FEDERAL MAGISTRATES COURT OF AUSTRALIA

SZRKY v MINISTER FOR IMMIGRATION & ANOR *[2012] FMCA 942*

MIGRATION – Persecution – review of recommendation made by independent merits reviewer ("Reviewer") that the applicant not be recognised as a person to whom Australia has protection obligations.

MIGRATION – Relocation – applicant had not lived in his country of nationality since he was three months old – whether return to country of nationality would amount to a relocation of the sort considered in *Randhawa v Minister for Immigration, Local Government & Ethnic Affairs* (1994) 52 FCR 437 – practicability of relocation is determined by whether such relocation involves a real chance of persecution not by quality of life considerations falling short of persecution.

MIGRATION – Well-founded fear of persecution in the county of nationality – whether Reviewer erred by considering one part of the country of nationality before others.

PRACTICE AND PROCEDURE – Administrative hearing – principle in *Jones v Dunkel* (1959) 101 CLR 298 not relevant to administrative hearings – relevant question is whether the applicant has been accorded procedural fairness.

STATUTORY INTERPRETATION – *United Nations Convention on the Rights of the Child 1989* not relevant to whether an applicant meets the criteria for the grant of a protection visa under s.36 of the *Migration Act 1958*.

Migration Act 1958, ss.36, 65, 46A,195A, 477

Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69/2010 v Commonwealth of Australia (2010) 243 CLR 319
SZQRW v Minister for Immigration & Citizenship [2012] FMCA 191
SZQDZ v Minister for Immigration & Citizenship (2012) 286 ALR 331
Randhawa v Minister for Immigration, Local Government & Ethnic Affairs (1994) 52 FCR 437
SZATV v Minister for Immigration & Citizenship (2007) 233 CLR 18
Januzi v Secretary of State for Home Department [2006] 2 AC 426
Plaintiff M13/2011 v Minister for Immigration & Citizenship (2011) 277 ALR 667
AZABQ v Minister for Immigration & Citizenship (2012) 127 ALD 314
SZRPA v Minister for Immigration & Citizenship [2012] FCA 962

Appellant S395/2002 v Minister for Immigration & Multicultural Affairs (2004) 216 CLR 473
Applicant WAEE v Minister for Immigration & Multicultural & Indigenous Affairs (2003) 75 ALD 630
Minister for Immigration & Ethnic Affairs v Guo (1997) 191 CLR 559
NAHI v Minister for Immigration & Multicultural & Indigenous Affairs [2004] FCAFC 10
Minister for Immigration & Citizenship v SZLSP (2010) 187 FCR 362
Minister for Immigration & Ethnic Affairs v Pochi (1980) 31 ALR 666
Broussard v Minister for Immigration & Ethnic Affairs (1989) 21 FCR 472
Jones v Dunkel (1959) 101 CLR 298
Schellenberg v Tunnel Holdings Pty Ltd (2000) 200 CLR 121
Kioa v West (1985) 159 CLR 550
Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd (1994) 49 FCR 576
Re Minister for Immigration & Multicultural Affairs; Ex parte Miah (2001) 206 CLR 57
SZBEL v Minister for Immigration & Multicultural & Indigenous Affairs (2006) 228 CLR 152
Minister for Immigration & Citizenship v SZGUR (2011) 241 CLR 594
Australian Crime Commission v NTD8 (2009) 177 FCR 263
SZQGE v Minister for Immigration & Citizenship [2011] FCA 1018
SZOOR v Minister for Immigration & Citizenship (2012) 202 FCR 1
Minister for Immigration & Citizenship v SZMDS (2010) 240 CLR 611

Applicant:	SZRKY
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	DOMINIC LENNON IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER
File Number:	SYG 916 of 2012
Judgment of:	Cameron FM
Hearing date:	16 August 2012
Date of Last Submission:	16 August 2012
Delivered at:	Sydney
Delivered on:	18 October 2012

REPRESENTATION

Counsel for the Applicant:	Mr S. Burchett
Solicitors for the Applicant:	Kah Lawyers
Solicitors for the Respondents:	Clayton Utz

ORDERS

(1) The application be dismissed.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 916 of 2012

SZRKY
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

DOMINIC LENNON IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER
Second Respondent

REASONS FOR JUDGMENT

Introduction

1. The applicant is a citizen of Afghanistan who arrived at Christmas Island by boat on 1 May 2010. He lodged an application for a Refugee Status Assessment ("RSA") dated 15 October 2010 alleging that he was a refugee and, as such, a person to whom Australia has protection obligations under the *United Nations Convention relating to the Status of Refugees 1951* as amended by the *Protocol relating to the Status of Refugees 1967* ("Convention").

2. By letter dated 21 December 2010 an officer in the department administered by the first respondent ("Minister") advised the applicant that he had been assessed as not meeting the definition of a "refugee" under the Convention. That decision was subsequently reviewed by the second respondent ("Reviewer") who, on 13 June 2011, recommended that the applicant not be recognised as a person to whom Australia has

protection obligations under the Convention. It can be presumed that the applicant was in detention at the time of the RSA and subsequent review.

3. The evidence makes it clear that the applicant had no visa when he entered Australia at Christmas Island. In the circumstances and as provided by s.46A(1) of the *Migration Act 1958* ("Act"), he cannot make a valid application for a protection visa. However, ss.46A and 195A of the Act also provide that the Minister may, in his discretion, lift the bar on the applicant making such an application and may grant him a visa.

4. It was an unstated assumption in these proceedings that the Minister would consider exercising his ss.46A and 195A discretions in favour of the applicant if he received advice to that effect, advice which would be based on the recommendation of the Reviewer: see *Plaintiff M61/2010E v Commonwealth of Australia; Plaintiff M69/2010 v Commonwealth of Australia* (2010) 243 CLR 319 at 344 [49].

5. The applicant has made an application to this Court for judicial review of the Reviewer's recommendation. He seeks a declaration that the Reviewer's recommendation was not made in accordance with law and an injunction restraining the Minister from relying on that recommendation. In order to succeed he must demonstrate that the Reviewer's review was procedurally unfair or was not conducted by reference to the correct legal principles correctly applied: *SZQRW v Minister for Immigration & Citizenship* [2012] FMCA 191 at [6]-[10].

6. For the reasons which follow, the application will be dismissed.

Background facts

7. The recommendation made by the Reviewer was supported by written reasons. The facts alleged in support of the applicant's claim for protection were set out at paragraphs 8 to 46 of those reasons and are relevantly summarised below.

Entry interview

8. The applicant made the following claims during his entry interview on 8 May 2010:

    a) he was born on 16 June 1994 in the Jaghori district of Ghazni province in Afghanistan and was a Hazara Shia;

    b) his family moved to Quetta in Pakistan when he was three months old because the Taliban were in his home area and because he needed to have an operation on his leg;

    c) after the operation in Pakistan his family wanted to return to Afghanistan but were unable to do so because of the Taliban;

    d) in 1997 or 1998 his father was shot because he was a Shia. He was unable to work as a result;

    e) one of his brothers was shot and killed by the Pashtuns or the Taliban. He had another brother who was missing;

    f) he was beaten in a bazaar (in Pakistan) for being a Shia;

    g) armed terrorist groups operated in his area;

    h) he did not want to return to Afghanistan because his father was not well, his mother was old and there was nothing he could do there; and

    i) in Pakistan, he was not allowed to work or go to the mosque and Afghan refugees were beaten and killed. He did not want to return to Pakistan because it was not safe.

RSA application

9. At his RSA interview on 18 October 2010 the applicant also claimed the following:

    a) his father was beaten and stabbed in Afghanistan by the Taliban or the Pashtuns;

b) his father attempted to return to Afghanistan but could not cross the border so returned to Quetta;

c) his brother was shot because he was a Hazara Shia;

d) the beating in the bazaar occurred in 2006 or 2008, when he was twelve or fourteen years old. The Pashtun boy who beat him told him to return to Afghanistan;

e) the Pashtuns looked for excuses to harass them;

f) if he returned to Afghanistan the Taliban would kill him because they were killing everyone. They would also target him because he was a Hazara Shia, because of his language and because of his inability to understand other languages; and

g) he could not live with his cousins in Afghanistan because their father had also been killed and he would therefore be living in fear. The only reason his cousins had not left Afghanistan was because they were looking after inherited land.

Proceedings before the Reviewer

10. The applicant was interviewed by the Reviewer on 8 March 2011 at which time he made the following additional claims:

a) his father owned a farm in Afghanistan. When the family moved to Pakistan, his father left the farm with his brother and his children (i.e. the applicant's uncle and cousins);

b) in 2004 his brother was killed by the Taliban. He knew that they were responsible because only the Taliban targeted Hazara Shias;

c) in 2007 his other brother left home to go to work and was never seen again. His brother did not have any enemies so the Taliban must have been responsible;

d) his cousins were no longer living on the family farm in Afghanistan. His family had lost contact with them and he was not sure if they were still on the farm or even if they were alive or dead;

e) the last contact his family had had with his cousins in Afghanistan was when his father asked them to sell some of the farm's assets to pay the people smugglers for the applicant to come to Australia. This occurred a couple of months before the applicant left Pakistan (in March 2010) for Australia;

f) he was beaten and attacked by three assailants in Pakistan. They took his money and hit him with a brick and told him that Shias were infidels who should return to their country;

g) when he was five or six years old, his father attempted to take the family back to Afghanistan but the journey across the border was too dangerous;

h) he was scared of returning to Afghanistan because Shias were attacked. There was no safety and security there; and

i) the Taliban attacked Hazaras in any province.

Reviewer's findings and reasons

11. After discussing the claims made by the applicant and the evidence before him, the Reviewer found that the applicant did not meet the criteria for the grant of a protection visa as set out in s.36(2) of the Act. The Reviewer consequently recommended that the applicant not be recognised as a person to whom Australia has protection obligations under the Convention.

12. The Reviewer found that the applicant did not face a real chance of persecution in Jaghori, Afghanistan, by reason of his Hazara ethnicity or Shia religion, noting that:

a) the knife assault and gunshot on his father in 1993 and 1998 occurred prior to the 2001 US-led invasion and the fall of the Taliban in 2002. The Reviewer found that the incidents did not have any probative value because they were too remote in time and the changes in Afghanistan since then had been extensive and far reaching;

b) the murder and disappearance of the applicant's brothers in 2004 and 2007 respectively also had little probative value because the

applicant's attribution of responsibility to the Taliban was speculative;

c) it could be accepted that as a Hazara Shia in Quetta the applicant had experienced some intimidation and possibly violence. However, given that his claims were not being assessed against Pakistan, the Reviewer found that the persecution the applicant suffered there had no probative value for the matter under determination, namely, whether the applicant faced a real chance of persecution in Jaghori in Afghanistan;

d) according to country information, Hazaras enjoyed a majority presence in Jaghori and reports overall were cautiously optimistic about their future. Further, the dominant political force in Jaghori was the Hizb-i Wahdat party, which was explicitly pro-Hazara, and its militia was said to be sufficiently powerful to have withstood Taliban infiltration;

e) country information also indicated that Shias in general were growing in ascendency in terms of influence and were now able to celebrate their faith to an extent which they had not done previously; and

f) he was not satisfied that the independent country information supported a claim that the Taliban in Jaghori specifically targeted Hazara Shias on a systematic and discriminatory basis or that they were subjected to a variety of forms of discrimination which, when combined, amounted to persecution or significant economic hardship, denial of access to services or denial of the capacity to earn a livelihood. On the contrary, the information suggested that people in Hazara districts were experiencing greater levels of access to education, health and other services and greater involvement in the political process than people in Pashtun areas.

13. The Reviewer noted that there was a disconnect between the applicant's advisers' pre-interview submissions and the applicant's oral evidence about his subjective fear. In the pre-interview submissions, much was made of the applicant's exposure to harm on the basis of his membership of the particular social group of "child/unaccompanied minor". However, the applicant did not himself raise this claim during

any of his interviews and the Reviewer concluded in the circumstances, and in the absence of a plausible explanation, that the applicant was not fearful of persecution by reason that he was a child. The Reviewer found that the applicant's advisers' submission in relation to children being a particular social group was a "template submission" and not based on instructions received from the applicant.

14. The Reviewer nevertheless did consider whether the applicant would face a real chance of persecution in Jaghori by reason that he was a child. In the Reviewer's opinion, the extent and nature of the applicant's family ties in Afghanistan were relevant to this question as they would have a significant bearing on the extent of his vulnerability to persecution. The Reviewer noted in this connection that the applicant's evidence about the circumstances of his family in Afghanistan was unclear. At his interview with the Reviewer the applicant stated that his family had lost contact with his cousins a month before he left Pakistan (i.e. February 2010) but at the RSA interview in October 2010 he said that he could not live with his cousins in Afghanistan because their father had been killed and the only reason that they had not left was because they were looking after inherited land, a response which, in the Reviewer's opinion, suggested that his cousins were still living on the land in October 2010 and that his family had not lost contact with them. In light of this inconsistency and the applicant's lack of a plausible explanation for it, the Reviewer preferred the information provided by the applicant at his RSA interview that he had cousins in Afghanistan who were living on the family farm in Jaghori. The Reviewer found that the applicant would have the support of family networks and would not be returning to Jaghori as an internally displaced person. He also noted that although the applicant was still a minor, he was about to turn seventeen and would be less vulnerable than a younger person might be. For these reasons, the Reviewer found that the applicant did not face a real chance of persecution in Jaghori by reason that he was a child.

15. The Reviewer accepted that the applicant's father was stabbed and shot, that one of his brothers was killed and that another was missing. He also accepted that the applicant was a member of their family unit and that this constituted a particular social group for the purposes of the Convention. However, given the time which had elapsed and the

lack of information about the causes of those incidents, the Reviewer did not accept that they were Convention-related. Consequently, the Reviewer found that the applicant did not face a real chance of persecution in Jaghori by reason of his membership of his family unit.

Proceedings in this Court

16. The applicant sought an extension of time to bring these proceedings. However, by reason of the decision of the Full Court of the Federal Court in *SZQDZ v Minister for Immigration & Citizenship* (2012) 286 ALR 331, even if these proceedings were commenced out of what s.477 of the Act might consider to be the statutory time limit, there is no need for the Court to consider that provision as it does not apply in the present circumstances.

17. In his amended application the applicant alleged:

> *1. The Reviewer erred in law, in finding [at (76) and (109) of the decision], that the applicable test of refugee status was "whether the claimant faces a real chance of persecution, if returned to his place of origin, Jaghori district".*
>
> *2. The Reviewer erred in law in excluding the relevant considerations:*
>
> *a) whether the applicant faced a real chance of persecution, if returned to Afghanistan (rather than Jaghori), and*
>
> *b) whether it was reasonably practicable for the applicant to 'return' to Jaghori.*
>
> *3. The Reviewer ought to have considered it impractical for the applicant to relocate to Jaghori, having regard to the facts, that:*
>
> *a) he had never since infancy been, let alone 'resided', there,*
>
> *b) he had a well-founded fear of attempting to travel there, due to the persecution of Shia Hazaras by the Taliban in Afghanistan generally,*

c) he is a minor with no immediate family or means of support there or knowledge of the place, other than what has been told him by his family, and

d) his family had attempted to 'return' to Jaghori, but had turned back due to the danger to them for convention reasons of the Taliban on route.

4. The Reviewer erred in law in finding a real chance of persecution in Jaghori was not established because of his anticipation of a modification of the applicant's conduct by staying away from his parents and seeking out and obtaining the protection and support of cousins.

5. The Reviewer relied heavily on his finding, that the applicant had 'cousins' living on a 'family farm' in Jaghori, which was irrelevant without a finding of fact (of which there was no evidence), that they were also willing and able to provide him with protection and support.

6. The Reviewer dismissed as irrelevant to a convention ground of persecution the fact, that the applicant is unable to speak a language, other than Hazaragi, when that fact was a relevant consideration, in that it tended to identify his racial group, which is a convention ground.

7. The Reviewer dismissed the fact, that the applicant had experienced intimidation and violence to himself and his family in Quetta, as of 'no probative value', because it was in Pakistan, outside his 'country of origin', when it was plainly relevant to the applicant's holding a well-founded fear of persecution, that such intimidation and violence was perpetrated by the same group, against the same group (of which he is a part) and for the same convention reasons as the Reviewer accepted is perpetrated within his country of origin.

7A. The Reviewer erred in law in not accepting, that the facts of attacks upon the applicant, his father and brothers evidenced a real chance of persecution related to his race, religion or particular social group(s).

8. The Reviewer erred in law in finding, that because the applicant did not personally raise in interview his fear of persecution by reason of being a child, which his agent had submitted before and after the interview existed, he was not in fact subjectively so fearful and the submissions were

made without instructions. This finding amounted to an error of law because:

a) The finding did not logically follow from grounds stated and was not open on the evidence.

b) It amounted to a denial of procedural fairness to draw such a serious, adverse inference against the applicant (and his agent) without giving him an opportunity to refute it at the interview.

9. *The Reviewer erred in law in holding, that it was an 'essential element of the definition of a refugee' under the Convention (43), that the claimant be personally aware of the convention reason for the persecution, which he fears.*

10. *The Reviewer failed to take into account the applicant's entitlements under the United Nations' Convention on the Rights of the Child, particularly article 22, to the support of his parents or if unable to obtain it, to have his best interests considered paramount, which relevant considerations he had a reasonable expectation would be taken into account and thus the Reviewer's failure to take into account amounts also to a denial of procedural fairness.*

11. *The Reviewer erred in law in failing to apply his own relevant finding at (103), that "in some parts of Afghanistan and in circumstances where there is no family or community support, children may face a real chance of persecution".*

12. *The Reviewer erred in law in failing to disclose any reason for his finding (108), that there was no real chance of persecution in Jaghori by reason of the combination of the applicant's race, religion, relationship to his father and brother and his minority.*

13. *The Reviewer erred in law in failing to take into account the relevant consideration of the risk of persecution arising from the combination of asserted convention grounds, including the aggravation of any risk of persecution by reason of the applicant's inability to speak a language, other than Hazaragi, and his minority, available on the evidence, even if not stated by him personally.*

Grounds 1-3

18. In para.76 of his reasons the Reviewer observed that the argument implicit in the applicant's submissions to him, that it would be unreasonable to expect the applicant to return to Jaghori, was misconceived because it confused the fear of persecution which a person claimed in respect of their place of origin with the reasonableness of expecting such a person to relocate to a third area to avoid that persecution. The Reviewer expressed the view that it was only if he found that the applicant faced a real chance of persecution for a Convention reason in Jaghori that it would be necessary to consider whether it was reasonable for the applicant to relocate to another part of Afghanistan. Later, at para.109 of his reasons, the Reviewer concluded that it was unnecessary to consider the issue of relocation because he had concluded that the applicant did not have a well-founded fear of persecution in Jaghori.

19. The applicant submitted that by employing this analysis the Reviewer did not ask the crucial question which, he argued, was whether he faced a real chance of persecution if he returned to Afghanistan.

20. The applicant submitted that the Reviewer's approach to the issue of a person's ability to "return" ignored two aspects of the Convention which he expressed in the following terms in his written submissions:

    a) *It is not any particular place within the country of nationality, to which the refugee must be unable or unwilling to return or of whose protection he must be unable or willing* [sic] *to avail himself, but the country itself. … There is no foundation in the convention for nominating a literal 'place of origin' within a country of nationality, against which to test a refugee claim; a birth place is not the equivalent of a country or place 'of habitual residence', to which the alternative test for a stateless person directs attention and suggests by analogy the focus of any claim.*

    b) *The question is not whether the person would face persecution, if somehow able to return, but whether he is unable or unwilling to make the journey back and subsist protected from the feared persecution. …*

21. The applicant submitted in connection with these points that "the requirement to consider the reasonableness of either location or

relocation within a home country is part of and not separate from the requirement to consider the ability or willingness of a person to 'return' to that country". He said that the Reviewer should not have "closed his eyes" to the impracticalities of a return to Jaghori which he described in the following terms:

> … *the Applicant has never since infancy been, let alone 'resided', there and claimed a well-founded fear of 'returning' there, both because of his inability to safely get there (32)-(33) and lack of immediate family or means of support there or knowledge of the place or people, other than what had been told him by his family, and because of the persecution of Shia Hazaras by the Taliban in the vicinity and of minors generally in Afghanistan. It is entirely unrealistic and speculative to expect him to seek out and obtain protection from his cousins, whom he has never met, and who are apparently no more able to protect themselves or their immediate family, than him, and never again enjoy the company of his parents and own immediate family.*

Nature of a return to Jaghori

22. The essence of the applicant's submissions in relation to the amended application's first three allegations was that because he had no real links with Afghanistan, any return there would amount to a relocation and thus he should not be expected to return unless it was reasonable and practicable to do so. However, to characterise a return by the applicant to Jaghori as relocation in the sense discussed in *Randhawa v Minister for Immigration, Local Government & Ethnic Affairs* (1994) 52 FCR 437 at 441 and subsequent cases directs attention to a label and distracts attention from what was really in issue which was, relevantly, whether the applicant had a well-founded fear of persecution in his country of nationality. As Black CJ said in *Randhawa*:

> *The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. If it were otherwise, the anomalous situation would exist that the international community would be under an obligation to provide protection outside the borders of the country of nationality even though real protection could be found within those borders.* (at 441)

That passage was part of a larger passage from *Randhawa* quoted with approval in *SZATV v Minister for Immigration & Citizenship* (2007) 233 CLR 18 at 22-23 [10] per Gummow, Hayne and Crennan JJ.

23. The relocation principle is no more than a manifestation of the principle stated by Black CJ that a person is not entitled to protection under the Convention if protection is available to them in their country of nationality. Put another way, even if a person does have a well-founded fear of persecution in one part of their country of nationality, protection obligations under the Convention will not be enlivened if there is somewhere else in that country where the fear would not be well-founded.

24. Consideration of the reasonableness and practicability of relocation presupposes that there is already a place in the country of nationality where a claimant is usually based and from which he or she might move, to another part of that country, in order to avoid persecution. However, in circumstances such as the present, where a claimant has no real link with any particular part of the country of nationality, when determining whether he or she does have a well-founded fear of persecution in that country, logic dictates that consideration first be given to whether such a fear is held in relation to that part of the country of nationality with which the claimant has the closest connection and where he or she might be expected to live in the future, absent a fear of persecution. But the identification of a claimant's home area really only reflects, in circumstances such as the present, the fact that consideration of a fear of future persecution has to be undertaken by reference to geographical locations and that the location with which a claimant has the greatest connection is generally the most logical and convenient point in the country of origin at which to start the enquiry.

25. In his reasons the Reviewer stated that there was a sequence in which "the tests are to be applied", in that it had first to be determined whether the applicant had a well-founded fear of persecution in his home area and it was only if he did that relocation had to be considered. The Reviewer appears to have been saying that application of the identified sequence was mandatory and to the extent that he did, at least in the circumstances of this case where the applicant had an almost negligible association with his home area, he was mistaken. In

this case, the Reviewer could just as well have started his consideration by reference to any area of Afghanistan notwithstanding that common sense dictated that Jaghori be considered first. But as the Reviewer concluded that the applicant did not, in fact, have a well-founded fear of persecution in the location which the Reviewer found to be his home area, the characterisation of the identified sequence as mandatory was an error of no significance.

26. Moreover, as noted earlier, the applicant's arguments focus on nomenclature rather than on the substance of the matter in issue. Presumably, this is because the Reviewer did not, in terms, consider the possibility of the applicant's return to Jaghori by reference to whether it would be reasonable or practicable. The implication underlying the applicant's argument was that the test of whether it was reasonable, in the sense of practicable, for him to relocate to Jaghori from Pakistan was materially different from the test of whether he had a well-founded fear of persecution for a Convention reason there. However, the applicant did not seek to demonstrate that the tests were, in fact, different. In this connection, in light of what was said in *SZATV* at 27 [24]-[26], it is difficult to conceive that the matters which would determine whether it would be practicable for a claimant to relocate from his or her home area to another part of the country of nationality would be any different from those matters which would determine whether the circumstances in a claimant's home area justified a fear of persecution there. In *SZATV* it was observed by the plurality that the Convention is concerned with persecution in the defined sense and not with living conditions in a broader sense. That is to say, the practicability of relocation is to be determined by reference to whether it involves a real chance of persecution, rather than by reference to whether the quality of life in the place of relocation meets what Lord Hope of Craighead referred to in *Januzi v Secretary of State for Home Department* [2006] 2 AC 426 at 457 [45] as the basic norms of civil, political and socio-economic human rights; see also *Plaintiff M13/2011 v Minister for Immigration & Citizenship* (2011) 277 ALR 667 at 672 [22]; *AZABQ v Minister for Immigration & Citizenship* (2012) 127 ALD 314 at 317 [19] and 318 [24]. That being so, the applicant's arguments depend on a distinction which does not exist with the consequence that the fact that the Reviewer did not consider the

possibility of a move from Pakistan to Jaghori by reference to its "practicability" discloses no error.

27. As to the particular facts of his case, the applicant submitted that the evidence before the Reviewer pointed to the impracticability of a return to Jaghori and that the Reviewer had "closed his eyes" to this. The applicant raised a number of matters in this regard:

    a) he had never since infancy been or resided in Jaghori;

    b) there was a lack of immediate family or means of support there;

    c) he lacked knowledge of the place and people;

    d) the Taliban in the vicinity persecuted Shia Hazaras;

    e) the Taliban persecuted minors generally in Afghanistan;

    f) it was unrealistic and speculative to expect him to seek out and obtain protection from his cousins, whom he had never met, and who were no better able to protect themselves or their immediate family than he;

    g) it was unrealistic and speculative to expect him to never again enjoy the company of his parents and own immediate family; and

    h) he was unable to safely get there.

28. In essence the applicant's argument is that, in light of the particularised matters, the Reviewer was wrong to find that he could live in Jaghori. However, with the exception of the last, all the matters particularised are properly considered in the context of whether the applicant had a well-founded fear of persecution for a Convention reason in Jaghori. On the evidence it was open to the Reviewer to conclude that he did not have a well-founded fear of persecution there.

29. The applicant's argument also raises questions of the reasonableness, in the sense of ease, of a move to Jaghori. However, the relevant question is not whether it would be difficult to live in Jaghori but whether it would involve persecution, a matter on which the Reviewer found against the applicant. Further even if a return to Jaghori were to be considered a relocation of the sort considered in *Randhawa*, for the

reasons given above at [26], again the question is whether the circumstances in Jaghori gave rise to a well-founded fear of persecution. The Reviewer concluded that they did not. The Court cannot review that factual finding.

Travel to Jaghori

30. The only remaining matter from the list set out above at [27] is the assertion that the Reviewer closed his eyes to the claimed fact that the applicant was unable to travel safely to Jaghori. The applicant did not point to any evidence which indicated that he had expressly made such a claim, saying rather that it was "fairly open" on the information before the Reviewer that he had been "making out a claim about the journey to Jaghori". However,

> *In the absence of unusually compelling reasons to conclude otherwise, where a claimant is professionally represented, as was the case here, it must be assumed that the claims which the claimant wished to make before an independent merits reviewer were the ones expressly articulated by him and his advisers and that none were left to be inferred. An unrepresented claimant may not know how to articulate a claim and thus some latitude is allowed if a claim is plainly available on the material but has not been expressly advanced. Represented claimants are in a different position and if they have not pursued an issue, then that is their election. In the circumstances, the Reviewer did not err by not considering a claim which had not been made.* (*SZRPA v Minister for Immigration & Citizenship* [2012] FCA 962 at [10], see also at [26])

31. The same considerations apply in this case. There was no reason for the Reviewer to turn his mind to the question whether the applicant had a well-founded feared for his safety if he were to travel to Jaghori, assuming that questions of personal safety *simpliciter*, rather than of threats to safety arising out of persecution, would be the relevant ones to consider in any event. Far from closing his eyes, the Reviewer was not asked to look at the issue.

Reviewer failed to ask the right question

32. In addresses the applicant also submitted that the Reviewer had failed to ask a necessary question, namely: is there a well-founded fear of persecution in Afghanistan? He submitted that from the answer to that

question flowed further issues which had to be considered, specifically whether particular localities were safe and whether it would be safe to go there.

33. The consequential questions have been addressed earlier in these reasons. As to the question whether the applicant had a well-founded fear of persecution in Afghanistan, it is not correct that the sequential approach advocated by the applicant must be followed. There is no point in the Reviewer considering the entirety of an applicant's country of nationality only to conclude, for instance, that there is no well-founded fear of persecution in that applicant's home area. Although the Reviewer could proceed in that fashion it would be inefficient. A more sensible approach involves determining whether the home area poses a threat of persecution and, if it does, then considering the situation in the remainder of a claimant's country of nationality.

34. For these reasons the first three paragraphs of the amended application do not disclose error on the Reviewer's part.

Grounds 4-5

35. The applicant submitted that the Reviewer's finding of a lack of a real chance of persecution in Jaghori was dependent upon him modifying his behaviour in order to avoid the risk of persecution. He said that the behaviour modification in question took the form of him staying in Jaghori, away from his parents, and seeking out and obtaining the protection and support of his cousins at their farm. In this regard, reference was made to what McHugh and Kirby JJ said in *Appellant S395/2002 v Minister for Immigration & Multicultural Affairs* (2004) 216 CLR 473 at 489 [40]:

> *The purpose of the Convention is to protect the individuals of every country from persecution on the grounds identified in the Convention whenever their governments wish to inflict, or are powerless to prevent, that persecution. Persecution covers many forms of harm ranging from physical harm to the loss of intangibles, from death and torture to State sponsored or condoned discrimination in social life and employment. Whatever form the harm takes, it will constitute persecution only if, by reason of its intensity or duration, the person persecuted cannot reasonably be expected to tolerate it. But persecution does not*

> *cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the person affected must take steps — reasonable or otherwise — to avoid offending the wishes of the persecutors. Nor would it give protection to membership of many a "particular social group" if it were a condition of protection that its members hide their membership or modify some attribute or characteristic of the group to avoid persecution. Similarly, it would often fail to give protection to people who are persecuted for reasons of race or nationality if it was a condition of protection that they should take steps to conceal their race or nationality.*

Modification of behaviour – move from parents

36. The passage quoted from *Appellant S395/2002* reveals that a person is not to be expected to modify his or her behaviour for the purpose of avoiding persecution. However, in this case the Reviewer concluded that the applicant did not have a well-founded fear of persecution for a Convention reason by reason of his membership of the particular social group made up of his family, which means that any steps taken by the applicant which would lead to him not being in contact with his family would not amount to conduct of the sort discussed in *Applicant S395/2002*. But in any event, the Reviewer never actually suggested that the applicant might avoid persecution by avoiding or not contacting his parents. The issue simply was that in Jaghori he would not be persecuted. The fact that this might have a practical impact on how often he would see his parents was not a matter which was addressed by the Reviewer and was certainly not something which the Reviewer opined would reduce or avoid the alleged risk of persecution.

Modification of behaviour – dependency on cousins

37. The applicant also submitted that the Reviewer imposed a further modification to his behaviour upon a move to Jaghori in the form of him being significantly dependent on his cousins and having to call upon them for support. However, the Reviewer did not say this; he simply observed that the applicant had relatives in Jaghori. Although it was implied that the applicant could call on them for assistance if needed, it was not suggested that he should.

No evidence

38. The applicant also submitted that there was no evidence for the Reviewer's finding that he would have the support of family networks in Jaghori. He submitted that the evidence made it clear that the only basis on which his cousins had provided any assistance to his family in the past had been because they had been rewarded by his father by way of the latter's abandonment of his rights to the family farm. It was submitted that those facts negated the possibility that the applicant could obtain the protection of the farm. It was further submitted that there was no evidence to support the proposition that the applicant's cousins could provide him assistance at the farm.

39. The fact that the applicant pointed to evidence which, in his submission, indicated that his cousins would not or might not be able to assist him does not lead to a conclusion that the Reviewer had no evidence for his finding that the applicant could have the support of family networks if he returned to Jaghori. The fact that members of the same family can be expected to provide some form of support to other members of that family is a social commonplace, even if not ubiquitous. The fact of the applicant's family connections, particularly at the relatively close degree of first cousin, was sufficient evidence for the Reviewer to infer that support would be available from family members still in Jaghori. It is also significant to observe that the Reviewer did not seek to quantify or describe the support he expected the applicant would be likely to receive.

Ground 6

40. At para.85 of his reasons the Reviewer said in relation to the applicant's language and his inability to understand languages other than Hazaragi:

> *This was mentioned by the claimant in his interview with me but he did not explain how the claim was being put (for example, if it is an imputed political opinion what the imputation would be) and or even what Convention nexus/es is/are being invoked. I note that the claimant speaks Hazaragi and do not accept that in inability to speak other languages establishes a Convention ground).*

41. The applicant submitted that merely reciting the issue did not deal with it. He submitted that the Reviewer expressly declined to deal with this issue because it had not been advanced by reference to one of the Convention categories although he had no onus to do so and it was unrealistic to expect that he would.

42. As noted earlier in these reasons, at his RSA interview on 18 October 2010 the applicant said that if he returned to Afghanistan the Taliban would kill him because they were killing everybody and would target him because he was Hazara and Shia and because of his language and inability to understand other languages. The record of the applicant's entry interview discloses that he spoke Hazaragi and a little English, information which was repeated in his request for an RSA. That is to say, the applicant spoke the language of the Hazara ethnic group. The Reviewer's observations about what the applicant had said about his language abilities, quoted above at [40], was that the applicant had not said how the claim was being put, i.e. how only speaking Hazaragi led to a well-founded fear of persecution for a Convention reason.

43. Given the manner in which the applicant referred to his language skills it is artificial to infer that the claim to fear persecution by reason of his language amounted to a separate and identifiable basis to fear persecution. It was presented by the applicant as a claim indivisible from the claim based on his ethnicity and as such, it was an aspect of his claims which rose or fell with the Reviewer's decision on whether he had a well-founded fear of persecution by reason of his ethnicity. It can be inferred that the Reviewer dealt with it in that way and that, to the extent that it was an issue of relevance, the Reviewer's findings in relation to it were subsumed into the more general claim concerning the applicant's ethnicity: *Applicant WAEE v Minister for Immigration & Multicultural & Indigenous Affairs* (2003) 75 ALD 630 at 641 [47].

44. For these reasons, the sixth ground of the amended application is not made out.

Grounds 7 and 7A

45. At para.90 of his reasons the Reviewer found that the attacks on the applicant's father did not have any probative value for the matter under

determination because they had occurred so long ago. At para.91 he found that the more recent incidents involving the applicant's brothers had little probative value and that the applicant's experience in Pakistan had no probative value.

46. The applicant submitted that the Reviewer was wrong in law:

> *… to find irrelevant the violence against the claimant and his family inside and outside his country of nationality by the same group and for the same convention reasons as were feared to be prevalent within it.*

He said, by reference to *Minister for Immigration & Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576, that a history of past persecution was relevant to the probability of future persecution. He also said that the evidence of the persecution of his family in Afghanistan and Pakistan by the Taliban or Pashtuns strongly supported his fear of it happening to him again on either side of the border.

47. It is unclear whether the applicant's assertion is that the Reviewer failed to consider the evidence in question and thus erred or that, having considered it, he erred by not according it appropriate weight. Whichever it is, neither discloses error by the Reviewer - if the assertion is that the Reviewer failed to consider the evidence in question then the submission is not supported by the evidence and if the assertion is that the Reviewer failed to accord the evidence appropriate weight then it is wrong in law.

48. If the Reviewer had failed to consider what significance and weight the evidence deserved then he would have erred. However, it is apparent that that is not what occurred in this case, where the Reviewer considered the evidence in question but concluded that it was of no or little value in deciding whether the applicant had a well-founded fear of persecution in Afghanistan. That is to say, having considered the evidence, he made a decision as to whether it was to be accorded any weight. A finding as to the weight to be accorded to particular evidence is part of the Reviewer's fact-finding function and something which the Court has no power to review: *NAHI v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 10 at [11]; *Minister for Immigration & Citizenship v SZLSP* (2010) 187 FCR 362 at 375 [38].

49. In addresses the applicant also submitted that the Reviewer's conclusion that some of the evidence had no probative value was an error of law because the incidents in question "plainly" had probative value. This submission involves two concepts: one being that there was no evidence to support a particular finding, the second being that such evidence as there was could not have tended logically to show the existence or non-existence of facts relevant to the issue to be determined: *Minister for Immigration & Ethnic Affairs v Pochi* (1980) 31 ALR 666 at 689 per Deane J, Evatt J agreeing. While these are questions of law, "probative value" is a technical legal expression and care should be taken not to apply too strict a construction of it when it is used by an administrative decision-maker. On a fair reading of his reasons, the Reviewer should be understood to have been saying that he found the evidence in question to be of no value to him, not that there was no evidence or that the evidence in question could not have logically affected the process of fact-finding: *cf. Broussard v Minister for Immigration & Ethnic Affairs* (1989) 21 FCR 472 at 479. Plainly the Reviewer acknowledged the evidence and considered it. He just did not think it was of any material significance.

50. For these reasons, the matters raised in grounds 7 and 7A of the amended application do not disclose a basis on which the Court may find error on the part of the Reviewer.

Grounds 8-11

51. At para.103 of his reasons the Reviewer concluded that the applicant's claim to fear persecution as a child, which had never been made by him personally and had only been made by his advisers in their written submissions, was a template submission by those advisers and had not been based on instructions given by the applicant. For these reasons, the Reviewer concluded that the applicant was not fearful of persecution by reason of being a child.

52. The relevant written submission made by the applicant's advisers was dated 18 February 2011 and relevantly stated:

> *In light of the above evidence, we submit that children in Afghanistan are faced with a significant risk of exposure to persecution on account of their membership of that particular*

> *social group. The ongoing conflict situation exposes children in Afghanistan to human security risks including death and injury, to economic hardship, to denial of access to basic services, to lack of livelihood opportunities and to denial of educational opportunities. Each of these factors fall within the scope of the* Migration Act's *definition of 'serious harm', which is used to define persecution. We submit that our client, if returned to Afghanistan, would face a well-founded fear of exposure to these forms of persecution for reason of his membership of the particular social group of Afghan children.*

53. The applicant submitted that the Reviewer's conclusion on this issue was erroneous because it amounted to an application of the rule in *Jones v Dunkel* (1959) 101 CLR 298, which was inappropriate given that the review was an administrative not a forensic procedure. The applicant further submitted that as the issue was only put to him by letter after his interview with the Reviewer, he was denied procedural fairness in that he was not accorded a further hearing in order to explain his position. He argued that this was particularly significant as he was asked to provide a response in writing in respect of an issue caused by the fact that the issue had only ever been raised in writing.

54. The applicant's submissions concerning *Jones v Dunkel* are not apposite. That case is authority for the proposition that a party's unexplained failure to adduce evidence may lead to an inference that the evidence which was not adduced could not have assisted that party's case: at 320-321 per Windeyer J and that any inference supported by evidence favourable to a party might be more confidently drawn when a person presumably able to put the true complexion on the facts relied on as the basis for that inference has not been called as a witness by the opposing party and the evidence provides no sufficient explanation for that witness's absence: per Kitto J at 308, Menzies J at 312. The rule applies when a party is required to explain or contradict something: *Schellenberg v Tunnel Holdings Pty Ltd* (2000) 200 CLR 121 at 142-143 [51] per Gleeson CJ and McHugh J. In this case, the Reviewer's analysis did not amount to even an implicit application of the *Jones v Dunkel* principle but was, instead, simply a comparative analysis of different aspects of the applicant's case. Moreover, it was a conclusion open on the evidence.

55. The applicant further submitted that the Reviewer should have put to him at the interview that he needed personally to recite all the reasons for his fear of persecution or the fact that, although this particular reason had been articulated by his advisers, he had personally failed to mention it. However, he did not demonstrate why an inconsistency in the way his case was advanced gave rise to the Reviewer having the procedural fairness obligation he postulated. A party liable to be directly affected by an administrative decision to which the rules of procedural fairness apply is to be given the opportunity of putting information and submissions to the decision-maker in support of an outcome that supports his or her interests. In order that that right can have substance, the party affected is to be given the opportunity of ascertaining the relevant issues, which will require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from the nature of that decision or the terms of the statute under which it is made. The party affected is also entitled to be informed of the nature and content of adverse material that is credible, relevant and significant and which the decision-maker has obtained from sources other than that party, as well as of any adverse conclusion that the decision-maker has reached which would not obviously be open on the known material, and to address that new material and those unexpected conclusions by further information and submission: *Kioa v West* (1985) 159 CLR 550 at 628-629; *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 590-592; *Re Minister for Immigration & Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57 at 96-97 [140]; *SZBEL v Minister for Immigration & Multicultural & Indigenous Affairs* (2006) 228 CLR 152 at 162 [32]; *Minister for Immigration & Citizenship v SZGUR* (2011) 241 CLR 594 at 599 [9].

56. The fact that the applicant did not personally make a claim which had been pressed on his behalf by his advisers was not an issue in the relevant sense; it was no more than an aspect of the way in which the applicant presented his case from which it was open to the Reviewer to draw conclusions. Further, the conclusion which the Reviewer did draw from this fact was not one which would not obviously have been open on the known material. Finally, the difference between the assertions made by the applicant personally and those made by his advisers was not information which the Reviewer obtained from third

parties and which procedural fairness required be provided to the applicant.

57. The applicant additionally argued that it had been impossible for him to address the matter after his interview with the Reviewer because the post-hearing letter had been phrased in such a way that he was inhibited from submitting anything to the contrary. However, this submission was unsupported by evidence. The applicant did not adduce evidence suggesting either that he could have contradicted the Reviewer's statement or that he would have wished to but failed to because of the way in which the letter was expressed.

58. For these reasons, this aspect of these allegations does not disclose a denial of procedural fairness.

59. The applicant also said that it was not for him to attach Convention labels to the motivations of his persecutors, arguing in his written submissions that:

> *It is not an 'essential element of the definition of a refugee' under the Convention, as implicitly found by the Reviewer by reference to (43), that the claimant be personally aware of all the reasons for the persecution, which he 'subjectively' fears.*

The submission was that because the applicant had not, in terms, articulated a claim to fear persecution by reason of his minority, the Reviewer found that he had not made such a claim. However, the Reviewer did not say this. In para.43 of his reasons what the Reviewer did say was:

> *Despite being invited to identify any other basis upon which he might be persecuted, he did not claim to be fearful of being persecuted by reason of being a child.*

60. The implication in the applicant's allegation is that he did make a claim to fear persecution because he was a minor but simply did not express it in those terms. That is not correct. The transcript of the applicant's interview with the Reviewer discloses that at no point did his evidence even suggest a claim based on his minority.

61. The applicant also submitted that his father feared losing another of his sons as he approached his majority. He impliedly submitted that this

fear ought to have been imputed to the applicant. However, in that part of the Reviewer's reasons relied upon in support of this submission, para.33, it is not suggested that the applicant's father feared that the applicant would be persecuted by reason of his minority. Consequently, this submission had no factual basis, was not arguable and should not have been made.

62. In his written submissions the applicant also argued that his evidence about the attack upon him in Quetta when he was younger, and the fact that he would have needed his father's support, and a bribe, to report the matter to the police, should have been recognised by the Reviewer as a claim that he faced a risk of persecution in Afghanistan if his father was not with him to take that sort of action if it was needed. However, as no claim to that effect was actually articulated, or in my view even made reasonably discernable, for the reasons given above at [31] this argument is not made out.

63. The applicant also referred to the Reviewer's finding that he would have the support of family networks, would not be returning to Jaghori as an internally displaced person and thus would not face a real chance of persecution in Jaghori by reason that he was a child. The applicant submitted that the Reviewer assumed that he could or would seek the support or protection of his cousins whereas he was under no obligation to do so and was entitled to have his best interests considered paramount as required by the *United Nations Convention on the Rights of the Child 1989*. The applicant submitted that when assessing what it was reasonable to expect him to do in the face of his feared persecution, the Reviewer had only taken into account "the supposed proximity of the cousins and their farm and expressly not the unreasonable impracticability of such a 'relocation' ". These latter points have been addressed earlier in these reasons.

64. In connection with his rights as a child, the applicant submitted that he had a reasonable expectation that under the *Convention on the Rights of the Child* his best interests as a child would be a primary consideration taken into account by the Reviewer and that a failure to do so would be a denial of procedural fairness or, alternatively, a failure to take a relevant consideration into account. In this connection, the applicant referred to para.112 of the Reviewer's reasons where it was said:

> *Whilst I have found that the claimant does not meet the definition of Refugee under the Convention, I am mindful that he is 16 years of age and that his age may bring him within the Convention on the Rights of the Child. The Minister may wish to have consideration to his Ministerial Intervention power to take into account obligations raised by the Convention.*

65. The applicant submitted that this statement implied that the Reviewer failed to take into account Australia's obligations to him under the *Convention on the Rights of the Child*. Notwithstanding this submission, the applicant did not identify how Australia's obligations under that instrument should have affected the Reviewer's consideration of whether the criteria for the grant of a protection visa had been met. As was said in *Australian Crime Commission v NTD8* (2009) 177 FCR 263:

> *Adoption of the Convention does not, of itself, create an obligation on the second respondent to consider the interests of the relevant children. The Convention is not part of Australian domestic law. A matter which can be discerned on the proper construction of the Act as a whole to be relevant in the exercise of that discretion, does not achieve that quality because the same matter is stipulated in an international treaty, or is the subject of one or more of Australia's international obligations. Thus, if, for example the right of the child of an applicant to acquire Australian nationality were relevant to the exercise of the Minister's discretion, the regard which the Minister should have to that right would not materially change because a similar right is recognised by a treaty.* (at 277 [67] per Black CJ, Mansfield and Bennet JJ)

66. Indeed, the wording of s.36 of the Act indicates that the *Convention on the Rights of the Child* was not a matter relevant to be taken into account by the Reviewer: *SZQGE v Minister for Immigration & Citizenship* [2011] FCA 1018 at [13].

67. The applicant also alleged that there was no rational foundation for the Reviewer's findings that:

> *a) the absence of nomination by the applicant in interview of his minority as a ground of his feared persecution meant his statements of that ground through his agents before and after it were untrue;*

b) the applicant had no subjective fear of persecution by reason of being a child; or

c) the lack of evidence of particular persecution of children in Ghazni or Jaghori rebutted the evidence and finding of widespread, general persecution of children in Afghanistan.

In this connection the applicant referred to *SZOOR v Minister for Immigration and Citizenship* (2012) 202 FCR 1 where the McKerracher J said, Reeves J agreeing:

> *The fact finding itself can only be impugned where the factual determination is "illogical, irrational or lacking a basis in findings or inferences of fact supported on logical grounds". This is the test developed from* S20 *at [52] per McHugh and Gummow JJ and with whom Callinan J agreed.* (at 22 [83])

68. The applicant's argument about the rationality of the findings referred to above at [64] was concerned with what were intermediate findings of fact, whereas illogicality, in the sense discussed in *Minister for Immigration & Citizenship v SZMDS* (2010) 240 CLR 611 and *SZOOR* is concerned with decisions in relation to the state of satisfaction required under s.65 of the Act, i.e. the jurisdictional fact which the Refugee Review Tribunal ("RRT") must find before it can make a determination under s.65, for which there is no evidence or at which no rational or logical decision-maker could arrive: see *SZOOR* at 21 [78] and 22 [84]. In the Reviewer's review the equivalent of the RRT's jurisdictional fact was the conclusion reached by the Reviewer which was a precondition to his recommendation to the Minister - that the applicant did not satisfy the criteria for the grant of a protection visa. The applicant's submission does not assert illogicality in connection with that finding and, for that reason, does not disclose error on the Reviewer's part.

69. However, should I be wrong in that conclusion, I will deal in turn with each of the matters raised by the applicant:

a) this submission misrepresents what the Reviewer found. Relevantly, he found that the written submission that the applicant feared persecution by reason of membership of the particular social group of children was a template submission made without instructions. The proposition that the Reviewer concluded that

that claim was "untrue" implies that the Reviewer inferred that the submission was deceitful or contrived. The Reviewer's reasons provide no basis to conclude that he drew any such inference. But in any event, the relevant conclusion had no significance for the review because the Reviewer went on to consider on its merits the issue of the applicant's status as a minor thereby providing a separate and independent basis for the relevant finding;

b) the relevant finding was that such fear as the applicant had was not well-founded. In those circumstances, whether the fear was subjectively held was not relevant; and

c) the Reviewer did not find that the lack of evidence of particular persecution of children in Ghazni or Jaghori rebutted evidence of widespread general persecution of children in Afghanistan. The finding which the Reviewer relevantly made was that because of the availability of family support networks and the fact that the applicant was shortly to become an adult meant that the applicant, in his particular circumstances, would not face a real chance of persecution in Jaghori by reason that he was a child.

Grounds 12-13

70. In para.108 of his reasons, the Reviewer said:

> *I have considered if, notwithstanding my view that the claimant does not face a real chance of persecution by reason of any of the discreet* [sic] *Convention grounds, when viewed cumulatively, he does face a real chance of persecution. In other words, I am required to assess whether the claimant faces a real chance of persecution in Jaghori by reason of the combination of his: race; religion; a member of his father's and brothers' family; and a child. I find that this particular claimant would not face a real chance of persecution on the basis of one or any combination, or indeed all his Convention characteristics.*

71. The applicant submitted that, apart from the Reviewer's discussion of the risk of persecution for the dual reasons of him being Hazara Shia, the reasoning for the above statement was undisclosed. The applicant submitted that para.108 failed to engage with the combination of

Convention grounds which he had raised and failed to mention how any one matter affected any other.

72. The factual basis for the Reviewer's conclusion was made sufficiently clear in the lengthy discussion of the claims and evidence which preceded it. The relevant reasoning was summarised in the final sentence of para.108 of his reasons. Given the Reviewer's earlier findings on the applicant's claims and evidence, he did not need to say more and, specifically, was not required to undertake the exegesis which the applicant submits was appropriate. While it can be accepted that in certain circumstances the absence of detailed reasons indicates that a matter has been overlooked, the manner in which the Reviewer expressed himself in the reasons presently under review makes it plain that he did not overlook any relevant matter.

Conclusion

73. The applicant has not demonstrated that the Reviewer's review was procedurally unfair or not conducted by reference to the correct legal principles correctly applied.

74. Consequently, the application will be dismissed.

I certify that the preceding seventy-four (74) paragraphs are a true copy of the reasons for judgment of Cameron FM

Date: 18 October 2012