

1213085 [2012] RRTA 1065 (11 December 2012)

DECISION RECORD

RRT CASE NUMBER:	1213085
DIAC REFERENCE(S):	CLF2012/146700
COUNTRY OF REFERENCE:	Afghanistan
TRIBUNAL MEMBER:	Rea Hearn-Mackinnon
DATE:	11 December 2012
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 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 (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Afghanistan, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2012.
3. The delegate refused to grant the visa [in] August 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

15. 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').
16. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
17. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

18. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Statutory declaration [in] July 2012

19. The applicant states that he was born on [date deleted: s.431(2)] in Kabul, [age deleted: s.431(2)], and is Hazara and Shia.
20. He states that he left Afghanistan because Hazaras and Shias are being persecuted by the Taliban. They are constantly verbally abused by Pashtuns who say they are atheists and should be killed. The Taliban are in control of the road between Behsud in Maidan Wardak province, [and Kabul]. It is extremely dangerous to travel on that road. Behsud is predominantly Hazara and the Taliban are trying to get rid of the Hazaras so they can live there.
21. His father was the caretaker of a [school] for boys and girls in a suburb of [Kabul]. A large number of Taliban live in [this suburb]. His father looked after the school during the day and night. The applicant relieved his father twice a week. The Taliban had the school under surveillance because they don't like education for girls.
22. One night the Taliban attacked the school. They tied up his father and killed him. His father was killed because he is Hazara and Shia. His father had prominent Hazara features and also had his ID card which identified his race and religion. They broke all the doors and smashed

23. the computers. His father also had the applicant's ID card when he was killed. The Taliban took both cards.
24. The police said they would investigate but they took no action. The police did not pursue the investigation because his father is Hazara and Shia.
25. After his father was killed, the applicant lived in fear of being identified by the Taliban because they had his ID card. He would try not to be seen on the way to work and he wore a hat to prevent people from recognising him.
26. Kabul is a dangerous place to live and the fighting between the Taliban and foreign forces makes it difficult to earn a living. He owned a shop near [a] Consulate which was [damaged by a bomb blast]. His family have told him there have been many suicide bombers in Kabul. His life is also in danger every time he travels to Behsud to visit his family.
27. He fears he will be killed by the Taliban if he returns to Afghanistan because he is Hazara and Shia. His father was killed because of his race and ethnicity. The Taliban have his ID card so he will be easily recognised. He has also been verbally assaulted about his ethnicity and religion by Pashtuns and Taliban. The Pashtuns are in control of Afghanistan and do not care about Hazaras. The government is comprised of Pashtuns and they support the Taliban. There is one Hazara member of the government with no influence or authority. He cannot relocate to another part of Afghanistan because the Taliban are active across Afghanistan and Hazaras are being targeted in broad daylight, such as in the Ashura day killings.
28. The applicant provided a translated copy of a taskera issued by the Department of Statistics and Registration in Behsud. The card has no date of issue.
29. The applicant indicated that he lived [details of movement and education deleted: s.431(2)]. He worked for [various employers] between 2000 and 2005. He owned an [internet café] from 2008 to 2010 and he co-owned a [another business] in [Kabul], from 2010 to January 2012. His mother [and six siblings] are living in Kabul.
30. The applicant provided an undated general submission on the situation in Afghanistan with his application

Statutory declaration lodged with Tribunal

31. In an undated and unsigned statutory declaration lodged with the Tribunal, the applicant stated that, between his father's murder and leaving Afghanistan, he lived in fear and believed the Taliban were looking for him. He suffered mentally and could not stop thinking about the Taliban. He was convinced he would be recognised. He kept a low profile, wore a hat and took different routes to work.
32. The Taliban had confronted him verbally on several occasions. He can't remember the exact words but they said offensive things about Hazaras, for example that they are not Muslims. These incidents were very frightening for him. The violence in Kabul was becoming worse. If he had been in his shop when it was destroyed he would have been killed. This incident, along with the death of his father, caused him to leave Afghanistan.
33. Most of his relatives live in Behsud. He travelled to Behsud every two months or so and never knew if he would reach his destination. He cannot relocate to Behsud. There are only farming jobs. The Taliban are on the roads and there are many problems with the Kuchis.

34. He will not feel secure in Kabul. There was a recent explosion at the airport which killed many people. Two Hazara boys were killed in an incident [in] September. .
35. Further submissions [dated] September 2012 were also provided.

Hearing

36. The applicant appeared before the Tribunal by video link from Perth [in] September to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hazaragi and English languages. The applicant was represented in relation to the review by his registered migration agent who attended by telephone from the NSW registry of the Tribunal.
37. The applicant confirmed that he was born in Kabul. He lived in Dasht-e Barchi for three years before leaving Afghanistan. He is not married. His family owned their home in Dasht-e Barchi. They also owned their previous [home]. Some of his [other] relatives live in Dasht-e Barchi but they are not close family. His [other] family live in [Behsud].
38. In Kabul, the applicant had owned a [business], for two years [managing properties]. He had a shop in [in a non- Hazara area]. It was a successful business but, in 2011, a suicide bomb destroyed the shop. He repaired the shop and continued to operate the business for 2 or 3 months but then decided to come to Australia as the conditions in Kabul were getting worse. I asked the applicant if he had travelled around Kabul to show customers to properties. He had a partner in the business who mostly showed clients to the properties whilst the applicant stayed in the shop. His partner closed the business after the applicant left Afghanistan.
39. Before the [property] business, the applicant had operated an internet café in [a mixed ethnic area]. He went to the café every day. He had an employee. He didn't serve food. The café was not making much money because a lot of other internet shops had opened so he opened the [property] business.
40. The Tribunal asked the applicant about his brothers' occupations. [Occupation details deleted: s.431(2)].
41. His father had a shop in Khote Sange a long time ago then worked as a wood cutter. His father became a guard at a [school] approximately two or three years ago. The applicant cannot remember the name of the school. [School details deleted: s.431(2)].
42. The school [had seven or eight classes]. He does not know if it was a high school or primary school as this was never mentioned. His father took care of the school day and night. He was the only guard. He had a small room at the school with a bed. He made tea for himself. The applicant relieved his father one or two nights a week to enable his father to go home. The applicant spent the night at the school then went to his [property] business in the morning. The school was aware of this and made a card for him to enter the school. He had no contact with the school teachers or principal.
43. The Tribunal expressed surprise that the applicant could not remember the name of the school if he had worked there one or two nights a week. The applicant said it was a difficult name and he has forgotten.
44. The applicant stated that the Taliban dislikes schools with girls and boys together and had decided to attack the school because it educated girls and boys together. The Tribunal asked

the applicant how old the children of the school were. He said they were aged [age range deleted: s.431(2)]. The Tribunal asked who owned the school. The applicant said he did not know the owner but the principal was there and there were [some] computers. The school had [a number of] rooms. He had a card to enter the school. Sometimes he left the card in his father's room. The school was attacked at the end of 2010, in the last or second last month.

45. The Tribunal asked the applicant what happened when the school was attacked. The applicant said he wasn't there. The Taliban came [and his] father opened the door and they asked him to open the school as they wanted to investigate. They saw the computers. They saw his father's card hanging on him and they beat him and killed him. The Tribunal asked the applicant how he knew this. The applicant said that he and his father had talked some nights before about the Taliban going to schools. His father was killed. The Taliban took his father's card and the applicant's card. The cards were issued by the school. The details on the cards were taken from their taskeras and had Hazara written on them. His father's taskera was also in his pocket.
46. The Tribunal asked the applicant how he learnt that the school had been attacked and his father killed. The applicant said that people from the school area called his mother and told her that a guard at the school had been killed by the Taliban. Some villagers and some parents of students went to the school. His father was lying on the ground. He was killed by a knife and his hands were tied.
47. The Tribunal asked the applicant whether the school contacted him or his mother. The applicant said that some numbers were on the wall. His father had contact numbers in a book and in his pocket. A father of some students called the applicant's mother. The Tribunal asked the applicant if the school contacted the police. The applicant stated that the school might have called the police when people went there. His mother went to the school then he went. He and his family were yelling and crying and beating themselves. The police came and said they would find the insurgents. The applicant and his family called a car and took his father's body home and buried him.
48. The Tribunal noted that taskeras do not usually include a person's ethnicity. The applicant stated that the Taliban could have recognised his father as a Hazara from his face. The Tribunal noted that the delegate had concluded that the taskera copy provided by the applicant was not a copy of a genuine document and that it looked different to other taskeras the Tribunal has seen. The applicant said there might be some fault in the age and that people pay money to make the age. The Tribunal asked the applicant why his taskera was issued in Behsud when he was born in Kabul. The applicant stated that, in Afghanistan, if you pay money, they will make a taskera. They don't care if you were born in Behsud. The Tribunal asked the applicant whether he paid money for his taskera. The applicant said he didn't know as his father obtained the taskera.
49. The applicant confirmed that he fears that the Taliban have his card and will associate him with the school and harm him if he returns to Afghanistan. The applicant said he was one hundred percent certain that he will be harmed by the Taliban and that they have taken his ID card. He stated that the conditions in Kabul are getting worse and that the Taliban will recognise him and his family when they travel to Behsud. His family travels to Behsud once or twice a week. The Tribunal asked why they travelled to Behsud so often. The applicant said his grandmother is there and when the family go there, everyone is happy and where they were born. The trip takes about seven or eight hours.

50. The Tribunal put to the applicant that it is unlikely the Taliban are looking for him because he worked at the school or because they have his identity card. The Taliban targeted the school, not the applicant's father and it was unfortunate his father was there when the school was attacked. The applicant said it is clear that the Taliban kill Hazaras. It is correct the Taliban attacked the school but his father was Hazara and Shia. [He] is worried that the Taliban are now looking for him. The Taliban will arrest him and kill him because he goes to Paghman. It is also clear there is no peace in Afghanistan. There is discrimination against Hazaras and Pashtuns call them infidels.

Country information

51. Hazaras are a distinct ethnic group, making up approximately nine per cent of Afghanistan's population (as compared to the two largest ethnic groups, Pashtuns and Tajiks who make up 42 per cent and 27 per cent, respectively).¹ Most Hazaras follow the Shi'a sect (twelver Imami). A significant number are also followers of the Ismaili sect while a small number are Sunni Muslims.² Hazara speak their own Persian dialect, Hazaragi,³ and are distinguished from other ethnic groups in Afghanistan by their Asiatic physical features.⁴ The majority of Hazaras live in the central mountainous region of the country, known as the Hazarajat⁵ which covers all of Bamiyan province and extends into parts of Ghor, Uruzgan, Wardak, and Ghazni. Decades of war have driven many Hazaras away from their traditional homeland to live on the fringes of the state, in areas that border Iran and Pakistan.⁶ A significant proportion of Hazaras are also reported to be living in Kabul.⁷
52. Hazaras have traditionally been distinct from the rest of Afghan society for a range of political, ethnic and religious factors. This separation has led to social and economic stigmatisation and to Hazara claims of preferential treatment for Pashtuns.⁸ It is estimated that 60 percent of the Hazara population was killed or displaced in the late nineteenth century and mistrust between Hazaras and Pashtuns has been strong ever since. Higher education, government appointments and military service have all traditionally been closed to the Hazaras. During the Muhajedin era (1979-1989) the Hazaras experienced attacks from both sides of the Soviet-Muhajedin conflict. When the Taliban regime took control of Afghanistan in 1996, it restricted the movements of Hazaras to the Hazarajat and committed atrocities against the Hazara population.⁹ The poor social and economic standing of Hazaras in Afghan society has been characterised by low rates of inter-ethnic marriage and limited employment opportunities.¹⁰
53. There is conflicting information about the nature and risk to Hazaras in Afghanistan.

¹ Central Intelligence Agency 2012, *The World Factbook: South Asia: Afghanistan*, 29 August,

² Minority Rights Group International n.d., *World Directory of Minorities and Indigenous Peoples – Hazaras*

³ Glatzer, B 1998, 'Is Afghanistan on the Brink of Ethnic and Tribal Disintegration?', in Maley, W (eds), *Fundamentalism Reborn? Afghanistan and the Taliban*, Hurst and Company, London, ECOI website

⁴ Zabriskie, P 2008, *The Outsiders*, *National Geographic*, February

⁵ Minority Rights Group International n.d., *World Directory of Minorities and Indigenous Peoples – Hazaras*

⁶ Minority Rights Group International n.d., *World Directory of Minorities and Indigenous Peoples – Hazaras*

⁷ Katzman, K 2012, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 21 September, p.90

⁸ Saikal, Amin 2012, 'Afghanistan: The Status of the Shi'ite Hazara Minority', *Journal of Muslim Minority Affairs*, March, Vol.32, No.1, pp.81; US Department of State 2011, *International Religious Freedom Report 2010 – Afghanistan*, 13 September, Section 1

⁹ DIAC Country Information Service 2010, *Situation of the Hazara Minority*, (sourced from DFAT advice of 21 February 2010), 17 September

¹⁰ Minority Rights Group International n.d., *World Directory of Minorities and Indigenous Peoples – Hazaras*

54. The UNHCR, in its eligibility guidelines for assessing the protection needs of Afghan asylum-seekers, identifies members of minority ethnic groups as being a potential risk profile and advises that ethnically motivated tension has declined since the fall of the Taliban regime in 2001 but certain concerns remain, including ethnic discrimination and clashes, particularly in relation to land use/ownership rights. The UNHCR advises that:

Marginalized during the Taliban rule, the Hazara community continues to face some degree of discrimination, despite significant efforts by the Government to address historical ethnic tensions.Notwithstanding the comparatively stable security situations in provinces and districts where the Hazara constitute a majority or a substantial minority, such as Jaghatu, Jaghori and Malistan districts in Ghazni province, the security situation in the remainder of the province, including on access routes to and from these districts, has been worsening. Although not able to launch widespread operations in Jaghori, there are some reports of Taliban attacks in the district. Jaghori district is increasingly isolated given that large stretches of the strategic Kabul-Kandahar road, are reportedly under Taliban control. There are regular reports of ambushes, robberies, kidnappings and killings by the Taliban and criminal groups along these roads. The Taliban have also intimidated, threatened and killed individuals, including Hazaras, suspected of working for, or being supportive of, the Government and the international military forces. ...¹¹

55. DFAT reported in February 2011 that:

Afghanistan's Hazaras do not live in fear of violence or systematic persecution as they did under the Taliban rule. And the current period is perhaps the best in several hundred years for Hazaras in terms of personal and community freedoms, opportunities and human security. However, they claim to face social, economic and social barriers to upward mobility and community development. The human rights gains Hazaras have experienced in recent years are very real but they wonder if it will continue.....

The current situation where Hazaras enjoy freedom from fear and persecution might not last indefinitely. Currently, however, Hazaras are not being persecuted on any consistent basis.

The AIHRC [Afghanistan Independent Human Rights Commission] said Hazaras outside of Hazarajat were more vulnerable to violent attacks and feared travelling beyond their immediate communities, in some cases even to the district centres. ...¹²(

56. DFAT then reported in September 2011 that:

Whether Hazaras are targeted, and motivations for it, will vary according to context. Animosity between ethnic groups are complex and may have their roots in resource disputes, historical feuds, political alignments and/or religious difference Hazaras may be at greater risk of victimisation from anti-government elements (AGE) in some areas of Afghanistan where they constitute a minority, but this depends on the context within particular provinces or even districts. At a national level, we do not assess that Hazaras are being targeted disproportionately or systematically as an ethnic group.¹³

57. Professor William Maley, who has published extensively on Afghanistan over the past 20 years, cautions, that the general situation in Afghanistan remains profoundly threatening and that:

¹¹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December 2010

¹² DFAT, Afghanistan: the situation of the Hazara minority, 21 February 2011

¹³ Country Information Report No 10/57 – Afghanistan: RRT Country Information Request AFG39190 - Conditions of Hazaras).

Hazaras have been subject to discrimination and persecution at least since the ‘Hazara Wars’ of 1891-1893 and there is no reason to believe that the underlying factors, (both ethnic and sectarian) fuelling hostility towards Hazaras have dissipated.¹⁴

58. Professor Maley goes on to note that the formation of the Interim Administration under Hamid Karzai put an end to official discrimination against Hazaras but did nothing to secure them against Taliban attack in the vast areas of Afghanistan not under the control of Kabul. He refers to the massacre of Hazara travellers near the Uruzgan-Helmand border in 2004 which, according to a local official, was designed to “stir up ethnic tensions” He also refers to the beheading of eleven Hazaras in Uruzgan in June 2010 which was described by a local police chief as the work of the Taliban “because they were ethnic Hazaras and Shi’ite Muslims” Professor Maley opined that these Hazaras were targeted because of their race and religion and imputed political opinion on the basis that the Taliban perceive Hazaras as spies and informants of the Government and the ISAF. Professor Maley also quotes “a highly respected Kabul-based observer” who has told him that “Dozens of Hazaras have been killed or abducted and never heard of while travelling between Ghazni and Jaghuri and also through Wardak province to Behsud and Bamyan. Ghulam Hussain Naseri, a Hazara member of Parliament from Behsud, reported on November 10 that 10 Hazaras were forced off vans and buses going to the Hazarajat in Wardak and killed in a dreadful manner in front of other travellers during the preceding 10 days”

59. In a presentation to the Independent Merits Review office in Sydney on 8 October 2010, Ms Halima Kazin, Researcher – Asian Pacific Program, Amnesty International, stated that:

Hazaras are visible due to their ethnicity. They are always more at risk because their ethnicity can be observed by their facial features. They cannot hide their facial features and this makes them susceptible to violent attacks on a daily basis and widespread daily discrimination. Their accent is also easily identifiable which puts them at greater risk when moving around the country;

Under the new Afghan constitution Hazaras have equality under the law, and some token positions in the government, and this is perhaps why some commentators are referring to the present time as a “golden age” for Hazaras. Legal protection does not translate in reality to equality.

Hazaras are more at risk in the community than other ethnic groups in Afghanistan. They are treated more violently and are more at risk when involved in confrontation with the Taliban or other militia forces. There are some exceptions to this, it will depend on the region and for example, there are areas where the Hazara militias have control...;

While majority Hazara areas are considered relatively ‘safe’, Hazaras are at risk when they are outside specific settlement areas. The ring around safe areas for Hazaras is getting smaller As soon as Hazaras are outside of these safe areas they have no safety and no safe passage...In all Hazara areas the Taliban are going into the areas and negotiating or fighting with locals for control;

The ‘protection’ in predominantly Hazara areas like Jaghori in Ghazni is afforded by a local warlord. The question must then be asked, what kind of protection or safety is offered by a warlord or militia. There is no protection of Hazaras outside Hazara areas. There is no real security for Hazaras.

60. On 15 July 2010, DFAT reported the views of an Afghan member of Parliament as follows:

On 1 July, the Embassy met with an Afghan Member of Parliament (MP) familiar with Ghazni Province, particularly the Hazara community.

¹⁴ Maley, William, *On the Position of the Hazara Minority in Afghanistan*, 7 December 2011

The MP said there were three main sources of insecurity on the routes in and out of Jaghori: the Taliban; petty thieves; and organised criminals. The latter two categories affected Pashtuns and Hazaras equally. Hazaras faced particular difficulties, however, compared to Pashtuns, if kidnapped by the Taliban on the road. Pashtuns who were kidnapped could draw on tribal and family networks to help secure their release. Such recourse to Pashtun networks was generally not an option for Hazaras which made securing their release difficult. Hazaras made it difficult to negotiate in such circumstances because they did not have direct communication channels with key figures in the Pashtun community that could influence the insurgents.

The MP said the Taliban in the area also remained anti-Shia. The MP thought that instructions from Mullah Omar and the Taliban leadership not to conduct attacks along sectarian lines were empty political rhetoric. Historical animosities against Hazaras were still in place. The MP said that recent evidence of this was a threatening Taliban “letter” which was addressed to the (Hazara) people of Jaghori warning them not to travel on the road from Jaghori visa Qarabagh and demanding the local population not to prevent the Taliban’s entry into their area.....¹⁵

61. Alessandro Monsutti, Associate Professor of Anthropology and Sociology of Development at the Graduate Institute of International Development Studies, Geneva, has noted that:

- Hazaras are still constantly under threat of being harmed by the Taliban. Hazaras are much more at risk from the Taliban in Afghanistan than Uzbeks or Tajiks;
- Even though the Taliban are not officially in power now they consider the Hazaras are against them. Hazaras returning to Afghanistan are being killed on the roads because they are considered potential enemies. This occurred a lot on the road between Wesh and Kandahar and is occurring on the road linking Kabul to Kandahar, especially around Ghazni;
- The Taliban use the uncertainty of whether or not they will attack to further intimidate and restrict Hazaras. Sometimes a Taliban will harm or even kill an Hazara and sometimes not. Hazaras can never be sure if a Taliban will turn on them or not;
- Currently the Taliban are attempting to surround Kabul. Ghazni is geographically strategic for the Taliban because of its proximity to Kabul. The Taliban have rendered the road between Kabul and Kandahar (through Ghazni) extremely unsafe;
- In recent times the most dangerous areas for Hazaras have become around the Pashtun/Hazara ethnic boundaries in Uruzgan, Ghazni Province, Wardak and toward Kabul.
- Jaghori itself seems rather safe (except for internecine political struggle). but the presence of Taliban is signalled from time to time and all the surrounding areas (West, South, East) are possibly among the most dangerous in the country.
- Creating a dangerous environment in Afghanistan is an intentional Taliban tactic. The Taliban promote thieving and robbing on the roads to increase the insecurity. Hazaras are particularly at risk in these conditions. They are at risk of being robbed, attacked or killed by criminals encouraged by the Taliban.
- The Taliban are following a systematic strategy now including the use of random violence, particularly against Hazaras, to maintain fear and instability.

¹⁵ AFGHANISTAN: Situation in Ghazni Province – views of Member of Parliament (CX246263) Australia: Department of Foreign Affairs and Trade, 15 July, 2010

- If the Taliban regain sufficient power in Afghanistan the Hazaras are right to fear they will be systematically targeted again, and with renewed vengeance, by the Taliban.¹⁶

62. Associate Professor Monsutti provided further comment to the Independent Protection Assessment Office in January 2012 in response to specific questions about security in different districts of Afghanistan and the situation for Hazaras. In relation to political representation, Professor Monsutti noted that:

Hazaras have better political representation now than they have ever had in past. However, the situation is very fragile. Other ethnic communities are jealous of their success. The Hazaras have become bolder, however I am not very optimistic for their future. Many Hazara leaders are not cautious enough. I heard once a Pashtun saying, “in the future we will take back what Hazaras have gained”.

63. The US Commission for International Religious Freedom Annual Report, May 2011, stated that:

Despite the overall improvement for the status of the Shia Muslim community, its members are still threatened by insurgents. ... There also are claims of forced expulsions of ethnic Hazaras and Tajiks from areas controlled or conquered by the Taliban, as well as harassment of these minorities throughout Taliban-controlled areas.

64. In August 2012, a Kabul newspaper, the *Daily Outlook*, reported on the killings of Hazaras in Wardak:

There have been increasing incidents of insecurity on Kabul-Maidan Wardak road. In the last week alone, 11 people have been slaughtered by Taliban in Jalrez District. Five passengers were taken off a vehicle on Wednesday at Kote Ashro area of Jalrez District on Wednesday August 1. They were brutally tortured, their hands tied behind, eyes taken off and thrown on the highway after beheading. All five were civilians... Four of them belonged to Jaghori District of Ghazni Province, one was from Baghlan.

Six others were killed in similar brutality a week ago Monday, July 23 in the same area of Jalrez. Their bodies were cut into pieces. All of the 11 civilians who were killed in last two weeks belonged to Hazara ethnic group....

People from Bamiyan and Daikundi provinces complain of increased insecurity on the Kabul-Hazarajat road, where Taliban militants stop vehicles of civilian passengers. They criticise the failure of government forces to maintain security on the way.....¹⁷

..these incidents of Taliban brutality show utter failure of government as it increased after the withdrawal of US troops from the Combat Outpost Conlon in Jalrez district of Maidan Wardak in February this year. The incidents have increased since then. It is of serious concern that ordinary civilians from a particular ethnic group – Hazara – are being targeted by the Taliban in Jalrez, Ghorband or on Kabul-Ghazni roads... The beheadings in Jalrez send a strong message to the people of Hazarajat that Karzai’s claims that Afghan National Security Forces can maintain security after foreign troops’ withdrawal are empty words and masses must prepare for the worst to come.

65. *The Kabul Press* also reported the killing of 5 Hazaras in Jalrez district on 27 July 2012 and a blog site entitled Kabul Perspective reported on 15 August 2012 that “32 residents of

¹⁶ Monsutti, A, ‘The situation for Hazaras in Afghanistan’ 26 July 2011

Bamiyan have been killed during the last six months, mostly in Jalrez district of Maidan Wardak and Ghorband district of Parwan on the way to Kabul”.

66. The International Crisis Group (ICG) has reported that:

Sunni extremists are operating along the Kabul-Kandahar Highway heading south from Kabul and heading west from Kabul to Wardak province, thereby rendering these roads unsafe for Hazaras.¹⁸

67. Thomas Ruttig noted in 2012, in respect of travel for Hazaras between Kabul and Ghazni, that “districts of Wardak were highly volatile and anti-Shia”.¹⁹

Sectarian bombings, December 2011

68. Ahmed Rashid, (author of *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia*, New Haven, Yale University Press, 2010) has noted that, whilst there were no major sectarian attacks in Afghanistan between 2001 and 2011 and the Taliban, who adhere to the conservative Deobandi sect of Sunni Islam, have taken extra care not to aggravate the Afghan Shia, this all changed on 6 December 2011:

In co-ordinated attacks aimed at Shiite Muslims in three Afghan cities, bombs killed 63 people and wounded 150. Lashkar-e-Jhangvi, a Pakistani militant group affiliated with Al Qaeda, has claimed responsibility for the attacks. Its aim appears to be to start a sectarian civil war. This is a tactic Al Qaeda has used in Iraq, Pakistan and, most recently, Egypt, and indicates a dangerous change of direction in the Afghan conflict – even as US and its Western allies prepare to leave the country.²⁰

69. Other commentators have implicated the Haqqani Network,²¹ a group closely integrated with the Afghan Taliban that trains terrorists and organises operations against targets in Afghanistan.²²

70. Ahmed Rashid notes that the Hazaras were repeated victims of sectarian massacres between 1992 and 2001:

... the worst massacres of Hazaras took place after 1996 when Taliban commanders were joined by Arab fighters loyal to Osama bin Laden and Pakistani fighters belonging to Lashkar-e-Jhangvi and other groups, who deliberately sought out Hazara Shias to kill. ..These fighters had trained and fought in Afghanistan, first with the Taliban then with Al Qaeda, while also mounting attacks in Pakistan aimed at prominent Pakistani Shia, many of whom were killed.

Initially, Lashkar-e-Jhangvi was close to the Pakistani military and its Interservices Intelligence, which also supports the Taliban. But even before 2001, LJ activists had turned against the government. Since 2001, they have bombed military targets in Pakistani cities, helped Al Qaeda hide out in Pakistan and are now part of the Pakistani Taliban movement which aims to overthrow the Pakistani state. According to Human Rights Watch, since 2008, over 275 Hazaras have been killed in Pakistan’s Balochistan province which borders

¹⁸ International Crisis Group, 2011, *The Insurgency in Afghanistan’s Heartland*, Asia Report No 207, June

¹⁹ Ruttig, T, 2012, ‘Comments provided by Thomas Ruttig on travel between Kabul and Ghazni for Hazaras’, 25 May

²⁰ Rashid, A, 2011, ‘Afghanistan: A new Sectarian War?’, New York Review blog (www.nybooks.com)

²¹ Urban M, 2011, ‘Is Pakistan Intelligence implicated in Afghanistan bombings’, BBC, 7 December

²² Wadhams, C and Cookman, C, 2009, ‘Faces of Pakistan’s Militant Leaders’, *Centre for American Progress*, 22 July

Afghanistan. In two attacks in Balochistan claimed by LJ earlier this fall, 39 Hazara Shia were shot dead.

By contrast, in Afghanistan, the Taliban have deliberately avoided the Hazarajat and have not mounted attacks against Hazaras since they began their insurgency against US forces in 2003. The Afghan Taliban have tried to show that they are no longer controlled by Arab or foreign sectarian fanatics, that their “jihad” would unite all Afghans against the Americans, and that, as Pashtuns, they were not against other ethnic groups. Just last month, Mullah Mohammad Omar warned his fighters not to target civilians.

However, the Hazaras and their powerful military commanders have been supported by Iran, which has continued to fund their political and religious activities. As part of its anti-American policy, Iran also backs several Taliban groups that operate in Western Afghanistan and has used its influence to warn the Taliban not to touch the country’s Shia minority. But there is now a growing rift between those Taliban who want a political solution before the US and NATO leaves, and more hardline groups. Al Qaeda and some Pakistani extremists are keen to thwart the secret talks being held between the Americans and the Taliban, undermine the Afghan government and prevent a longer-term US presence to continue after 2014 when most Western forces will leave. And part of Al Qaeda’s way of accomplishing this appears to be to revert to the now familiar strategy of starting a sectarian bloodbath.

71. Others have disputed the likelihood of increased sectarianism in Afghanistan²³ and Ahmed Rashid also notes that:

.the fact that sectarian killings subsided so rapidly after 2001 when the Taliban were defeated demonstrated that sectarianism is not deeply rooted. And the prospect of a general sectarian war seems unlikely...But the re-introduction of sectarian killing by non-Afghan groups has dangerously widened the scope of the war in Afghanistan and threatens to draw in neighbours such as Iran and Pakistan. And it is one more way to keep Afghanistan permanently in a state of conflict.

72. However, there is still concern that the extremist groups responsible for widespread sectarian violence in Pakistan are operating in Afghanistan. A report from Radio Free Europe quotes Farzana Sheikh, a Pakistani specialist at the Chatham House think tank in London as stating that LeJ has been responsible for a series of murderous attacks against Shia in Pakistan and that “if it has been shown that [LeJ] is responsible for the attack it also for many spells the possibility of widening the conflict in Afghanistan which until now has been political and ethnic” and that, “if the current trends are to go by, it is an extremely disturbing development”²⁴.

Kabul

73. The ICG has reported more generally on security in and around Kabul:

Although the number of major attacks on Kabul has recently declined, insurgent networks have been able to reinforce their gains in provinces and districts close to the city, launching smaller attacks on soft targets. Outmanned and outgunned by the thousands of foreign and Afghan security forces in and around Kabul, Taliban attacks inside the capital are not aimed at controlling it physically but to capture it psychologically. Once that objective is achieved,

²³ Londono, E, ‘US Ambassador: Kabul attack won’t spawn sectarian violence in Afghanistan’, *The Washington Post*, 11 December 2011

²⁴ Siqqe A, 2011, ‘Pakistani Extremist Group in Focus after Unprecedented Attack on Afghan Shia’, *Radio Free Europe/Radio Free Liberty*, 7 December

the political and financial cost of doing business for foreign forces and diplomatic missions located in Kabul will be too high to sustain for the long haul.

An aggressive campaign of assassinations of government officials and infiltration of Afghan security forces in neighbouring provinces has, meanwhile, gutted the government's ability to expand its reach to the periphery....A little more than a year after the transfer of additional US troops was completed, violence increased across the country hitting new peaks in May 2011 as the Taliban launched their spring offensive, which resulted in the highest recorded number of civilian casualties incurred in a single month since...2001

Nearly a decade after the U.S.-led military intervention began, little has been done to challenge the perverse incentives of continued conflict in Afghanistan. Insecurity and the inflow of billions of dollars in international assistance has failed to significantly strengthen the state's capacity to provide security or basic services and has instead, by progressively fusing the interests of political gatekeepers and insurgent commanders, provided new opportunities for criminals and insurgents to expand their influence inside the government. The economy as a result is increasingly dominated by a criminal oligarchy of politically connected businessmen. On the surface, security conditions in the capital city appear relatively stable. The nexus between criminal enterprises, insurgent networks and corrupt political elites, however, is undermining Kabul's security and that of the central-eastern corridor. Afghan citizens, meanwhile, are squeezed on all sides – by the government, the insurgency and international forces.

The insurgency's penetration of the greater Kabul area has also intensified competition between Taliban fighters associated with Mullah Omar's Quetta Shura (leadership council), the North Waziristan-based Haqqani network and Gulbuddin Hekmatyar's Hizb-e Islami. Violent rivalries between commanders of these insurgent groups in places such as Kapisa, Logar and Wardak have resulted in the loss of hundreds of lives. Caught in the middle are ordinary Afghans who remain fearful of a Taliban return to power. Tasked with quelling the violence, NATO's International Security Assistance Force (ISAF) is perceived as unable or unwilling to distinguish between civilians and insurgents and to reduce dependence on corrupt government officials in its counter-insurgency strategy.²⁵

74. Professor Maley states that “it is also a mistake to conclude Kabul is safe for Hazaras” He refers to the sectarian bombing on 6 December 2011 and states that:

The spectacularly gruesome nature of this event should not distract attention from a number of largely unreported attacks in the past that many observers and decision makers have overlooked. I visited Kabul in late September 2010...I interviewed a wide range of sources from diverse ethnic groups (notably Pashtun, Tajik and Hazara). One of the main topics about which these interlocutors were concerned was the violence which had broken out in Kabul on 13 August 2010 in which a number of ethnic Hazaras had been killed.....

..... In most cases in which Kuchis have resorted to high level violence as a way of resolving so called 'land disputes', it has been ethnic Hazaras who have been targeted....A number of credible sources have stated to this writer that the Kuchis are being armed by the Taliban.²⁶

75. Professor Maley also noted that:

To assume that Hazaras can expect protection from the agencies of the Afghan state is unrealistic. The generally poor quality of the Afghan National police, often combined with

²⁵ 'The Insurgency in Afghanistan's Heartland', *Asia Report No 207* – 27 June 2011:

²⁶ Maley, W, 2011 'On the Position of the Hazara Minority in Afghanistan', 7 December 2011

ingrained antagonism towards Hazaras, means that there is little prospect that the police will be willing or able to protect vulnerable Hazaras even in Kabul. This provides a further reason for extreme caution in drawing the conclusion that Hazaras do not have genuine protection needs.

76. In June 2012, the Taliban attacked the lakeside resort of Kharga, on the outskirts of Kabul, killing a large number of civilians. Thomas Ruttig noted that this attack:

.was the latest in a long string of similar attacks...[which] appear designed...to catch the eye of the international public, to counter NATO claims that the Taleban have been weakened and are no longer able to pull off attacks, to throw dirt on the glossy picture of a smoothly progressing transition and deepen the uncertainty among Afghans about their future.

Rutting noted that Kharga is off limits to most foreigners because of security concerns and is the domain of ordinary Afghans. and that the attack “is definitely another concerning sign of diverging opinions and tactics within the [Taleban] movement”.

77. Recent media reports indicate ongoing ethnic and sectarian tensions in Kabul. The Wall Street Journal reported on 9 September 2012 on a gun battle between Hazaras and Tajiks in Kabul that reportedly killed 5 or 6 Hazaras. The battle reportedly occurred after a caravan of Tajik vehicles from Panjshir Valley commemorating the death of Ahmad Shah Massoud knocked down a Hazara bicyclist. The police declined to detain anybody leading to a large group of Hazaras demonstrating and setting fire to four police outposts. According to the Wall Street Journal, “For many in Kabul, this outbreak reinforces fears that such ethnic tensions might spiral out of control after most of the international forces withdraw in 2014” and that the civil war has become the ‘elephant in the room’ as foreign forces go home.²⁷ AFP reported on 23 November 2012 that Afghan police had arrested two bombers with suicide vests planning to attack an Ashura procession in Kabul on the anniversary of the 2011 bombing²⁸ and Radio Free Europe reported on 25 November 2012 that three major public universities in Kabul were closed for more than a week after sectarian clashes between Shia and Sunni students left one dead and three wounded. The clashes reportedly occurred on November 24, after a ritual marking the beginning of Ashura was interrupted by hardline Sunni students who attacked the Shia students with sticks and rocks.²⁹

Attacks on schools

78. In 2009, CARE International listed 72 attacks on schools in Kabul.³⁰ In 2010, Reuters reported on a number of gas attacks on schools and students, particularly girls, across Afghanistan.³¹ In 2011, the Financial Times reported on a suicide attack on a school in west Kabul.³²

Relocation

79. The UNHCR Guidelines advise that:

²⁷ Hodge, N and Sultani, S, ‘Rival Ethnic Groups clash on streets of Afghan capital’, *The Wall Street Journal*, 9 September 2012

²⁸ ‘Afghan police say Shiite attack thwarted’ *AFP*, 23 November 2012

²⁹ ‘Kabul closes universities after sectarian clashes’, *Radio Free Europe/Radio Liberty*, November 25 2012

³⁰ Care International, 2009, ‘Knowledge on fire: Attacks on education in Afghanistan – Risks and measures for successful mitigation’, 30 September

³¹ Hamed, M and Shalizi, H, 2010, ‘Afghan girls hit again by suspected gas attack’, *Reuters*, 11 May

³² Greene, M, 2011, ‘Taliban launches attacks in Kabul’, *Financial Times*, 13 September

Given the wide geographic reach of some armed anti-Government groups, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups. It is particularly important to note that the operational capacity of the Taliban (including the Haqqani network), the Hezb-e-Eslami (Gulbuddin) and other armed groups in the southern, south-eastern and eastern regions is not only evidenced by high-profile attacks, such as (complex) suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening “night-letters”.

Furthermore, some non-State agents of persecution, such as organized crime networks, local commanders of irregular or paramilitary outfits and militias, as well as the Taliban and the Hezb-e-Eslami (Gulbuddin), have links or are closely associated with influential actors in the local and central administration. As a result, they largely operate with impunity and their reach may extend beyond the area under their immediate (de facto) control.

80. The UNHCR advises that, in order to determine if relocation is reasonable:

.. the following elements need to be taken into account: (i) the availability of traditional support mechanisms, such as relatives and friends able to host the displaced individuals; (ii) the availability of basic infrastructure and access to essential services, such as sanitation, health care and education; (iii) ability to sustain themselves, including livelihood opportunities; (iv) the criminality rate and resultant insecurity, particularly in urban areas; as well as (v) the scale of displacement in the area of prospective relocation.

The traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism, particularly in rural areas where infrastructure is not as developed. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. Since the protection provided by families and tribes is limited to areas where family or community links exist, Afghans, particularly unaccompanied women and children, and women single head of households with no male protection, will not be able to lead a life without undue hardship in areas with no social support networks, including in urban centres. In certain circumstances, relocation to an area with a predominantly different ethnic/religious make-up may also not be possible due to latent or overt tensions between ethnic/religious groups.

In urban centres, the IDP population and growing economic migration are putting increased pressure on labour markets and resources such as construction materials, land and potable water. Widespread unemployment and underemployment limit the ability of a large number of people to meet their basic needs. The limited availability of humanitarian assistance has generally not improved this situation in a meaningful way. In addition to causing loss of life and serious injuries, mine land, water, healthcare and education...

In light of the foregoing, UNHCR generally considers IFA/IRA as a reasonable alternative where protection is available from the individual’s own extended family, community or tribe in the area of intended relocation. Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. A case-by-case analysis will, nevertheless, be necessary given the breakdown in the traditional social fabric of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas.

81. Associate Professor Monsutti notes that:

Land ownership and housing is highly political in Kabul. There is a sense that ordinary Afghans, not just Hazaras, have no ‘agency’ A Hazara who does not have family support in Kabul will be vulnerable as the government does not provide any services. If you don’t have any connections, you will be lost.³³

³³ Monsutti, A, ‘The situation for Hazaras in Afghanistan’ 26 July 2011

82. In relation to social networks, Associate Professor Monsutti notes that:

Social networks are a very complicated issue. You can rely on them to provide a certain level of support. However, you must provide something in return. If you are vulnerable and can't reciprocate, then social networks won't work for you.

83. Whilst there are reports of Hazaras in Kabul accessing all levels of education and of a growing middle class, other reports indicate that there is a huge Hazara underclass made up of manual labourers living in west Kabul neighbourhoods, such as Dasht-e Barchi, Kart-e She and Chindawul, that have neither electricity nor clean water and that Hazaras still face social discrimination, discrimination in employment and economic oppression.³⁴ There are reports of 24 children having died of the cold in IDP camps in a month and of great hardship in the camps including lack of adequate shelter food, fuel, blankets clothing and cash support.³⁵

84. In relation to returning to the Hazarajat, Associate Professor Monsutti noted that:

The Hazarajat is demographically full. Even if they had land in their place of origin, a returning Hazara would not go to their village because they would find that their cousin had been using their land. If you want to begin using your land again your cousin will be unhappy as he will starve. Your cousin will expect you to leave. If you don't there could be a problem.

As it is difficult for Hazaras to go back to their village of origin they tend to go to Kabul or Herat or other big cities, to housing projects on the outskirts of those cities. While a family of returnees may go to Kabul or Mazar to find a house, at least one member of the family will need to leave for abroad again to obtain money.³⁶

FINDINGS AND REASONS

85. The claimant claims to be a national of Afghanistan. He provided a copy of a taskera which does not appear to be a genuine document. It is different in appearance to genuine taskeras seen by the Tribunal which show the bearer's name, father's name, paternal grandfather's name, place and date of birth and do not indicate ethnicity. Further, the applicant confirmed that his father paid money to obtain the taskera. However, the applicant has consistently claimed to be a national of Afghanistan. He was able to provide some detail about Afghanistan and Kabul and he spoke Hazaragi with the assistance of an Afghan interpreter. On this basis, the Tribunal is satisfied that the applicant is a national of Afghanistan and has assessed his claim against Afghanistan as his country of nationality. There is no evidence before the Tribunal that the applicant has the right to enter and reside in any other country.

86. The Tribunal accepts that the claimant is a Hazara and Shia. I accept he was born in Kabul and has lived most of his life in Kabul. I accept that his [some of his] family live in Behsud in Wardak province

87. The Tribunal accepts that the applicant's father worked as a caretaker in a [school] on the outskirts of [Kabul]. The Tribunal was not able to locate [the suburb], but did find a map showing [the road] heading towards Paghman. The Tribunal also located country information which indicates that Paghman is a primarily Pashtun district. This information is consistent with the applicant's claims.

³⁴ Zabriskie, P, 2008, 'Afghanistan: The Outsiders', *National Geographic*, February; CPAU, 2009, 'Conflict analysis: Farza and Kalakan districts, Kabul province', March

³⁵ Nordland, R, 2012, 'Children escape war but not deadly cold', *The Age*, 11 February

³⁶ Monsutti, A, 2011, 'The situation for Hazaras in Afghanistan' 26 July

88. The Tribunal accepts that the Taliban may have attacked the school near the end of 2010. There is country information indicating that the Taliban has attacked schools educating girls, including in Kabul. The Tribunal accepts that the applicant's father may have been killed in this attack. The Tribunal accepts that the applicant's father may have had a school access or ID card. The Tribunal does not accept that the information on this card was taken from his taskera and stated his ethnicity. As set out above, taskeras do not record ethnicity, and there is no reason why a school access or ID card would state the bearer's ethnicity. Further, Hazaras are identifiable by their distinct facial features and the applicant's father's ethnicity would have been identifiable to any attacker.
89. The Tribunal does not accept that the applicant worked at the school one or two nights a week. The Tribunal accepts that the applicant may have visited his father at the school but considers that he would have been able to remember the name of the school and the owners if he had worked there on a regular basis. It follows that the Tribunal does not accept that the applicant had a school access or ID card which showed his name and ethnicity or that the Taliban now have this card.
90. It follows that the Tribunal does not accept that the Taliban are now looking for the applicant because of his association with the school. The Tribunal considers that the applicant has fabricated this aspect of his claim to seek to establish that he is a personal target of the Taliban.
91. Even if the Taliban who attacked the school took the applicant's father's school ID card, the Tribunal does not accept that the applicant will be targeted by the Taliban because his father worked at the school. The applicant's father was not the target of an attack on the school, although he may have unfortunately been killed in the course of the attack, and Tribunal does not accept that the Taliban would search for the son of the caretaker at the school. The Tribunal notes that the applicant remained in Kabul for a year after his father was killed. He continued to reside at the same address and to operate his business during that period. The Tribunal considers that the Taliban would have been able to locate him and harm him during this period if they wished to.
92. The Tribunal accepts that the applicant feared harm in Afghanistan. The applicant provided evidence of increased violence in Kabul, that his own business was destroyed by a bomb blast, that he was abused by Pashtuns and that Hazaras are being killed on the road through Maidan Wardak. The Tribunal accepts that the applicant's fears are based on the deteriorating security situation and attacks on Shia in Kabul and in Maidan Wardak. The Tribunal has considered whether the applicant faces a real chance of suffering serious harm in Afghanistan on the basis of his race or religion.
93. There is conflicting country information about the extent to which Hazaras are currently being targeted in Afghanistan because of their ethnicity and religion. DFAT has advised that the motivation for targeting of Hazaras depends on the context and that Hazaras are not currently being systematically or disproportionately targeted. Other commentators advise, however, that historical enmity and anti-Shia sentiment remains strong.
94. Travel in and out of the Hazarajat is particularly dangerous for Hazaras. The reports above indicate that the Taliban have increased their control and are engaging in intimidation tactics to attempt to control and frighten the residents of the Hazarajat. In 2010, Professor Maley quoted a "highly respected Kabul-based observer" who describes dozens of killings and abductions of Hazaras travelling between Jagori and Ghazni and through Wardak to

Bamiyan. In August 2012, 11 Hazaras were reportedly killed in targeted attacks in Maidan Wardak intended to control and intimidate the Hazarajat. The ICG has reported on killings by Sunni extremists on the road to Wardak and Thomas Ruttig has noted that districts of Wardak are highly anti-Shia. On the basis of this information, the Tribunal accepts that the applicant faces a real risk of harm when travelling to visit family in Wardak.

95. More generally, Professor Maley refers to a number of targeted attacks on Hazaras which local officials have described as due to their ethnicity or religion or designed to stir up ethnic tensions. Halima Kazim notes that a gain in political representation has not translated into practical security or equality. Professor Monsutti notes that Hazaras are at constant threat of being attacked by Taliban and notes that Hazaras will be systematically targeted again if the Taliban regain sufficient power. He describes a very fragile situation with other ethnic groups jealous of Hazara gains and a potential for future retribution. In view of these reports and commentary, it is not possible to say that ethnic or religious enmities are no longer a factor in Afghanistan.
96. Further, there were extreme sectarian attacks in Kabul and Mazar-e-Sharif in December 2011 specifically targeting Shia celebrations. Commentators such as Ahmed Rashid note a split between more moderate Taliban and aligned groups such as Lashkar-e-Jhangvi which claimed responsibility for the attacks and which has been responsible for the killing of hundreds of Shia in Quetta, Pakistan over the past few years. Other Taliban aligned groups which have also been held responsible, such as Lashkar-e Jhangvi Al Alim and the Haqqani network, are also anti-Shia. There is clear evidence that insurgent groups aligned to the Taliban, such as those above, have been responsible for targeted killings of Hazaras and other Shia in Pakistan. The country information indicates that these groups are also present in Afghanistan. Whilst more moderate sections of the Taliban appear to be refraining from widespread targeting of Hazaras pending negotiations with the US and the withdrawal of international forces, it is not certain whether this is merely a strategy to facilitate the withdrawal, or if these apparently more moderate leaders will remain in control.
97. Insecurity has increased in Kabul. There have been attacks on civilians, without any pretence of a military or government target, and there are reports of ongoing ethnic and sectarian violence between Sunni and Shia.
98. The country information indicates that the security situation in Afghanistan is deteriorating. It is not clear yet what form the ongoing war will take. The Taliban have an historical enmity towards Hazaras. There is evidence of targeting of Hazaras in Afghanistan, including in Kabul, either because of race or religion because they are perceived to be supporters of the government. Groups aligned to the Taliban, which are openly targeting and killing Hazaras in Pakistan have claimed, or are being held, responsible for large scale sectarian attacks in Afghanistan. Whilst commentators have noted that sectarian violence has not been a significant characteristic of the conflict in Afghanistan since 2001, it was a factor prior to 2001 and attacks against Hazaras have occurred since 2001. The possibility of more extreme, ongoing sectarian attacks cannot be discounted at this point.
99. Considering all of the above, the Tribunal cannot be positively satisfied that the applicant will not be harmed for reason of his race or religion in the reasonably foreseeable future in Afghanistan. The country information above indicates that the central government and state agencies such as the Afghan National police are not able or willing to provide protection to the applicant.

100. The Tribunal has considered whether the applicant could safely or reasonably relocate to another part of Afghanistan. The Tribunal is satisfied that the risk the applicant faces is not localised and is a factor across Afghanistan. Further, the applicant's family and networks are in Kabul and the Tribunal is satisfied that relocation to another part of Afghanistan is not reasonable in the absence of such networks.

CONCLUSIONS

101. 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

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