

1400655 (Refugee) [2015] AATA 3467 (30 September 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1400655
COUNTRY OF REFERENCE:	Afghanistan
MEMBER:	Rea Hearn Mackinnon
DATE:	30 September 2015
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 30 September 2015 at 2:52pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Afghanistan, applied for the visa [in] November 2012 and the delegate refused to grant the visa [in] January 2014.
3. The applicant appeared before the Tribunal on 17 September 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hazaragi and English languages.

CONSIDERATION OF CLAIMS AND EVIDENCE

4. The criteria for a protection visa are set out in s.36 of the Act and 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 of the same class.
5. 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 Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. 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.
7. 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').
8. 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 – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

9. The issue in this case is whether the applicant will be harmed because of his ethnicity, race or religion. For the following reasons, the Tribunal has concluded that matter should be remitted for reconsideration.

Nationality

10. The applicant has provided a copy of his taskera. There is no evidence before the Tribunal which indicates that the applicant's identity and nationality is not as he has claimed. The Tribunal accepts that he is a national of Afghanistan and has assessed his claims against Afghanistan as his country of nationality and his receiving country. The applicant lived in Pakistan before coming to Australia however there is no evidence before the Tribunal which indicates that he has a right to enter and reside in Pakistan or any other third country.

Background

11. The applicant claims to have been born in [year] (according to his taskera) which converts to [year] or [year] in the Gregorian calendar and makes him now about [age] years old now. He is married and has [children]. The applicant claims that he was born in [a village] in Jaghori district of Ghazni Province and lived there until he left Afghanistan in about 2009/2010.
12. The applicant claims that his wife, children, parents and [siblings] have been living [in] Quetta in Pakistan since about 2009 or 2010. His father owned a property and land in [the village] which his uncles are now using. The applicant stated that he attended school for about [number] years and also attended religious education. He told the Tribunal that he can read and write Farsi. When the Tribunal queried this he said that Farsi is the same as Dari.
13. The applicant told the Tribunal that his father owned a [shop] in [a] bazaar [in a town] of Jaghori district. His father rented the premises. He worked with his father. His father also owned a truck which they used to purchase supplies in Ghazni city. They employed a driver who went to Ghazni whenever they needed supplies which might have been once a month. Sometimes the applicant went with the driver and sometimes his father went. Sometimes they could not go because of the poor security on the road and sometimes they went to Herat.
14. The applicant told the Tribunal that he has no family members in Afghanistan other than those living in Jaghori. He stated that his father-in-law had moved to Kabul but he was shot and killed outside his home a few years ago. He does not know why his father-in-law was killed. His brother-in-law left Afghanistan after the shooting and is now in [another country].
15. The applicant told the Tribunal that, when he went to Pakistan, his father sold all the stock in the [shop] at half price, closed the shop and sold his truck. About a year after they arrived in Quetta, they leased a premise [and] opened a [shop] but it made no profit and they closed it. The applicant said that, even though they were living illegally in Pakistan, they were able to rent the shop privately and work so long as they remained in [their location]. His family are now living on savings, on money his brothers earn [working] and on money the applicant sends to them.
16. The applicant has provided some different dates for when he left Afghanistan. In his protection visa application, he indicated that he remained in Afghanistan until 2010. In his entry interview, he indicated that he went to Pakistan in 2008. At the hearing, he said that he thinks he went to Pakistan in early 2009. He also said that he has been having memory problems and cannot remember dates properly. The Tribunal accepts that the applicant may have some difficulty remembering exact dates with the passage of time and has given him the benefit of the doubt in relation to any inconsistencies in dates.

Claims

17. The applicant claims to be a non-practicing Shia, to have developed an interest in Christianity and to fear harm from the authorities because he was involved in distributing Christian material in Afghanistan. He also claims to fear harm from the Taliban because he is a Hazara and will be perceived to be a Shia even though he does not practice his religion.

Christian material

18. The applicant claims to have become interested in Christianity before he left Afghanistan. In his written statement, he said that he became interested due to his concern about extremist Muslim activity in Afghanistan. He stated that he had not denounced Islam but he no longer practiced Islam. At his interview, he told the delegate that he had been to church 8 times in Australia
19. The applicant told the Tribunal that, a year or two before he left Afghanistan, he began to pick up boxes from a person in Ghazni called [Mr A] and deliver them to a shopkeeper in [location] called [Mr B]. He stated that he made three deliveries before [Mr B] told him that the boxes contained Christian material. He stated that, when [Mr B] told him, his reaction was positive as he was interested in Christianity.
20. He stated that, at the same time as he was delivering these boxes, [Mr B] was also talking to him about Christianity and that he had become interested in Christianity because of all the killing and violence that was occurring. He told the Tribunal that he was also attending secret meetings organised by [Mr B] in a house in Jaghori attended by about eight or ten students with an interest in Christianity.
21. The applicant told the Tribunal that he picked up the boxes of Christian material when he went with the driver to pick up supplies from Ghazni. The driver did not know what was in the boxes. The Tribunal put to the applicant that it seemed unlikely he would carry Christian material on the road between Ghazni and Jaghori which is known to have frequent Taliban checkpoints and to be highly insecure. The applicant stated that he hid the boxes underneath other supplies. When the Tribunal noted that the driver would have been at risk of harm if the Taliban had searched the truck and found the material, the applicant stated that the driver would have said he was just a simple driver with no knowledge of the material.
22. The applicant claims that, initially, he gave the boxes to [Mr B] who distributed the material, however, after a while he also gave the material directly to the students who attended the secret meetings.
23. The applicant claims that [Mr A] was caught by police in Ghazni. He stated that [Mr A] was able to ring [Mr B] and tell him that [Mr B] and the applicant were in danger. Other people were arrested with [Mr A]. The applicant went to Pakistan two days later. The applicant's father sold his truck and business and the family went to Pakistan about 15 days later. When asked [Mr A] and [Mr B]'s full names, the applicant stated that he only knew them by these names. He said that [Mr B] fled to Pakistan at the same time as him and the students who attended the meetings scattered and he doesn't know where they are. The applicant claims that police went to his father's shop three or four days after he left Afghanistan. His father told them the applicant was visiting family members and would be back. The police returned a few days later and also went once to his family home after his father went to Pakistan. His uncles told the police the applicant was in Pakistan.
24. The applicant took an oath on the Bible at the hearing. He told the Tribunal that he has not been baptised. He produced a book in Farsi which he called the holy book which could have been a Bible or New Testament. He stated that he can read the book a little bit and that he

reads it at home after work when he has time. He stated that the book explains about Jesus, about how to behave – to be gentle and nice to people and not to be violent. When asked the name of the first chapter, he could not remember and he could not name any of the chapters. When asked what Christians believe, he stated that Jesus is alive and with God in heaven; at doomsday, Jesus will ask God to forgive our sins; to be good to neighbours, poor people and people in need; and that we are all equal. He stated that since being in Australia, he has gone to a church [a] couple of times. When asked why he has not gone to church more often to find out more about Christianity since he has been in Australia, he stated that he is reading the book in his own language, that church is in English and he can't understand and that he is working and very busy but he might be able to go on Sundays.

Hazara and Shia

25. The Tribunal accepts that the applicant is of Hazara ethnicity from [a] village in Jaghori and that he and his family moved to Pakistan in about 2009/2010.
26. The applicant claims to fear harm from the Taliban in Afghanistan because of his race and perceived religion as a Shia. The Tribunal accepts that the majority of Hazaras are Shia and that the applicant was of the Shia faith and that he has not actually converted to Christianity.
27. Jaghori is a Hazara district of Ghazni province. Whilst Jaghori is itself relatively secure, surrounding districts are not. Ghazni province is regarded as one of the most dangerous in Afghanistan and a gateway between Kabul and the south-east of Afghanistan. Several anti-government insurgent groups, including the Taliban, the Haqqani network, Arab and Pakistani fighters and IS are reported to be active in Ghazni.¹ There were 1,257 reported security incidents in Ghazni between January and 31 October 2014.² The insurgents usually target government officials and employees travelling on the main Kabul-Kandahar highway. Information about harm to Hazaras in Ghazni is set out in the following paragraphs.

Security situation in Afghanistan

28. The security situation in Afghanistan generally is poor with Afghanistan currently ranked second in the World Security Risk Index after Syria.³ In its recent report on security in Afghanistan, the European Asylum Support Office (EASO) noted that:

According to Ruttig and Münch, the withdrawal of foreign troops has had an impact on the areas that they used to secure. In those areas, which are now left to the ANSF [Afghan National Security Forces], insurgents increasingly take control of territory, and attack administrative centres and security installations. The International Crisis Group (ICG) described how the transition initiated a new phase in the war, characterised by fighting between the ANSF and insurgent groups. The latter have failed to capture major towns and cities and some areas are even more secure due to the withdrawal of IMF [International Military Forces]. However, the overall trend is one of decreasing government control outside the larger towns and cities, escalating violence and more insurgent attacks.

Ruttig and Münch reported that since 2013, insurgents have made increasing territorial gains and cut off major highways, especially in the north. They sometimes symbolically capture abandoned ISAF [International Security Assistance Force] bases, such as Kejran, Daykundi in October 2013 and ANSF bases, such as Omna

¹ European Asylum Support Office, 2015, *EASO Country of Origin Information Report Afghanistan Security Situation*, January

² Ibid

³ Global Intake, World Security Risk (www.globalintake.com), 12 November 2014

district, Paktika, in late May 2014 and Ghaziabad, Kunar, in February 2014. The insurgents launch major assaults around the country on administrative centres and security checkpoints. The aim is to capture territory and hold it, such as at Yamgan, Badakhshan, and Qaisar and Ghormach districts of Faryab. They operate in fronts of several hundred fighters. So far, the ANSF has repelled most attacks and regained control over district administrative centres and security installations, but the UN Secretary General reported that ANSF have not been able to curtail insurgents' presence and freedom of movement, especially in remote districts. However, the expansion of the ALP [Afghan Local Police] and local uprisings have pushed them back from other areas, for example in Ghazni province.⁴

29. The Department of Foreign Affairs and Trade (DFAT) also notes in its most recent report that "insurgent forces contest many areas of Afghanistan and no part of the country can be considered free from conflict related violence. The situation remains fluid. While the government retains control of much of the country, particularly in the provincial and district centres, some areas are openly contested with varying levels of control exerted by the government and by insurgents. ... The security situation is better in areas where government forces maintain strong control, such as major urban centres like Kabul, but attacks remain a common occurrence even in these areas".⁵
30. The United Nations Assistance Mission of Afghanistan documented 10,548 civilian casualties (3,699 deaths and 6,849 injured) in 2014, marking a 25 per cent increase in civilian deaths and a 21 per cent increase in injuries or an overall increase of 22 per cent in civilian casualties compared to 2013 which was the highest number of civilian deaths and injuries in a single year since the UNAMA began systematically recording civilian casualties in 2009. This increase was said to result mainly from increased ground engagements across Afghanistan in which parties to the conflict used high explosive weapons systems such as mortars, rockets and grenades in civilian-populated areas with devastating consequences for civilians. The use of improvised explosive devices had also increased in 2014 as had the number of civilian victims of suicide and complex attacks.⁶ The Afghan Analysts Network reported in August that targeted attacks on civilians was the biggest cause of civilian deaths (28%) and that the UNAMA had reported on targeted killings of aid workers, tribal elders, government officials, mullahs and places of worship.⁷
31. A number of different anti governments groups are operating in Afghanistan including the Taliban, the Haqqani Network, Hezb-e Islami Afghanistan (led by Gulbuddin Hekmatyar), the Islamic Movement of Uzbekistan and various other armed militias.⁸ Foreign fighters associated with Al Qaeda are present in the north and east.⁹ Daesh (IS) is exerting limited influence in some parts of Afghanistan and a number of disaffected Taliban insurgents are reported to have identified with IS. As well, there are a number of local militias, aligned to local warlords who are not necessarily opposed to the government but act to protect their own interests.¹⁰

⁴ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

⁵ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

⁶ United Nations Assistance Mission in Afghanistan (UNAMA), *Afghanistan Annual Report 2014: Protection of Civilians in Armed Conflict*, 18 February 2015, CISEC96CF1205, pages 4, 6-7.

⁷ Clark, K, 2015, 'War and peace, Highest Civilian Casualty Figures Ever: UNAMA details deaths by mortar, IED, suicide attack and targeted killing', *Afghan Analysts Network*, 5 August

⁸ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January; Department of Foreign Affairs and Trade, 2015, *DFAT Country Information Report Afghanistan*, 18 September

⁹ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

¹⁰ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

32. The most common targets for insurgents in Afghanistan are government and security institutions, political figures, foreign missions, international organisations and recently in Kabul, foreign civilians.¹¹ DFAT has noted that, whilst attacks may be directed at specific targets, the method of attack can be indiscriminate and result in a high number of civilian casualties, for example, an attack on Afghan Local Police commanders at a crowded volleyball game in Paktika Province in November 2014 killed ten police officers and 53 civilians and injured another 85 civilians.¹²

Current situation for Hazaras in Afghanistan

33. The Department of Foreign Affairs and Trade (DFAT) has estimated that there are 3 million Hazaras in Afghanistan, (approximately nine percent of the population) living mostly in the central highlands area of Afghanistan known as the Hazarajat. There has been strong enmity between Hazaras and the dominant Pashtun population since the killing or displacement of approximately 60% of the Hazara population under the Pashtun Emir Abdur Rahman Khan in the late 19th century. The takeover of Kabul and most of Afghanistan by the Taliban in 1996 resulted in a period of repression and conflict for Hazaras. Thousands of Hazara fighters and civilians were killed in fighting in Kabul and Mazar-e-Sharif where at least 2000 Hazaras were killed in reprisal for earlier killings of Taliban fighters. Hazaras experienced ongoing systematic official and societal discrimination and violence under the Taliban regime.¹³
34. Since the removal of the Taliban regime Hazaras have made “significant gains albeit from a low base”¹⁴ although DFAT has noted that Hazaras still suffer some societal discrimination, mostly in relation to nepotism involving tribal and ethnic connections; and are still underrepresented in senior levels of government (Vice President Danish is the only Hazara in Cabinet); and that the historical enmity between Hazaras and Pashtuns contributes to a perception amongst Hazaras of ongoing discrimination and targeted violence.¹⁵
35. Assessing the level of risk to Hazaras in Afghanistan is complex. DFAT reported recently that, “all Afghans are vulnerable to violent attacks associated with insurgent and/or terrorist groups. DFAT has no evidence to suggest that Hazaras are systematically targeted in these attacks on the basis of their ethnicity alone. DFAT assesses that, with the exception of kidnappings, Hazaras are not currently at any greater risk of violence than any other ethnic groups in Afghanistan.”¹⁶ In a letter provided to the Tribunal, William Maley noted that, “it is a serious mistake to conclude that Afghanistan is safe for Hazaras. The disposition of extremists to strike at them has not disappeared”.¹⁷
36. There have been a number of reported kidnappings of Hazaras recently including:
- The kidnapping of 31 Hazaras travelling in two buses from Herat to Kabul in Zabul Province on 23 February 2015. The armed men who carried out the abductions reportedly stopped the buses and checked the passenger’s identity cards, separated

¹¹ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

¹² DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

¹³ DFAT, 2014, *DFAT Thematic Report: Hazaras in Afghanistan and Pakistan*, 26 March

¹⁴ UNHCR, 2013, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 6 August

¹⁵ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

¹⁶ *Ibid*

¹⁷ Maley, W, 2015, ‘On the Return of Hazaras to Afghanistan’, 16 February

the Hazara men and took them away.¹⁸ The Taliban denied involvement in this kidnapping and it has been suggested that IS was responsible;¹⁹

- The kidnapping of ten Hazaras travelling from Kabul to Jaghori in two cars in the Qarabagh district of Ghazni Province on 15 March 2015. Nine of the ten passengers have since been released. Reports suggest that this was not an isolated incident;²⁰
 - The kidnapping of six Hazara passengers on their way from Herat to Farah on 16 March 2015 however four of those taken were reportedly soldiers in the Afghan National Army;²¹ and
 - The kidnapping and killing of four Hazaras from Malistan in Ajrestan district of Ghazni Province on 14 April 2014. These people were reportedly taken as leverage to negotiate the release of a Taliban commander and his men.²²
37. As well, five Hazara coal merchants were reportedly abducted in Balkh Province on 30 March 2015 for ransom; thirteen Hazaras were reportedly taken in Sar-e Pul on 1 April 2015 for an unknown reason and released two weeks later; and another twenty Hazaras were taken in Qarabagh on 1 April 2015 and held for a day, reportedly as leverage to force the police to return a Pashtun girl to her family.²³
38. The DFAT advice above notes that Hazaras have been subject to kidnappings. DFAT also notes that:

While no ethnic group is immune from kidnappings, DFAT assesses that Hazaras travelling by road between Kabul and the Hazarajat face a risk which is greater than other ethnic groups. It is unclear whether this is due to ethnic targeting or is a result of the high numbers of Hazaras travelling on this route. Nonetheless, DFAT assesses that, if a bus with a mixture of ethnic groups on board is stopped in these areas, ethnic Hazaras (and other non-Pashtuns) are more likely to be selected for kidnapping or violence than Pashtun passengers. It should be noted, however, that kidnappings of Hazaras are relatively rare in a country-wide context. According to the UNAMA 2015 mid-year report on protection of civilians in Afghanistan, of the 196 abduction incidents country-wide in the first six months of 2015, only 10 incidents involved Hazaras. All but one of the kidnappings of Hazaras occurred in areas of mixed Hazara and non-Hazara communities. A total of 97 Hazaras were reported as being abducted, 67 of whom have been confirmed as being subsequently released.²⁴

¹⁸ 'Fear stalks Afghan minorities after rare attacks', *News24 -South Africa*, 17 March 2015; 'Drivers explain how Hazara passengers were kidnapped in Afghan south', *Tolo TV*, 24 February 2015

¹⁹ 'Taliban deny hand in abduction of 30 Hazara men in Zabul; Khalili says they are safe', *Afghan Zariza*, 7 March 2015; Frud Bezhan, 'Mass Abduction Of Hazaras In Afghanistan Raises Fears Of Islamic State', *Radio Free Europe/Radio Liberty (RFE/RL)*, 25 February 2015; Ali M. Latifi and Shashank Bengali, 'Afghan officials acknowledge Islamic State presence in their country', *Los Angeles Times*, 17 March 2015

²⁰ 'Gunmen free 9 kidnapped passengers in Ghazni', *Pajhwok Afghan News -Afghanistan*, 15 March 2015; '9 abducted civilians freed by kidnappers in Ghazni', *Khaama Press*, 15 March 2015

²¹ 'Another 6 Hazara Passengers Abducted from Herat-Farah Highway', *Tolo News*, 17 March 2015; 'Masked gunmen kidnapped 6 people on Farah-Herat Highway', *Khaama Press*, 17 March 2015; 'Kidnapped passengers rescued in ANA operation', *Pajhwok Afghan News -Afghanistan*, 17 March 2015

²² Suroush, Q, 2015, 'War and peace: Hazaras in the Crosshairs? A scrutiny of recent incidents', *Afghan Analysts Network*, 24 April

²³ Ibid

²⁴ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

39. DFAT notes that although ethnicity and religion may be a factor in kidnapping of civilians, insurgents generally target persons associated with the government or the international community or who appear wealthier than other Afghans.²⁵ DFAT has assessed that Hazaras have taken full advantage of the opportunities available to them since the removal of the Taliban regime (including in education and politics) and that, due to the improvement in their circumstances, Hazaras are widely perceived to be affiliated with both the government and the international community.²⁶ In October 2014, a Hazara asylum seeker returned to Afghanistan from Australia was reportedly kidnapped by the Taliban in Ghazni Province and tortured after the Taliban found his Australian licence.²⁷ Another Hazara dual Afghan-Australian citizen was killed by Taliban in Ghazni in September 2014 reportedly because of his association with Australia.²⁸

Finding

40. Whilst the applicant may be able to live safely in Jaghori, he is likely to have to travel in and out of the area for employment or other reasons. Having considered all of the country information above, particularly the information regarding the high level of insecurity in Ghazni and the heightened risk to Hazaras of being kidnapped by insurgents whilst travelling in Ghazni, the Tribunal finds that there is a more than remote chance that the applicant will be subject to serious harm in the form of kidnapping and possible killing if he returns to Jaghori and that this harm will be because of his race, perceived Shia religion or imputed political opinion as a supporter or associate of the government and/or the international community.
41. Given that the Afghan government and security forces are struggling to exercise effective control over large parts of Afghanistan, including large areas of Ghazni province, the Tribunal finds that state protection will not be effective or available to the applicant.
42. In view of this finding, the Tribunal has not made findings in relation to the applicant's claim that he will be arrested and harmed for distributing Christian material in Jaghori. The Tribunal finds it somewhat implausible however that the applicant would be involved in transporting Christian material on a road where he and his truck were likely to be stopped at any time by anti-west and therefore anti-Christian insurgents.

Relocation

43. In view of the finding above, the Tribunal has considered whether the applicant could live safely in a different part of Afghanistan and whether it would be reasonable for him to relocate.
44. The country information above indicates a high level of insecurity across large sections of Afghanistan with large urban centres under the control of the government, such as Kabul, being the most secure. Kabul is a diverse city with an estimated population of between 5 and 7 million people of which Hazaras comprise about one third.²⁹ Whilst there have been a number of recent targeted attacks in Kabul (discussed further below), these have not been directed at Hazaras. There was a bomb attack on the Shia Abu Fazi Mosque during an Ashura celebration in December 2011 which killed 70 people which has been attributed to Lashkar-e Jhangvi, an extremist Sunni group from Pakistan however there has not been a sectarian attack in Kabul since then. In view of the country information discussed above, the

²⁵ Ibid

²⁶ DFAT, 2014, *DFAT Thematic Report: Hazaras in Afghanistan and Pakistan*, 26 March

²⁷ Donnelly, B, 'Government to investigate torture claims of deported asylum seeker Zainullah Naseri', *The Sydney Morning Herald*, 28 October 2014; also referred to in DFAT, 2015, *DFAT Country Information Report Afghanistan*, September

²⁸ 'Australian man Sayed Habib 'tortured and killed by Taliban', *The Australian*, 29 September 2014

²⁹ Ibid

Tribunal is not satisfied that the applicant could live safely in a rural part of Afghanistan but is satisfied that the applicant would not face a real chance of persecution in Kabul.

45. The UNHCR has noted that the reasonableness of relocation in Afghanistan depends on the availability of traditional support structures such as family and tribal support networks, access to shelter, the availability of infrastructure and access to essential services such as sanitation and health care, livelihood opportunities and the scale of internal displacement in the area.³⁰ DFAT notes that Kabul offers relatively better opportunities for employment and access to services than rural areas but also notes that unemployment is widespread; that underemployment is common; and that new arrivals are at a disadvantage because they lack skills and a family network to assist them to obtain employment. DFAT notes that many new arrivals work as relatively poorly paid day labourers or have to beg or work as street sellers. DFAT notes that the cost of living and rents are relatively high in Kabul and that many residents live in "informal settlements" with no electricity, water or sanitation.³¹
46. DFAT also notes that insurgents regularly conduct high profile attacks in Kabul and that, whilst the primary targets of such attacks are government institutions, military and security facilities or personnel, political figures and international organisations, these have caused significant civilian casualties.³² A series of attacks in August 2015 killed an estimated 355 civilians in a single day.³³
47. The applicant has no family members in Kabul so cannot obtain any assistance with accommodation or finding employment. When the Tribunal noted that there are other people from Jaghori living in Kabul, he stated that people have rivals and jealousies and they don't want to see others move ahead implying that these people will not offer him any assistance. Whilst the applicant did have assets these appear to have been used to support the family in Pakistan. Whilst the applicant has had experience running his own shop, there is no evidence on which to conclude that he will be able to establish a similar business in Kabul given the current overcrowding and his lack of capital. He has a wife and [children] to support and with no family network or support to assist him with employment or accommodation; and in view of the poor security situation in Kabul, the Tribunal finds that relocation to Kabul is not reasonably practicable.

CONCLUSION

48. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

49. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.
50. CONCLUDING PARAGRAPHS
51. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

³⁰ UNHCR, 2013, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 6 August

³¹ DFAT, 2015, *DFAT Thematic report Conditions in Kabul*, 18 September

³² *Ibid*; EASO also noted a number of attacks which targeted foreign civilians

³³ *Ibid*

DECISION

52. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

53.

Rea Hearn Mackinnon
Member