethnic groups (including Tajiks, Pashtuns or Panjshiris) such as to constitute persecution. The Tribunal notes that the applicant has made claims in relation to other matters such as discrimination an. It will consider these claims below.
69. The applicant has also expressed a fear of coming to the attention of the Taliban and being harmed by them as a person who has returned from a Western country and/or been a failed asylum seeker from a western country. He has expressed concern that, as a returnee from a western country, he would be regarded as a spy. The Tribunal has had regard to the applicant's position as a person returning to Afghanistan from Australia. However, as put to the applicant, DFAT has advised that none of its contacts considered that there were significant protection issues for returnees. It notes DFAT's advice that interlocutors did not believe Hazaras would be targeted because they had sought asylum in the west. It also notes that advice by DFAT that it was not aware of any instance of returnees having suffered harm due to being considered supporters of the west. It has had regard to the submissions in relation to returnees and failed asylum seekers, as well as submissions relating to the treatment of those perceived as supporters of the government or opponents of the Taliban. It notes also the information from Mr Ibrahim, cited in the submission of [January] 2013, to the

effect that, while he was unaware of cases where persons had been targeted simply because they had returned from western countries, certain risk factors might apply. There is little in the evidence to indicate that returnees have in fact been targeted for reason of having been in the west or having applied for asylum there. The Tribunal considers to be reliable DFAT's advice that its interlocutors did not believe Hazaras would be targeted because they had sought asylum in the west.

70. Having carefully considered the available evidence, the Tribunal is not satisfied that the applicant would face a real chance of being persecuted, by the Taliban or anyone else, for reason of being a failed asylum seeker returning to Afghanistan from a western country. It is not satisfied that there is any real chance that he would be persecuted because he would be regarded as a spy on return. It is not satisfied that there is any real chance that he would be persecuted for reason of being imputed with a particular political opinion as a consequence of having sought asylum in a western country or being a returnee from a Western country. Even if it were accepted that groups such as returned asylum seekers or returnees from western countries or failed asylum seekers returning from Western countries constituted particular social groups, the Tribunal is not satisfied that there is any real chance that the applicant would be persecuted for reason of membership of such groups. It is not satisfied that there is any real chance that he would be persecuted, by the Taliban or anyone else, for reason of an imputed political opinion.
71. The Tribunal has also considered the claims that have been made about discrimination against Hazaras and about denial of access to employment, accommodation and various services. It has considered the submission that the applicant will be uniquely vulnerable because of his youth, lack of personal and social connections in Afghanistan and risks as a perceived opponent. In regard to this the Tribunal has found above that the applicant does have social connections through his family and does not accept that he is perceived as an opponent of the Taliban as it does not accept a bomb was found in his house.
72. Independent information indicates that there has been some improvement in the situation for Hazaras in Afghanistan. The Tribunal notes, for instance, the DFAT report of March 2012 referring to many positive and real chances in the treatment of minorities and to the fact that Hazaras had become very active in Afghan society. It notes also the advice cited by DFAT to the effect that discrimination against Hazaras was not a major systemic concern. It notes the views expressed by Professor Saikal concerning the improved social and economic conditions for Hazaras. Sources such as the UNHCR and the US Department of State have nevertheless pointed out that there is continuing discrimination against Hazaras in Afghanistan. The Tribunal notes also that the applicant's representative has submitted material concerning discrimination against Hazaras. The Tribunal accepts that, in spite of improvements in their position, Hazaras do continue to face some discrimination. The Tribunal has had regard also to the material that has been submitted concerning the circumstances in Kabul, including in relation to matters such as the economy, health care and accommodation.
73. The Tribunal has considered carefully the position of the applicant and his family. While it has been claimed that Pashtuns/Tajiks receive preference in hiring and career advancement and Hazaras are discriminated against the evidence indicates that the applicant and his family were able to live in Kabul for a lengthy period and that both he and his father were employed at the time he left Afghanistan and the family lived in rented accommodation. While it has been suggested that Hazaras are denied access to basic needs such as employment and accommodation, the Tribunal does not accept that this has been the situation

for the applicant and his family. It considers that, if the applicant were to return, he would be able to work as he has done in the past, providing further income and support for himself and his family. In making this finding, the Tribunal has had regard to independent information indicating that Hazaras face some discrimination and that unemployment is high.

74. It has also been submitted that Hazaras face denial of access to basic services. The Tribunal notes that independent information indicates that the standard of health services in Afghanistan is poor. However, the Tribunal does not accept that this in itself constitutes persecution of the applicant for reason of his race and ethnicity. The Tribunal accepts that there are deficiencies in some services in Afghanistan such as health services. However, it does not accept that the applicant has been denied, for instance, an education. It finds to be remote the chance that he would, for reason of his race or ethnicity or any other Convention reason, be denied access to basic services such as to constitute persecution.
75. On the evidence before it, the Tribunal also finds to be remote the chance that the applicant would, for any Convention reason, be denied access to employment or accommodation. The Tribunal notes that submissions have been made in relation to how violence in Afghanistan affects the ability of people, including Hazaras, to access employment and other basic services. However, although the Tribunal accepts that there is violence in Afghanistan, including a level of violence in Kabul, it does not accept that this has had the effect of preventing the applicant from working or accessing basic needs such as accommodation and services. The Tribunal is not satisfied that there is any real chance that, as a Shia Hazara in Kabul, the applicant would suffer significant economic hardship threatening his capacity to subsist or a denial of capacity to earn a livelihood of any kind threatening his capacity to subsist. While the Tribunal is conscious that these and the other instances of serious harm referred to in s.91R(2) do not form an exhaustive list, the Tribunal nevertheless is not satisfied that the applicant faces a real chance of being persecuted for reason of his race or ethnicity. In making this finding, the Tribunal has had regard to the reasonably foreseeable future. It has had regard to the impending departure of foreign troops, to information indicating that Hazaras face continuing discrimination and to information concerning the Hazaras and their history.
76. The applicant has claimed in his statement that he was subjected to verbal abuse because of his Hazara ethnicity and when he worked in the car repair shop he was denied opportunity for career advancement. The applicant's evidence in this regard was very general. His evidence indicates that, in spite of these issues, he was able to go and obtain paid labour. It is willing to accept that he may have suffered some harassment and insults from people of other ethnicities. However, it is not satisfied on the applicant's evidence about this that he suffered such treatment as to constitute persecution, even when considered on a cumulative basis. The Tribunal has had regard to the submissions that have been made to the effect that harassment, humiliation and insulting conduct might amount to serious harm. The Tribunal accepts that certain forms of harassment, humiliation and insulting conduct might be of such a nature as to constitute serious harm, particularly when considered cumulatively. However, it is not satisfied on the evidence before it that the applicant suffered harm of such a nature as to amount to serious harm. As noted above, advice from DFAT indicates that their Hazara contacts described Kabul as safe and had not raised claims of persecution. The US Department of State has indicated that Shias were generally free to participate fully in public life. The Tribunal accepts that the applicant may face some harassment or insults in the future. However, it is not satisfied that there is any real chance that the applicant would, for

reason of his race or ethnicity, suffer such mistreatment as to amount to serious harm (even when considered on a cumulative basis).

77. The Tribunal has considered carefully all of the applicant's claims, both individually and cumulatively. It has considered all of the information before it. It has had regard to his Shia faith and Hazara ethnicity. It has had regard to the fact that the applicant would be returning to Afghanistan from a western country where he has sought asylum. It has considered carefully information about conditions in Afghanistan and has had regard to the planned departure of foreign troops. However, the Tribunal is not satisfied, looking to the reasonably foreseeable future, that there is any real chance that he would be persecuted for reason of his race, his religion, an imputed political opinion or any other Convention reason.

78. Looking to the reasonably foreseeable future, the Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted in Afghanistan for any Convention reason. Therefore he does not satisfy the requirements of s.36(2)(a) of the Act.

Does he meet the protection obligations under the Complementary protection provisions of the Migration Act?

79. Having regard to my findings of fact above that the applicant has not been credible as to his claims of having previously resided in a building which was raided and found to possess bombs for use in suicide attacks and that as a result he will not face any difficulty from the authorities or insurgent groups on this basis for the reasons he claims, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act for this reason.

80. Having regard to my findings of fact above, as I do not accept the applicant is a member of the group "unaccompanied Afghan minors" I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act for this reason.

81. Having regard to the findings above, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act as a member of the group "children and young people in Afghanistan" or "children and young people."

82. The Tribunal appreciates that there is evidence of a number of insurgent attacks in Kabul, including the Ashura attack in 2011. For the reasons already outlined, the Tribunal finds that the Ashura attack or the sectarian skirmishes in universities in November 2012 do not establish that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will suffer significant harm. The Tribunal does not accept that, if the applicant returns to Kabul, there is a real risk that he will suffer significant harm because he is a Hazara or because he is a Shia Muslim. On the basis of the evidence before it, the Tribunal finds that there is no real risk of the applicant facing discrimination amounting to significant harm in Kabul.

83. In relation to other insurgent attacks, the Tribunal finds that any harm faced by the applicant in Kabul is faced by the population generally and not by him personally. The Tribunal finds that there is taken not to be a real risk that the applicant will be arbitrarily deprived of his life or will suffer significant harm in Afghanistan as a result of general violence.
84. The Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined by the Act.
85. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
86. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa)

decision

87. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

APPENDIX

independent country information

General Security Situation

88. Over recent years, the civilian population has been affected by worsening armed conflict in Afghanistan. For instance, a September 2011 report stated as follows:

As of summer 2011 the Afghan conflict was continuing to expand geographically and to intensify in terms of violence. With just one province out of 34 still (almost) unaffected by violence (Panjshir), 2011 saw an intensification of violence in eastern, western and north-western Afghanistan. The fact that the Taliban has suffered setbacks in the north-east and has been under great pressure in the south does not detract from the fact that the number of insurgent-initiated incidents has been climbing faster than ever in 2010 and 2011. (Norwegian Country of Origin Information Centre (LANDINFO) 2011, *Afghanistan: Human Rights and Security Situation: Report by Dr. Antonio Giustozzi*, 9 September)

89. According to the United Nations Assistance Mission in Afghanistan, between 1 January and 30 June 2012, conflict-related violence resulted in 3,099 civilian casualties. Anti-Government Elements were responsible for 80 percent of all civilian casualties (UNAMA 2012, *Afghanistan: Midyear Report 2012: Protection of Civilians in Armed Conflict*, July)

90. In its report on human rights for 2011, the US Department of State provided the following summary on the situation in Afghanistan:

Afghanistan is an Islamic republic with a strong, directly elected presidency, a bicameral legislative branch, and a judicial branch. Widespread fraud and irregularities marred the September 2010 parliamentary elections, with observers concerned that the transparency of the electoral process would be undermined by President Hamid Karzai's 2010 appointment of a special tribunal, not envisioned in the constitution, to adjudicate the disputed election results. In 2009 citizens voted in their second presidential election. The constitutionally mandated Independent Elections Commission (IEC) declared Karzai president for a second term, after his challenger withdrew from a run-off election. Allegations of fraud also marred those elections. Civilian authorities generally maintained control over the security forces, although there were instances in which security forces acted independently.

The most significant human rights problems were: a) the continued dispute over President Karzai's appointed tribunal, which was not settled until August, when the president recognized that the sole authority to adjudicate election results lay with the IEC; b) widespread violence, including armed insurgent groups' killings of persons affiliated with the government and indiscriminate attacks on civilians, and credible reports of torture and abuse of detainees by security forces; c) pervasive corruption; and d) endemic violence and societal discrimination against women and girls, despite considerable improvements in women's health and maternal mortality.

Other human rights problems included extrajudicial killings by security forces-- for example, the Afghan National Police (ANP) in Kandahar was implicated in several cases of torture and extrajudicial killings; poor prison conditions; ineffective government investigations of abuses and torture by local security forces; arbitrary arrest and detention; prolonged pretrial detention; judicial corruption and ineffectiveness; violations of privacy rights; restrictions on freedom of speech and of the press; some limits on freedom of assembly; restrictions on freedom of religion;

limits on freedom of movement; abuse of children, including sexual abuse; discrimination and abuses against ethnic minorities; trafficking in persons; societal discrimination based on race, religion, gender, and sexual orientation; abuse of worker rights; compulsory and bonded labor; and child labor, including forced child labor.

Widespread official impunity for those who committed human rights abuses was a serious problem. The government was either unwilling or unable to prosecute abuses by officials consistently and effectively.

The Taliban and other insurgents continued to kill record numbers of civilians, using improvised explosive devices, car bombs, and suicide attacks. The Taliban increasingly used children as suicide bombers. Antigovernment elements also threatened, robbed, and attacked villagers, foreigners, civil servants, and medical and nongovernmental organization (NGO) workers. (US Department of State 2012, *Country Reports on Human Rights Practices for 2011: Afghanistan*, Introduction)

91. In its *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, issued in December 2010, the UNHCR reported that the intensification and spread of the armed conflict in Afghanistan had taken a heavy toll on the civilian population in 2009 and continued to worsen through the first half of 2010. It stated that continued instability in Afghanistan had resulted in the shrinking of the humanitarian space. It stated, "Reported high levels of corruption, ineffective governance, a climate of impunity, lack of official impetus for the transitional justice process, weak rule of law and widespread reliance on traditional dispute resolution mechanisms that do not comply with due process standards, contribute to the deteriorating human rights situation in the country." (UNHCR 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December, p.10).
92. In advice of January 2013, the BBC observed that the Afghan National Army had about 185,000 trained members, while there were similar numbers of Afghan police, who were less well trained (*BBC News* 2013, "Q&A: Foreign forces in Afghanistan", 8 January, <http://www.bbc.co.uk/news/mobile/world-south-asia-11371138>).
93. As noted in submissions on the applicant's behalf, most international troops are scheduled to leave Afghanistan by the end of 2014 (*BBC News* 2013, "Q&A: Foreign forces in Afghanistan", 8 January, <http://www.bbc.co.uk/news/mobile/world-south-asia-11371138>). The BBC has commented on this withdrawal as follows:

In December 2012 there were about 102,000 Nato troops serving in Afghanistan from 50 contributing nations, the International Security and Assistance Force (Isaf) said.

Of these the bulk - about 68,000 - are US troops.

The number of US forces in Afghanistan peaked at about 101,000 in 2011, taking full Nato force numbers to about 140,000. But an extra 33,000 American soldiers sent as part of the "surge" have now been withdrawn and Washington plans to carry on winding down combat operations during 2013.

Leaders of nations contributing forces in Afghanistan have been talking about withdrawal for some time. Both France and Canada ended their combat missions early, although they have yet to bring all their troops home.

Britain, the second largest contributor to Nato's Afghanistan operation, has about 9,000 troops in Afghanistan, and 4,000 more will be brought home by summer 2013, with the remainder leaving by the end of 2014.

Australia has said most of its troops most will be home by the end of 2013. Other contributing countries include Germany, Italy, Australia, Poland and Turkey. (ibid.)

94. The BBC report provided the following comments on the outlook for Afghanistan: “The BBC's Quentin Sommerville in Kabul say that it is likely to remain desperately poor, with an economy still on the brink and corruption still widespread. The Taliban will remain undefeated, our correspondent says, even if it is unlikely that they will pose a "major" threat to the government - at least in terms of taking Kabul.” (ibid.)
95. As has been submitted to the Tribunal, it has recently been reported that troop withdrawals are to be accelerated. For instance, it has been reported that the US will withdraw about half of its 66,000 troops in Afghanistan within a year with more to leave in 2014 (Burns, R. and Pace, J. 2013, “Obama to Talk Afghanistan Drawdown, Announce Return of 34,000 Troops in a Year”, *Huffington Post*, 12 February, http://www.huffingtonpost.com/2013/02/12/obama-afghanistan_n_2669267.html). The US has also announced that the role of its forces is to change from spring 2013 with their mission being to train, advise and assist Afghan forces (*Wall Street Journal* 2013, “Obama to Speed Troop Exit”, 12 January, <http://online.wsj.com/article/SB10001424127887324581504578235893292795864.html>).
96. Independent sources indicate that some Western military presence will remain in Afghanistan beyond 2014. For instance, *The Independent* reported in December 2012 that “[e]lements of Western military presence, including air power and special forces, are also due to remain in the country after the ground combat mission had ended” (Sengupta, K. 2012, “British to reduce forces in Afghanistan to half their current size by end of 2013”, *The Independent*, 19 December, <http://www.independent.co.uk/news/uk/home-news/british-to-reduce-forces-in-afghanistan-to-half-their-current-size-by-end-of-2013-8424522.html>). It has been reported that, while all NATO operations are to finish by the end of 2014, a small number of British troops would remain in the country beyond that, working at an officer training academy and involved in returning equipment and dealing with logistics (“UK to withdraw 3,800 troops from Afghanistan during 2013” 2012, *BBC News*, 19 December, <http://www.bbc.co.uk/news/uk-20778561>). It has been reported that Australia will continue to support Afghanistan after the transition, through training and advice and a possible special forces contribution. (“Withdrawal from Afghanistan 'by 2014'” 2012, *The Sydney Morning Herald*, 14 May, <http://www.smh.com.au/opinion/political-news/withdrawal-from-afghanistan-by-2014-20120514-1ym6v.html>).

Situation for Hazaras in Afghanistan

97. Hazaras make up approximately nine per cent of Afghanistan's population. The two largest ethnic groups, Pashtuns and Tajiks, make up 42 per cent and 27 per cent respectively (Central Intelligence Agency, *The World Factbook: Afghanistan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>)
98. In eligibility guidelines issued in December 2010, the UNHCR stated that “ethnically-motivated tension and violence have diminished markedly in comparison to earlier periods”. The UNHCR did caution that certain concerns remained, including ethnic discrimination and

clashes, particularly in relation to land use (UN High Commissioner for Refugees 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December, HCR/EG/AFG/10/04, UNHCR Refworld, p.31-32 <<http://www.unhcr.org/refworld/pdfid/4d0b55c92.pdf>> Accessed 21 September 2011).

99. The UNHCR identified certain profiles as requiring particularly careful examination of possible risks:

UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF); (ii) humanitarian workers and human rights activists; (iii) journalists and other media professionals; (iv) civilians suspected of supporting armed anti-Government groups; (v) members of minority religious groups and persons perceived as contravening Shari'a law; (vi) women with specific profiles; (vii) children with specific profiles; (viii) victims of trafficking; (ix) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (x) members of (minority) ethnic groups; and (xi) persons at risk of becoming victims of blood feuds. (ibid., p.3)

100. With regard to the position for members of minority ethnic groups, the UNHCR included the following information:

Marginalized during the Taliban rule, the Hazara community continues to face some degree of discrimination, despite significant efforts by the Government to address historical ethnic tensions. Notwithstanding the comparatively stable security situations in provinces and districts where the Hazara constitute a majority or a substantial minority, such as Jaghatu, Jaghori and Malistan districts in Ghazni province, the security situation in the remainder of the province, including on access routes to and from these districts, has been worsening. Although not able to launch widespread operations in Jaghori, there are some reports of Taliban attacks in the district. Jaghori district is increasingly isolated given that some access routes to and from the district, including large stretches of the strategic Kabul-Kandahar road, are reportedly under Taliban control. There are regular reports of ambushes, robberies, kidnappings and killings by the Taliban and criminal groups along these roads. The Taliban have also intimidated, threatened and killed individuals, including Hazaras, suspected of working for, or being supportive of, the Government and the international military forces...

Although available evidence suggests that some members of (minority) ethnic groups, including Hazaras, may engage in irregular migration for social, economic and historical reasons, this does not exclude that others are forced to move for protection-related reasons. UNHCR therefore considers that members of ethnic groups, including, but not limited to those affected by ethnic violence or land use and ownership disputes, particularly in areas where they do not constitute an ethnic majority, may be at risk on account of their ethnicity/race and/or (imputed) political opinion, depending on the individual circumstances of the case. However, the mere fact that a person belongs to an ethnic group constituting a minority in a certain area does not automatically trigger concerns related to risks on the ground of ethnicity alone. Other factors including, inter alia, the relative social, political, economic and military power of the person and/or his and her ethnic group in the area where fear is alleged may be relevant. Consideration should also be given to whether the person exhibits other risk factors outlined in these Guidelines, which may exacerbate the risk of persecution. In the ever-evolving context of Afghanistan, the potential for

increased levels of ethnic-based violence will need to be borne in mind. (ibid., pp.31-32)

101. In its report on human rights practices in Afghanistan during 2011, the US Department of State noted that ethnic tensions between Pashtun and non-Pashtun groups resulted in conflict and occasional killings. The State Department noted that societal discrimination against Shia Hazaras continued. It also noted that the UNHCR had reported that “Hindus, Sikhs, and Shia Muslims--particularly those from the Hazara ethnic group--faced official obstacles and discrimination by the Sunni Muslim majority” (US Department of State 2012, *Country Report on Human Rights Practices for 2011: Afghanistan*, March).
102. In September 2010, DFAT reported that its interlocutors agreed that conditions for the Hazara community had improved significantly since the fall of the Taliban, although it referred to limited employment opportunities, security challenges and a perception of discrimination on the part of Hazaras. DFAT stated that “Hazaras are making the most of the opportunities now open to them, reflected in typically high levels of education and active involvement in the political process”. DFAT noted that a Hazara contact described “discrimination against the community in terms of exclusion from some economic opportunities and sectors, and a reluctance to award scholarships or jobs on a full merit basis if this would result in a preponderance of Hazaras” (DIAC Country Information Service 2010, *Country Information Report No. 10/60 – the Hazara*, (sourced from DFAT advice of 28 September 2010), 29 September (CISNET Afghanistan CX250180)).
103. In advice of March 2012, DFAT stated that Hazaras continued to face societal discrimination but were not being persecuted on a consistent basis and did not face systemic violence or an existential threat. It referred to positive and real changes for minorities over the previous decade (Department of Foreign Affairs and Trade 2012, ‘AFGHANISTAN: Hazara Community Update’, 12 March (CISNET Afghanistan CX283654)). The DFAT advice included the following observations:
 2. Contacts agreed there had been a great many positive and very real changes in the treatment of minorities over the past decade. The Constitution provided for the equality of all citizens. Hazaras had become very active in Afghan society, including politically. The ethnic breakdown of the lower house of the national assembly included 20 percent Hazaras - a relatively high proportion for a community who made up an estimated 10 per cent of the total population. And Hazaras had a recent political win with the nomination of two Hazara ministers to President Karzai's Cabinet.
 3. Hazaras also continued their record of educational achievement. The community strongly valued formal education, including for girls. Both male and female Hazara students continued to make strong progress. But mindsets beyond the classroom had not changed as much as Hazaras and human rights advocates would like.
 4. The US State Department's 2010 Human Rights Report on Afghanistan stated discrimination against Hazaras continued. This took the form of "extortion of money through illegal taxation, forced recruitment and forced labour, physical abuse, and detention". However, the US Embassy considered that discrimination against Hazaras was not a major systemic concern. There was no credible evidence Hazaras were being persecuted on a consistent basis. US contacts thought refugee claims should continue to be considered on a case-by-case basis. (Comment: the 2011 version of the annual Human Rights report was due to be published in the coming month.)

5. All our contacts agreed Hazaras faced discrimination by Pashtun, Tajik and Uzbek ethnic groups - but equally, Hazaras reciprocated this discrimination in areas where they were dominant. (ibid.)

104. Similarly, in advice of 17 September 2010, DFAT stated that Hazaras “do not live in fear of violence or systemic persecution as they did under Taliban rule” It stated that Hazaras were not being persecuted on any consistent basis (Department of Foreign Affairs and Trade 2010, *Situation of the Hazara Minority*, 17 September (CISNET Afghanistan CX249511)). DFAT referred to advice from the US Embassy, stating:

10. The US Embassy pointed us to the State Department's 2008 Afghanistan "Country Report on Human Rights Practices", including:

- "Since Shia representation has increased in government, there has been a decrease in hostility from Sunnis. However, social discrimination against Shia Hazaras continued."

- "Ethnic Hazaras reported occasionally being asked to pay additional bribes at border crossings where Pashtuns were allowed to pass freely."

11. A similar formulation was expected to appear in the 2009 report which should be released in coming weeks. The Embassy considered that while discrimination against Hazaras did occur it was not a major systemic concern. (ibid.)

105. DFAT indicated that discrimination was reported by Hazara advocates (ibid.).

106. In a paper of March 2012, Professor Amin Saikal of the Australian National University stated that the situation of Hazaras had improved substantially since the US-led NATO intervention and that they had “succeeded in securing a sizable share in the political and economic life of Afghanistan in the context of the growth of political pluralism and civil society” He stated, for instance, that Hazaras ran a large number of lucrative business in Kabul and other places. He stated, “Although a majority of Hazaras still live in poverty—like most of the Afghan population—their social and economic conditions of living have taken a steep upward trajectory, with an increasing share in Afghanistan’s economy to match their growing political influence.” Professor Saikal stated that “Hazaras now enjoy a substantial share in the power structure, and economic and social life of Afghanistan” (Saikal, Amin 2012, ‘Afghanistan: The Status of the Shi’ite Hazara Minority’, *Journal of Muslim Minority Affairs*, March, Vol.32, No.1, pp.80-87). The improving economic position of Hazaras in Kabul was also noted in a June 2012 report by the Congressional Research Service (CRS) which described Hazara Shiites as advancing economically and politically (Katzman, K 2012, *Afghanistan: Politics, Elections, and Government Performance*, 5 June, US Congressional Research Service, p.3 <<http://www.fas.org/sgp/crs/row/RS21922.pdf>> Accessed 31 July 2012). A December 2011 CNN article on sectarian violence in Kabul stated that “[s]ince the overthrow of the Taliban, Afghanistan's Hazara have prospered -- in higher education, the government and the military and they have embraced new democratic processes” (Lister, T 2011, ‘Attack on shrine signals new nexus on Afghan strife’, *CNN*, 6 December <http://articles.cnn.com/2011-12-06/asia/world_asia_afghanistan-violence-analysis_1_pakistan-taliban-islamabad-al-almi?_s=PM:ASIA> Accessed 27 September 2012).

107. Supporting claims regarding a growing Hazara middle class in Kabul, a report by the *National Geographic* states that:

On neighbourhood streets in the western part of the city, you see Hazara children in uniform going to school, Hazara vegetable vendors setting up their carts, and Hazara shop owners and tailors opening stores. Hossein Yasa, the editor of the Daily Outlook newspaper, notes that there are Hazara-owned television stations, Hazara-owned newspapers, and a huge Shiite madrassa and mosque complex under construction. “The middle class of Hazaras is growing very fast,” Yasa says. (Zabriskie, P 2008, “The Outsiders”, *National Geographic*, February <<http://ngm.nationalgeographic.com/2008/02/afghanistan-hazara/phil-zabriskie-text/1>> Accessed on 18 June 2009)

108. In contrast, in a paper of December 2011, Professor William Maley referred to the general security situation in Afghanistan as “profoundly threatening”, referred to the history of discrimination and persecution of Hazaras in Afghanistan and stated that the overthrow of the Taliban regime had done nothing to secure Hazaras against Taliban attack in the vast tracts of Afghanistan where the Kabul government was ineffectual. Professor Maley questioned the ability of Australian Embassy staff to conduct field research given the tight security constraints. Professor Maley stated that there was no reason to believe that the underlying ethnic and sectarian factors fuelling hostility towards Hazaras had dissipated (Maley, W 2011, ‘On the Position of the Hazara Minority in Afghanistan’, 7 December <<http://bmrsg.org.au/wp-content/uploads/2011/10/Maley-Hazaras-Opinion-Updated2.pdf>> Accessed 15 June 2012).
109. With regard to access to education, the Tribunal notes that Afghans are entitled by law to free education (Katzman, K 2011, ‘Afghanistan: Post-Taliban Governance, Security, and U.S. Policy’, Congressional Research Service, 15 April, p.65, UNHCR REFWORLD website <<http://www.unhcr.org/refworld/pdfid/4db92b5b2.pdf>> Accessed 17 May 2011). A June 2011 article by *The Guardian* that reported on Hazaras in Kabul noted the availability of functioning universities and schools for the Hazara community (Burke, J 2011, ‘Kabul enjoys a new prosperity but fears for a future without the coalition’, *The Guardian*, 4 June <<http://www.guardian.co.uk/world/2011/jun/04/afghans-enjoy-prosperity-fear-coalition>> Accessed 4 October 2012). With regard to health facilities, DFAT has advised that medical facilities are limited, training standards are low, sanitation and hygiene are poor, and medical supplies and medicines in short supply. Access to health care facilities is variable (Department of Foreign Affairs and Trade (DFAT) 2011, ‘Health Issues’ in ‘Travel Advice: Afghanistan’, 1 May <http://www.smartraveller.gov.au/zw-cgi/view/Advice/Afghanistan> – Accessed 17 May 2011). IOM information, dated November 2009, indicates that Afghanistan’s modern health facilities are mostly in Kabul and other cities. In Kabul city there are both state-owned hospitals and private hospitals (International Organization for Migration (IOM) 2009, ‘Returning to Afghanistan’, 13 November, pp.3-6 http://irrico.belgium.iom.int/images/stories/documents/afghanistan_en_edited.pdf – Accessed 18 May 2011).

Kabul

110. Kabul is a city with a population of approximately five million inhabitants (Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process, 25 February to 4 March*, p. 6 <<https://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 4 October 2012). Hazaras are estimated to comprise more than a million residents or approximately 25 per cent of the population of Kabul (Katzman, K 2012, *Afghanistan: Post-Taliban*

Governance, Security, and U.S. Policy, 21 September, p.90
<<http://www.fas.org/sgp/crs/row/RL30588.pdf>> Accessed 4 October 2012).

111. In a May 2012 report, the Danish Immigration Service provided information on the security situation in Kabul. This included the following:

Regarding security in Kabul, an international NGO informed the delegation that Kabul is one of few places in Afghanistan where the security situation is relatively good and stable even though incidents are occurring also in Kabul.

Regarding the security situation in Kabul, IOM said that there have been a number of suicide attacks which influences the lives of ordinary people. However, apart from suicide attacks, Kabul is safer than other places in Afghanistan, and the area is more under control. This is, according to IOM, due to the fact that Afghan National Army (ANA) and ANP in general are more trained in security operations in Kabul and other big cities like Herat and Mazar-i-Sharif and the situation is more under control in these cities compared to other parts of the country. (Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process, 25 February to 4 March*, p. 6
<<https://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 4 October 2012)
112. The Danish report also referred to advice from the Afghan Independent Human Right Commission which stated that Kabul was considered safer than other provinces but referred to suicide bombings and an increasing crime rate (ibid.).
113. In advice of July 2011, DFAT stated that Kabul remained a relatively safe province. It stated that it experienced the lowest number of security incidents in the country by a significant margin. It stated:

As data from the Afghanistan NGO Safety Office's Quarterly Data Report and the US Department of Defence's Report on Progress Toward Security and Stability in Afghanistan indicate, Regional Command Central (which includes Kabul), experiences the lowest number of security incidents in the country by a significant margin. Despite recent spectacular attacks, you could not characterise levels of violence in Kabul as 'continuous, general and sustained'. We assess that the great majority of Kabul's population are able to go about their daily activities freely. (Department of Foreign Affairs and Trade, 2011, *Afghanistan: Security Situation in Kabul*, CISNET CX268773, 14 July)
114. In its advice of September 2010, DFAT stated that “there is a cohesive Hazara community in Kabul, and a Hazara human rights contact assessed that it would be relatively easy for new arrivals to integrate into the city, where they can move freely” (DIAC Country Information Service 2010, *Country Information Report No. 10/60 – the Hazara*, (sourced from DFAT advice of 28 September 2010), 29 September (CISNET Afghanistan CX250180)).
115. In advice of September 2011, DFAT stated that “Hazara contacts describe Kabul as safe, and have not raised claims of persecution with us, though they point out that discrimination continues to exist” (Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1323 – DFAT Request – AFG39190*, 27 September). In advice of October 2012, DFAT stated that it had no information suggesting that the security or economic situation for Hazaras in Kabul differed significantly from that experienced by the general population of

Kabul. DFAT stated that it was not aware of any current targeting of Hazaras by the Taliban in the city (DFAT 2012, *AFGHANISTAN: CIS Request AFG13987: Security Situation for Hazaras in Afghanistan*, 31 October, CX298127).

116. In an Operational Guidance Note of February 2012, the UK Home Office stated that Kabul had remained largely insulated from the worst violence over the last decade. While insurgent violence had expanded steadily throughout the country, Kabul had remained relatively quiet, although there were isolated incidents, some of them serious. It stated that a series of checkpoints known as the ‘Ring of Steel’ had been erected around Kabul’s perimeter to provide the capital with an extra layer of protection (UK Home Office 2012, *Operational Guidance Note – Afghanistan*, 20 February, p.10 <<http://www.unhcr.org/refworld/pdfid/4f43788a2.pdf>> Accessed 2 August 2012).

Shia Muslims

117. In its 2011 report on religious freedom in Afghanistan, the US Department of State indicated that, although the Shia community continued to experience discrimination by Sunnis, an increase in Shia representation in government had reduced the more overt forms of discrimination. The report noted that Shia were generally free to participate fully in public life (US Department of State 2011, *International Religious Freedom Report – Afghanistan*, 13 September, Section 3 <http://www.state.gov/j/drl/rls/irf/2010_5/168240.htm> Accessed 2 August 2012). In its 2012 report, the United States Commission on International Religious (USCIRF) stated that Shia Muslims generally were able to perform their traditional Ashura public processions and rituals in Kabul without incident or hindrance (United States Commission on International Religious Freedom 2012, *Annual Report 2012*, p.287 <[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 2 August 2012).
118. The Tribunal notes that there was a significant attack on Shias in Kabul on 6 December 2011 during Ashura. According to the US Department of State’s 2011 Country Report on Terrorism for Afghanistan, the Ashura bombings took place in Kabul, Mazar-e Sharif and Kandahar on 6 December 2011 and “[t]he combined death toll in these attacks was estimated to be 80, while over 160 more were injured” (US Department of State 2012, *Country Reports on Terrorism 2011 – Afghanistan*, 31 July, p.130 <<http://www.state.gov/documents/organization/195768.pdf>> Accessed 13 August 2012). The Taliban did not claim responsibility for these attacks (Ruttig, T 2012, ‘The attack in Kargha: Return of the Taliban Puritans?’, *Afghanistan Analysts Network*, 23 June <<http://www.aan-afghanistan.org/index.asp?id=2823>> Accessed 7 August 2012). Responsibility for the attack in Kabul was claimed by the Lashkar-e-Jhangvi (LeJ), a Pakistan-based militant group with links to al-Qaeda and the Pakistani Taliban (Habib, M & Danishju, M 2011, ‘Pakistan blamed for Afghan Shia shrine atrocity’, *Institute for War and Peace Reporting*, 9 December <<http://iwpr.net/report-news/pakistan-blamed-afghan-shia-shrine-atrocity>> Accessed 13 December 2011; Roggio, B 2011, ‘Suicide bomber kills 6 Afghans in mosque attack’, *The Long War Journal*, 9 December).
119. A *Los Angeles Times* report, published on 7 December 2011, referred to the Kabul and Mazar-e Sharif attacks as “a rare outbreak of sectarian violence in a country racked by 10 years of war with Taliban insurgents” (Baktash, H. & Rodriguez, A 2011, ‘Two Afghanistan bombings aimed at Shiites kill at least 59 people’, *Los Angeles Times*, 7 December <<http://articles.latimes.com/2011/dec/07/world/la-fg-afghanistan-bombings-20111207>> Accessed 18 January 2012). A CNN report dated 7 December 2011 stated that it was “rare to

see such an explosion of religiously motivated violence” (Lister, T 2011, ‘Attack on shrine signals new nexus of Afghan strife’, *CNN*, 7 December <http://articles.cnn.com/2011-12-06/asia/world_asia_afghanistan-violence-analysis_1_pakistan-taliban-islamabad-al-almi?_s=PM:ASIA> Accessed 8 December 2011).

120. A December 2011 BBC News article, which made reference to the Ashura bombings, provided information on previous tensions between Sunnis and Shias in Afghanistan but indicated that outbreaks of sectarian violence were infrequent. The relevant information reads:

Unlike their brethren in Pakistan, Afghanistan’s Shias have largely escaped the wrath of the Sunni militant groups that operate in both countries.

There have been low-level tensions between the Shia and Sunni communities and one clash in the largely Sunni area of Herat in 2006 left five dead.

But over the last decade Shias in Afghanistan have been able to celebrate their festivals on a larger scale and with more confidence and openness than ever before. (Massoud, W 2011, ‘Why have Afghanistan’s Shias been targeted now?’, *BBC News*, 6 December)

121. A report from *The Long War Journal*, published on 6 December 2011, noted that the targeting of Shia did not fit the profile of previous attacks in Afghanistan, which were aimed at military targets, Westerners or Afghan officials. It stated that the Taliban had carried out attacks against mosques previously, although the information indicated that those attacks also targeted Afghan government and police officials. The relevant information reads:

The Kabul Attack Network has averaged about one major, high-profile attack in the capital this year. But today’s targeting of Shia does not fit the profile of other attacks, which have focused on US, NATO, and Afghan personnel and bases, as well as areas such as hotels where Westerners and Afghan officials congregate.

The Taliban have carried out numerous attacks at mosques in the past, including the assassination of Kunduz’s governor in the province of Takhar on Oct. 8, 2010, and more recently, a suicide bombing that killed seven people, including a local police commander, in an attack at a mosque in the northern Afghan province of Baghlan on Nov. 6. (Roggio, B 2011, ‘Suicide bomber kills scores in attack at Kabul mosque’, *The Long War Journal*, 6 December)

122. In its July 2012 report on the general security situation in Afghanistan, the European Country of Origin Information Network (ECOIN) provided a time line of attacks in Kabul between and January 2011 and June 2012. An assessment of reports cited in the ECOIN timeline of attacks in Kabul indicates that the vast majority of attacks targeted Afghan military personnel, police officers and political figures, as well as government buildings, hotels and embassies (US Department of State 2011, *International Religious Freedom Report – Afghanistan*, 13 September, Section 3 <http://www.state.gov/j/drl/rls/irf/2010_5/168240.htm> Accessed 2 August 2012).

Returnees from the West

123. The March 2012 advice from DFAT stated that there were no significant protection issues for returnees. It noted that “[n]one of our contacts considered there were significant protection issues for returnees - although returning was considered a failure and therefore not spoken of widely in communities”. It also noted that “Hazaras outside of the Hazarajat were

more vulnerable and avoided travel outside their immediate communities” (DFAT 2012, *Afghanistan – Hazara Community Update*, 12 March, CISNET CX283654). Similarly, in earlier advice of September 2010, DFAT had stated that “interlocutors did not believe Hazaras would be targeted because they had sought asylum in the west” (DIAC Country Information Service 2010, *Country Information Report No. 10/60 – the Hazara*, (sourced from DFAT advice of 28 September 2010), 29 September (CISNET Afghanistan CX250180)).

124. In advice of October 2012, DFAT stated:

Post is not aware of any instances of returnees having suffered harm due to being considered supporters of the west. Afghans regularly travel abroad - to Iran and Pakistan, but also to Europe and other western countries - to seek work and greater economic or educational opportunities. Even under Taliban rule, Afghans continued to travel abroad to work or study, then returned to the country. Representatives of the several European countries that regularly conduct involuntary returns to Afghanistan have told us they are not aware of any returnees having suffered harm due to a prior claim for asylum. (DFAT 2012, *AFGHANISTAN: CIS Request AFG13987: Security Situation for Hazaras in Afghanistan*, 31 October, CX298127)