

1319759 (Refugee) [2016] AATA 3858 (10 May 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1319759
COUNTRY OF REFERENCE: Afghanistan
MEMBER: Rea Hearn Mackinnon
DATE: 10 May 2016
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 10 May 2016 at 12:07pm

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] December 2012 and the delegate refused to grant the visa [in] December 2013.
3. The applicant appeared before the Tribunal on 10 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.
4. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. 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.
6. 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).
7. 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.
8. 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').
9. 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.

10. The issue in this case is whether the applicant will be harmed by Taliban or other extremist groups because of his race or religion; or by other unidentified other people in Afghanistan who are the enemies of his family. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

Nationality

11. The applicant has not provided any identity documents. He has consistently claimed to be a national of Afghanistan. He has provided evidence regarding his family origins in Parwan province; his life in Kabul; his previous unsuccessful asylum claim in [Country 1] and his deportation back to Afghanistan. He speaks fluent Hazaragi. In view of this evidence and his language, the Tribunal accepts that he is a national of Afghanistan.

Background

12. The applicant's background details, as accepted by the Tribunal, are set out below:
 - He is an ethnic Hazara and a Shia Muslim;
 - His parents are from Parwan. His paternal grandfather left land in Parwan to the applicant's father and [uncles]. He may have an ownership interest in this land but he does not know. Relatives are currently looking after the land.
 - He was born in Kabul. He does not know exactly how old he is, perhaps around [age]. (He told a Departmental officer in 2013 that he is [age] years old.) He has [siblings].
 - His father died when he was [at a young age]. He and one [sibling] then lived with his [grandfather] and [Relative A] in [a town] in Kabul. His mother and other [sibling] lived with [another relative] in Parwan;
 - His grandfather was abducted in 2001 and then released after payment of a ransom. The family then went to [Country 2] for safety but returned after three months due to financial hardship in [Country 2];
 - His mother remarried in [Country 2]. She and her husband now live in Herat. He does not know when she went to Herat. He has had very limited contact with her since she remarried. He saw her in 2011 in Kabul. He has spoken to her on the telephone since he has been in Australia. He has never met her husband and does not know if she has more children;
 - He attended [a named school] in Kabul from the age of [age range]. This was a [specific type of] school. His grandfather did not have to pay any fees for him to attend;
 - His [Relative A] has [family composition]. They did not attend [the named] school when the applicant was in Afghanistan as they were too young or not yet born;
 - When he left school, he worked with his grandfather in his grandfather's shop which sold [products]. The shop was located in [a specified location]. His grandfather also

owned another shop in [another location] which was rented out. He had a good relationship with his grandfather;

- His grandfather died when he was [age range] years old. He continued to live with his [Relative A] and worked for him in his [shop] at [the town]. His grandfather's [shop] was either closed or leased or someone else was employed to run it. He does not know if [Relative A] still owns this shop;
- He left Afghanistan at the end of 2009. He had wanted to leave since he was young; he had lost both his parents and did not have a good memory of Afghanistan. His [Relative A] made the arrangements. He does not know if he had a good relationship with his [Relative A] as he was young at the time. His [Relative A] may have treated him well. His [Relative A] didn't want him to stay in Afghanistan;
- He travelled to [two other countries] where he was detained for several months because he entered illegally. He then went to [Country 1] and applied for asylum but was unsuccessful and was deported back to Afghanistan in November 2011;
- His [Relative A] then arranged for him to leave again. He departed Afghanistan in January 2012 on his own passport and arrived in Australia in June 2012.

Identity

13. The applicant claimed to be [his Alias] when he arrived in Australia and applied for protection. He subsequently informed the Department that his name is actually [applicant name], son of [name]. In [Country 1] he used the name [applicant name] ([his second name] being his grandfather's name). He told the Tribunal that he chose the name [his Alias] because it is a friend's name and [another] name and because he knew he would not be granted protection. He did not explain why he knew he would not be granted protection. It may be because he was refused protection in [Country 1].
14. The applicant has not provided any identity documents. A Departmental officer asked him to provide a copy of his taskera however he responded that his [Relative A] had his taskera and would become angry if he asked for the taskera. He did not provide a reason as to why his [Relative A] would become angry.
15. The applicant told the Tribunal that he did not take his taskera to [Country 1] and the [Country 1 officials] did not ask to see it. He did not bring his taskera to Australia as he had a passport however the smuggler took his passport in [a transit country]. When asked why he could not ask his [Relative A] to send a copy of his taskera, he stated that his [Relative A] told him not to provide his real name and address when he got to Australia and that his [Relative A] would have been angry with him if he had asked for his taskera. He also stated that his [Relative A] wanted him to include his [Relative A's] name and his [children's] names as family members in his protection application so he can sponsor them later. The Tribunal accepts that this may explain why his [Relative A] would have become angry with him if he asked for his taskera.
16. The applicant stated that he has documents relating to his asylum claim in [Country 1] in Afghanistan but not with him. He queried why providing identity documents is so important and stated that it should be clear he is a Hazara from Afghanistan and that [Country 1] deported him back to Afghanistan. The Tribunal is not aware if any contact has been made with [Country 1] authorities to confirm if the applicant applied for protection in [Country 1] in the name of [applicant name]. The applicant has been consistent in his evidence to the Department and the Tribunal about his real name and identity. On balance, the Tribunal accepts that the applicant's real name is [applicant's name], son of [name].

Mental health

17. Aspects of the applicant's presentation at the hearing including his demeanour and inability to present his case caused the Tribunal to be concerned about his mental health. When asked if he has seen any doctors or counsellors in Australia, the applicant stated that he has problems but does not want to talk to anyone. He stated that he suffers from headaches and has a lot of problems – his life is uncertain, he is in limbo, he has been held as a captive and he has lost his mother and father. He stated that he has not seen a doctor or counsellor in Australia however he was referred to a doctor and placed on medication when he was in [Country 1].
18. The Tribunal asked the applicant's representative to arrange a medical report if the applicant consented and gave 28 days for a report and further submissions but neither was provided.

Claims

19. The applicant claims to fear harm from insurgents and from unidentified enemies who have killed his [Relative A].

Unidentified enemies

20. The applicant claims that, two months before the hearing, a [relative] rang him from [another country] and told him that his [Relative A] had been killed at home by gunmen who named the applicant, knew he was in Australia and threatened to kill him too. The applicant stated that he suffered an unbearable headache when he received this news and could not do anything for two weeks.
21. When asked why his [Relative A] was killed, the applicant said that his [relative] told him that his family had enemies before and the enemies are now in a position to kill them. He does not know the reason for the enmity and did not ask the [relative] who called him as this [relative] is not [directly related to] his [Relative A]. The applicant does not know who killed his [Relative A] or why. When asked why these enemies threatened to kill him given he has not lived in Afghanistan since 2009, the applicant stated that they might be enemies of his father and the animosity may have lingered.
22. The applicant claims not to know where his [Relative A's] wife and children are now living or what has become of his [Relative A's] shop. He fears he will be killed by these enemies and stated that this enmity is the reason why his [Relative A] did not want him to live in Afghanistan.
23. The Tribunal accepts that the applicant's family may have had enemies and that the applicant's [Relative A] may have been killed in Kabul in 2015 but given the lack of detail provided by the applicant, the Tribunal is not able to make any findings in relation to why his [Relative A] was killed or by whom or whether the applicant has been specifically threatened or whether there is any enmity which might pose a specific risk to the applicant on return to Afghanistan.

Insurgents

24. The applicant also claims he will be harmed by insurgents in Kabul. He told the Tribunal that there were explosions in Kabul during the three months he was there in 2012. He stated that ordinary people are being killed in Kabul and that a friend was killed whilst travelling to Parwan. He stated that criminals are also killing many people in Kabul.

Security situation in Afghanistan

25. The security situation in Afghanistan is extremely poor with Afghanistan currently ranked second in the World Security Risk Index after Syria.¹ In its recent report, the European Asylum Support Office (EASO) noted that insurgents have increasingly taken control of territory and attacked administrative centres and security installations and that the overall trend is one of decreasing government control outside the larger towns and cities, escalating violence and more insurgent attacks. EASO reported that the insurgents operate in fronts of several hundred fighters; and that the ANSF has repelled most attacks and regained control over district administrative centres and security installations but has not been able to curtail the insurgents' presence and freedom of movement, especially in remote districts although the Afghan Local Police (ALP) and local uprisings have pushed them back from other areas, for example in Ghazni province.²
26. The Department of Foreign Affairs and Trade (DFAT) noted 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".³
27. The UNHCR noted in its most recent guidelines that that "the security situation deteriorated markedly in 2015 as the Taliban and other AGEs [anti-government elements] conducted aggressive campaigns and increasingly advanced towards major population centres. At the end of 2015, the Taliban reportedly held more territory than in any year since 2001... A proliferation of AGEs with various goals and agendas, including notably the emerging threat from ISIS-affiliated groups [and the re-emergence of Al-Qaeda], combined with intra-insurgent violence has further complicated the security situation".⁴ The UNHCR noted that the ANSF has been generally adept at holding the major urban centres (with the notable exception of Kunduz which the Taliban took briefly in September 2015) but that the ANSF has suffered substantial casualties; has been forced into a reactive position as the Taliban has launched multi-pronged offensives and strengthened their hold in rural areas; and that the nature of the conflict has changed since the withdrawal of the international troops in 2014 with increased attacks by AGEs, including complex and suicide attacks, targeted attacks on civilian leaders and a general campaign of intimidation aimed at controlling local communities; and that AGEs continue to carry out high profile attacks in Kabul and other cities.
28. In 2014, the number of civilian casualties documented by the United Nations Assistance Mission of Afghanistan (UNAMA) increased to 11,002, the highest recorded since the UNAMA began recording casualties in 2009.⁵ The increase was said to result mainly from increased ground engagements involving high explosive weapons systems such as mortars, rockets and grenades in civilian-populated areas; increased use of improvised explosives and an increase in suicide and complex attacks.⁶ The Afghan Analysts Network reported that

¹ Global Intake, World Security Risk (www.globalintake.com), 12 November 2014

² European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

³ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

⁴ UNHCR, 2016, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 19 April

⁵ UNAMA, *Afghanistan Annual Report 2015: Protection of Civilians in Armed Conflict*, February 2016

⁶ UNAMA, *Afghanistan Annual Report 2014: Protection of Civilians in Armed Conflict*, 18 February 2015

targeted attacks on civilians including aid workers, tribal elders, government officials, mullahs and places of worship were the biggest cause of civilian deaths (28%).⁷

29. 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 influence in some parts of Afghanistan and a number of disaffected Taliban insurgents are reported to have identified with IS. According to one source, IS flags have been hoisted in Ghazni and Nimroz provinces; large numbers of Taliban fighters have switched their allegiance to IS; and there are reported strongholds of support for IS across a number of provinces.¹⁰ 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.¹¹
30. 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.¹² 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.¹³ Attacks in Kabul have increased. Most recently, in April 2016, a bomb attack targeting the National Security Directorate killed at least 40 people and injured more than 300 and a second bomb attack, also targeting the security forces killed dozens of people and injured hundreds more.¹⁴
31. The UNHCR also noted that the increased violence needs to be considered in the context of a deteriorating economic situation, endemic corruption, limited government authority, continuing weaknesses in the rule of law, an underperforming judicial system, high crime levels, widespread human rights violations and a general climate of impunity.

Current situation for Hazaras in Afghanistan

32. DFAT has noted 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

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 Roul, A, 2015, 'Wilayat Kurusan': Islamic State Consolidates Position in AfPak Region, *The Jamestown Terrorism Monitor*, 3 April

¹¹ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

¹² European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

¹³ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

¹⁴ Smith J and Shalizi H, 'Dozens killed in Taliban attack on Afghan capital Kabul', *The Age*, 20 April 2016

killings of Taliban fighters. Hazaras experienced ongoing systematic official and societal discrimination and violence under the Taliban regime.¹⁵

33. DFAT has reported that, since the removal of the Taliban regime Hazaras have made “significant gains albeit from a low base” but still suffer some societal discrimination, mostly in relation to nepotism involving tribal and ethnic connections: and that the historical enmity between Hazaras and Pashtuns contributes to a perception amongst Hazaras of ongoing discrimination and targeted violence.¹⁶
34. Assessing the level of risk to Hazaras in Afghanistan is complex. DFAT has reported that all Afghans are vulnerable to violent attacks by insurgent groups; that it has no evidence to suggest that Hazaras are systematically targeted on the basis of their ethnicity alone; and that, with the exception of kidnappings, Hazaras are not currently at any greater risk of violence than any other ethnic groups in Afghanistan.¹⁷ Reported recent kidnappings of Hazaras include:
 - 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 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
 - 10 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
 - Six Hazara passengers on their way from Herat to Farah on 16 March 2015. Four of those taken were reportedly soldiers in the Afghan National Army;²¹ and
 - Four Hazaras from Malistan in Ajrestan district of Ghazni Province kidnapped and killed on 14 April 2014. These people were reportedly taken as leverage to negotiate the release of a Taliban commander and his men;²²
 - Five Hazara coal merchants abducted in Balkh Province on 30 March 2015 for ransom;

¹⁵ DFAT, 2014, *DFAT Thematic Report: Hazaras in Afghanistan and Pakistan*, 26 March

¹⁶ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

¹⁷ Ibid

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 kidnapers 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

- Thirteen Hazaras taken in Sar-e Pul on 1 April 2015 for an unknown reason and released two weeks later;
 - Twenty Hazaras 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
35. DFAT has noted that, while no ethnic group is immune from kidnappings, Hazaras travelling by road between Kabul and the Hazarajat face a greater risk than other ethnic groups whether because of ethnic targeting or because of the high numbers of Hazaras travelling on this route. DFAT has reported that, if a bus with a mix of ethnic groups on board is stopped in this area, ethnic Hazaras (and other non-Pashtuns) are more likely to be selected for kidnapping or violence than Pashtun passengers. DFAT also noted that kidnappings of Hazaras are relatively rare country-wide and that all but one of the kidnappings of Hazaras occurred in areas of mixed Hazara and non-Hazara communities.²⁴
36. In a letter provided to the Tribunal in 2015, 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”.²⁵
37. Most recently, the UNHCR advised that Hazaras are subject to continuing societal discrimination and are targeted for extortion through illegal taxation, forced recruitment, forced labour and physical abuse and that, whilst they have made significant economic and political progress since 2001, more recently there has been a significant increase in harassment, intimidation, kidnappings and killings at the hands of the Taliban and other AGEs.²⁶ More generally, the UNHCR has noted that ethnic divisions remain strong in Afghanistan and that ethnicity and religion are often inextricably linked, particularly in the case of Hazaras who are Shia; that it is therefore not always possible to distinguish between ethnicity or religion as the motivating factor behind specific incidents or tensions; and that political allegiances and imputed political opinions are often also linked to ethnicity.²⁷
38. DFAT has reported that, although ethnicity and religion may be a factor, insurgents generally target persons associated with the government or the international community or who appear wealthier than other Afghans;²⁸ and that, as Hazaras have taken full advantage of the opportunities available to them since the removal of the Taliban regime and due to the improvement in their circumstances, Hazaras are widely perceived to be affiliated with both the government and the international community.²⁹ 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.³⁰ Another Hazara dual Afghan-Australian citizen was killed by Taliban in Ghazni in September 2014 reportedly because of his association with Australia.³¹
39. The UNHCR has also noted that AGEs target persons who are perceived to have adopted western values or appearance due to their imputed support of the government and the

²³ Ibid

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

²⁵ Maley, W, 2015, ‘On the Return of Hazaras to Afghanistan’, 16 February

²⁶ UNHCR, 2016, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 19 April

²⁷ Ibid

²⁸ Ibid

²⁹ DFAT, 2014, *DFAT Thematic Report: Hazaras in Afghanistan and Pakistan*, 26 March

³⁰ 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

³¹ ‘Australian man Sayed Habib ‘tortured and killed by Taliban’, *The Australian*, 29 September 2014

international community and has referred to the reports of Hazaras returned from Australia who were tortured or killed on the grounds that they had become foreigners or spies.³²

Future harm

40. The country information above indicates a worsening security situation with the Taliban in control of large parts of Afghanistan, other AGEs including IS and Al Qaeda active and numbers of disaffected Taliban fighters moving their allegiance to IS. The ANSF have been weakened, there have been an increased number of attacks in Kabul with a high level of civilian casualties and it is not possible to say with certainty at this time that the ANSF will continue to hold Kabul.
41. The Taliban has a history of killing Hazaras, because of their ethnicity or religion or both. Al Qaeda and IS are strongly anti-Shia and have engaged in the killing of Shias in other countries. There is a level of intra-insurgent violence amongst the AGEs and it is not clear at this time which force will emerge as dominant. Whilst Hazaras have made some gains since 2001 the reports above indicate that they are being increasingly targeted for harm. Whilst DFAT takes the view that Hazaras are not at greater risk of ethnic violence than other groups, it also notes that Hazaras are being targeted and kidnapped on the road between Kabul and the Hazarajat, that is, Hazaras are vulnerable to harm outside the Hazara areas; and that Hazaras are more likely to be imputed with a political opinion of support for the government and the international community which adds to their level of risk.
42. The applicant is Hazara and Shia. He has lived in [another country] and Australia since 2009 which is likely to add to a perception that he is pro the international community. His [Relative A] has been targeted for harm for an unknown reason which may impact on the applicant if he returns to Afghanistan. Having regard to all of the country information above, the Tribunal is satisfied that the applicant faces a more than remote and therefore a real chance of serious harm now or in the reasonably foreseeable future in Afghanistan because of his race, his religion and/or his imputed political opinion. The Tribunal is satisfied that this harm is systematic and discriminatory in nature.
43. Given that the Afghan government and security forces are struggling to exercise effective control over large parts of Afghanistan, the ongoing attacks in Kabul and the assessment of the UNHCR above of corruption, limited government authority, widespread human rights violations and a general climate of impunity, the Tribunal is satisfied that state protection will not be effective or available to the applicant.
44. The Tribunal is satisfied that internal relocation is not safely or reasonably available to the applicant.

CONCLUSION

45. 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

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

³² Ibid

Signed by AustLII

Rea Hearn Mackinnon
Member

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