

1406165 (Refugee) [2015] AATA 3130 (1 July 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1406165
COUNTRY OF REFERENCE:	Afghanistan
MEMBER:	Stuart Webb
DATE:	1 July 2015
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 01 July 2015 at 3:41pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) 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] March 2014.
3. The applicant appeared before the Tribunal on 17 June 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Dari and English languages. The applicant was represented in relation to the review by his registered migration agent. The applicant provided the Tribunal with a copy of the delegate's decision.

RELEVANT LAW

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

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 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. 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.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

9. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
10. 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.
11. 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.
12. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
13. 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.
14. 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.

Section 499 Ministerial Direction

18. 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.

CONSIDERATION OF CLAIMS AND EVIDENCE

19. The applicant provided the following statement to the Tribunal.

I am a citizen of Afghanistan. I do not have a right to citizenship or a right to reside in any other country. I am Tajik and a Muslim. I was born on [date] in [Town 1], Afghanistan.

The country to which I fear returning

Afghanistan

Why I left that country

I have set out my work history in detail in an attachment to this application. About two years ago, while returning to Kabul after a visit to my family, I was informed by my father that two men had called to our house when only [one family member] was present asking about me.

Then, at the time of the festival of Bid al-Adha, when I was visiting my family, as is the custom at that time, my [brother] was told by some young men that 12 Taliban were asking about me and [Relative 2 who] is a [certain occupation] who works [in Kabul].

We left out the back door and returned to Kabul immediately. A day later, a letter arrived, delivered by a child, stating that the Taliban Council had decided that I

should be killed as I worked for foreigners, Jews and Christians. Since then, I have not returned to Logar.

I have provided to the Department a copy of the letter which was e-mailed to me by my family. I had not seen it before. I have noticed that the year is wrongly written as 1391, which is this year, not 1390, which was last year. However, the date is otherwise correct, because the letter was delivered one day after Eid al-Adha, which was on 6 November 2011; the letter is dated 7 November.

On [date] September 2012, [Relative 3] was visiting my family with his mother and [sibling]. As they left to return to Kabul, the car in which they were travelling was stopped by the Taliban and [Relative 3] was held overnight. Eventually, village elders intervened and gave assurances that [Relative 3] was not working for foreigners and that he was not either myself nor [Relative 2].

What I fear may happen to me, by who and why, if I return to that country

I fear that I will be targeted and killed by the Taliban if I return to Afghanistan. The Taliban objects to the work I have been doing.

Why I think the authorities of that country cannot or will not protect me if I were to go back to that country

Once the Taliban make a decision to kill someone, it is almost impossible to prevent them.

Why I think relocation to another area in my country is not a reasonable option

Firstly, there is nowhere I could find security from the Taliban. Particularly with the coming departure of international forces, the situation will get more dangerous over time, not less. Secondly, it would be very difficult for me to live in Afghanistan without sometimes visiting my family in Logar. To do so, however, would be very dangerous.

20. The applicant provided some documents pertaining to his identity and work. A submission was provided by his agent. It stated that the applicant is from Logar, where his family and fiancé live. Since 2005 he has resided in Kabul. He has worked for the Afghan government including in schools, as well as for [Organisation 4] and NGOs as a [Occupation 5]. Most recently he was a [teacher]. He would be imputed to be pro Afghan Government and pro-West. He is known to the Taliban. The threat to the applicant is exacerbated by [Relative 2] working as [occupation] at [Kabul]. It was submitted that the Taliban also consider the applicant to be an infidel because he has worked with the west. Comments on what the Taliban do to spies was included.

21. The delegate provided a useful summary of the applicant's background, residence and employment history in their decision. This stated:

The applicant is a [age] year old engaged male born in [Town 1], Logar Province, Afghanistan. He declares his ethnicity as Tajik and his religion as Sunni. He declares that he knows Dari, Pashto and a little bit of English. Although his application form states he also knows Tajik, at interview he stated he does not know Tajik because Dari is the language of Afghanistan.

The applicant completed primary and high school in [Town 1] and then moved to Kabul for his tertiary [education]. He then returned to live in Logar and worked [in

health] there, until relocating again to Kabul in 2005. He resided in Kabul until his departure from Afghanistan.

While residing in Kabul he worked [in health] from 2005-2006 and was employed by the Ministry of Public Health, and also worked in a private capacity. He then decided to change occupation to earn more money and began working as [Occupation 5]. During 2006-2008 he worked as [Occupation 5] at [Organisation 4] Office. During 2007-2008 he also worked as [a teacher]. Then from 2008 to 2010 he worked as [Occupation 5] for [a company]. From 2010 to 2011 he worked as [Occupation 5] for [another company]. He then worked as a teacher [at] a boys' high school in Kabul, employed by the Ministry of Education. This was the applicant's last occupation before he departed Afghanistan.

The applicant has close relatives currently residing in Kabul and in Logan.

22. Given that the applicant had been resident in Kabul since 2005, the delegate assessed this as his home region in Afghanistan. The delegate considered the country information that stated that civilians who are associated with the Government or Afghan community had been targeted by the Taliban, though noted that this was in outlying provinces and did not accept this to be true of Kabul, where high profile targets were more likely. The delegate considered the applicant's claims of being targeted because of his employment history. The delegate accepted that the applicant had been [Occupation 5]. However the delegate did not accept that the profit making companies were NGOs, and did not consider that these companies were being targeted. With respect to his work for [Organisation 4], the delegate noted this ceased in 2008, and the applicant continued to work in Kabul after this employment with no negative outcomes. The delegate noted that the applicant had stopped working for foreign companies in 2011, and had not been harmed. The applicant's agent submitted that his work history would become known, and he would be targeted. However the delegate did not accept that low level employees were likely to be targeted after ceasing their employment. The delegate considered that the applicant would not come to adverse attention in Kabul due to his past employment for foreign companies.
23. The delegate had concerns regarding the threats made to the applicant in Logar. The delegate considered it strange that the applicant would be targeted by a letter, saying the Taliban would kill him. The delegate noted that the applicant was not residing in Logar, and the reason for the apparent death sentence, working for foreigners, no longer existed as he had ceased this role and was working as a teacher. The applicant claimed it would be unreasonable not to expect him to visit his family in Logar. The delegate did not accept this, noting that his family could go to Kabul, and the applicant's residence in Australia also meant that he had limited access to his family in Logar.
24. The delegate considered the applicant's employment as a teacher at a boy's only [school]. The delegate considered country information about the violence against teachers, including that it was now far more targeted, in particular, at girl's education providers, and this was in areas where the Taliban had a significant presence. The delegate considered that the applicant, a teacher in Kabul at a boy's school, would not be harmed in these attacks.
25. The delegate considered the applicant's affiliation with the government, including working as a former employee of the Ministry of Health. The delegate considered that this was a long time ago, and that the applicant would not be targeted for this reason, as a low profile individual. The delegate did not accept that only high profile attacks are reported in Kabul.

26. With respect to returning to Kabul, the delegate noted that the applicant would have to find employment and shelter, but as an educated man with experience in the city, he would find this, and that he would not be so vulnerable on return that he would come to serious harm.
27. The delegate did not accept that the withdrawal of international forces would lead the applicant to have a chance of harm. With respect to his family members, the delegate noted that they had not come to harm, despite living and working in Kabul. The delegate did not accept that the applicant would be harmed because of [Relative 2], or [other siblings] who continue to be teachers in Logar, who have not been harmed because of their positions.
28. A submission was provided by the agent to the Tribunal. It was submitted that the claim was based on the applicant's well-founded fear of persecution at the hands of anti-governmental elements (AGEs), in particular the Taliban, as a result of his (imputed) political opinion as a perceived supporter of the Afghan government and the International community in Afghanistan including the IMF (International Military Force) and International NGOs. In addition, the applicant fears that his situation in Afghanistan will be further exacerbated if he were forced to return because of his profile as a failed asylum seeker who sought safety in a non-Muslim country. The claims needed to be considered individually and cumulatively.
29. There was a submission with respect to the applicant's home region. It was submitted that the applicant's home region was [Town 1], in Logar province, where he had lived for [many] years, prior to his [several] years in Kabul, where he would return to Logar on a regular basis.
30. It was submitted that supporters of the government are at risk of harm in Afghanistan. Violence against those deemed supporting the government was increasing. It was submitted that with the withdrawal of the international troops the applicant would be at risk due to the increasing violence in the country, in particular Logar, but also in locations such as Kabul. It was also submitted that returned asylum seekers are particularly at risk, and that they are being seen as favourable to the west, or had converted to Christianity. The applicant could not relocate.
31. The Tribunal provided the applicant's agent time to provide a post hearing submission. This included the following submissions.

It is our submission that the objective independent country information below supports [the applicant's] claims of having a well-founded fear of being seriously harmed in Afghanistan for reasons of his (imputed) political opinion as a perceived supporter of the Afghan government and the International community in Afghanistan including the [deleted] and International NGOs.

We further submit that [the applicant] has claims under complementary protection legislation as supported by independent country information and international legal principles.

The security situation in Afghanistan (including Kabul) is rapidly deteriorating and will only continue to do so with the withdrawal of foreign troops.

32. Country information was provided, including reference to the car bomb detonation outside the Parliament building in Kabul on 22 June 2015, and violence in Kunduz. A list of attacks on government and foreign officials, and locations associated with the government or foreign officials was included. Reference was made to decisions made by the RRT in 2013 and 2014 that returnees were being targeted across Afghanistan. State protection was not available. The situation was getting worse. The submission concluded that:

Consistent with country information law cited above, we submit that [the applicant] possesses a well-founded fear of being persecuted for his imputed political opinion, his and his membership of a social group in all areas of Afghanistan. He has already been identified as a threat to the Taliban. Due to their increased presence in Kabul and the impunity they have due to inadequate state protection, [the applicant] is in imminent danger of being systematically killed.

FINDINGS AND REASONS

Country of nationality

33. The applicant claims to be a citizen of Afghanistan and has consistently claimed this and has described particular locations in Afghanistan with a significant degree of accuracy. He has provided documentary evidence to the Department that show he is of Afghani background, and his identity was accepted by the delegate.
34. The Tribunal finds that the applicant is a citizen of Afghanistan, that Afghanistan is the applicant's country of nationality for the purposes of the Refugees Convention, and that Afghanistan is his receiving country for the purposes of complementary protection.

Third country protection

35. There is no evidence before me to suggest that the claimant has the right to enter and reside in any safe third country for the purposes of s.36(3) of the Act.

The Applicant's home region

36. The Tribunal has considered the submissions made as to the location of the applicant's home region. The applicant clearly has significant connections to both [Town 1], in Logar Province, and Kabul, in Kabul Province. The applicant spent his formative years in [Town 1], including his primary and secondary education. The applicant then resided in Kabul, from 1999 to 2002, studying [a tertiary course]. The applicant returned to Logar Province between 2002 and 2005 to work providing [health] services. In 2005 the applicant returned to Kabul, where he lived and worked in various roles until he left for Australia, in 2012. The applicant claimed he never owned a property in Kabul. The applicant stated that his family and fiancé remained in [Town 1], and he would visit them often from Kabul. When asked about how frequently he visited [Town 1] from Logar, the applicant stated it was initially fortnightly or monthly, but since 2010 it was far less frequent, for special occasions or if there was a sickness. He stated he visited every 5 months to 3 months, and as stated in the delegate's decision, did not return to his home village after November 2011. The applicant also noted that [Relative 2] has lived in Kabul for an extended period, employed as [occupation]. The applicant stated that [Relative 2] had little to do with the family in Logar. The applicant stated he remains in contact with [Relative 2] and spoke most recently to him a week ago. The applicant also noted that another brother had recently moved with his family to Kabul from Logar, taking up a teaching position. The applicant stated he may be [in a certain position] at a school. The applicant also noted that [another sibling] had married and moved to Kabul to live with [the] family.
37. The Tribunal noted at the hearing that the courts have held that if an applicant has more than one place that could be characterised as their 'home area', the relevant question in such a case

is whether the applicant has a well-founded fear of being persecuted in that area.¹ Specifically in *SZQEN v MIAC* (2012) 202 FCR 514, it states:

I propose to apply the statement of principle in *Randhawa* by Black CJ (at 440-441) which plainly proceeds on the basis that the relocation principle concerns relocation from a claimant's home region to another place in the claimant's country of nationality that is not the claimant's home region. This position is supported by the United Kingdom authorities to which I have referred. In proceeding on this basis I do not think that the reference in the cases to "home region" or "home area" (or similar expressions) is to be given a narrow or restrictive meaning to refer, for example, only to the place where the claimant happens to be living at the time of the feared persecution, or that a "home region" or "home area" is necessarily limited to one location if similar and substantial ties exist at another location that would also appropriately characterise that location as a "home region" or "home area" of the claimant. Whether such ties exist and whether a particular location can be appropriately characterised as a "home region" or "home area" are matters of fact.²

38. Given the specific facts as provided in this matter, the Tribunal considers that it is open to a finding that the applicant's home region is not necessarily limited to one of [Town 1] or Kabul, but that the applicant has significant ties to both locations. His work and daily life has most recently been in Kabul, where he has resided for the [number] years prior to departing Afghanistan. He has [Relative 2] who remains resident in Kabul, and as detailed at the hearing, now has two other family members who live in Kabul. His connection to [Town 1] comprises his formative years and the continuing residence of his parents, [siblings] and his fiancé, whom he would visit on an increasingly less frequent basis.
39. Having taken into account the facts as presented, the Tribunal has accordingly finds both [Town 1] and Kabul are locations that are appropriately characterised as the applicant's his home region in Afghanistan, and has considered the applicant's claimed fear of persecution in relation to these locations.

The applicant's claims in relation to his home region of Kabul

40. Having identified that the applicant has a home region in Kabul, the Tribunal discussed the applicant's circumstances with him. The Tribunal asked if the applicant had ever been threatened or harmed in Kabul. The applicant stated he had not. The applicant confirmed that the only threats had been made in Logar province.
41. The Tribunal discussed with the applicant his fears of harm arising from his imputed 'pro Afghan Government' political opinion arising from his employment [in the health industry] and teacher; his imputed 'pro-Western' political opinion arising from his employment as [Occupation 5], and general association with the international community in Kabul; his fears arising out of his employment generally; his fears returning from a Western country as a failed asylum seeker and possible spy; his fears of the generalised violence in Kabul; and

¹ *SZQEN v MIAC* (2012) 202 FCR 514 at [38]-[40]. Whether a place is an applicant's home region or home area is a question of fact, but is not necessarily limited to one location if similar and substantial ties exist at another location: *SZQEN v MIAC* (2012) 202 FCR 514 at [38]; also see *SZRBA v MIBP* [2013] FCCA]. The question would only arise if, on the material before the decision-maker, there appears to be more than one place capable of being classified as a 'home region'. See also *Durairajasingham v MIEA* (1997) 50 ALD 469 at 479; *Nouredine v MIMA* (1999) 91 FCR 138 at [14]; *Sabarathnasingam v MIMA* [2000] FCA 261 (Whitlam, Lehane and Gyles JJ, 10 March 2000) at [13] ff.

² *SZQEN v MIAC* (2012) 202 FCR 514 at [38]

fears of criminal gangs in Kabul, two new claims raised by the applicant's agent at the hearing.

42. At the hearing the Tribunal discussed country information with respect to the violence in Kabul. The Tribunal accepts that there has been some violence in Kabul, but notes that a recent assessment by the DIBP stated that:

Although the reports note a high level of attacks in and around Kabul, most target government and international personnel and no reports suggest that Hazaras and Shias are being disproportionately targeted by these attacks.

In 2014, analysis of attacks in Kabul by insurgents³ found that insurgents targeted Afghan military personnel, police officers, political figures and foreigners, as well as government buildings, hotels and embassies.⁴

43. An EASO Country of Information Report⁵ made the following comments of the violence in 2014, identifying that Kabul was on the lower end of the scale regarding the risk indicators of conflict incidents and civilian casualties.

The following provinces received the highest relative risk indicators for conflict incidents (the number indicates how many times more risk than the average for all provinces): Kunar (5(129)); Helmand, Kandahar and Nangarhar (3); Paktika, Laghman, Khost and Ghazni (2). The lowest were: Kabul, Samangan and Panshjur (-10); Bamyam (-9) and Balkh (-8). The following provinces received the highest relative risk indicators for civilian casualties: Kunar (4); Helmand and Paktika (3); Nuristan, Faryab, Zabul, Nangarhar, Kandahar, Wardak, Farah, Laghman, Khost, Uruzgan and Logar (2). The lowest for civilian casualties were: Bamyam (-9); Samangan and Takhar (-5); Kabul, Daykundi and Balkh (-3).⁶

44. Further in the report, discussing Kabul specifically, the following comments were made.

According to figures collected by UNOCHA, 250 violent incidents occurred from September 2013 to August 2014(149) – an increase of more than 51 incidents in one year.(150) During the summer, a spike in attacks caused some concern and eventually led to controversy over the position of Kabul police chief Zahir.

High-profile and often complex attacks have targeted Afghan and international offices. Additionally, high-profile locations were targeted with suicide bombs and IEDs. In 2014, AGEs carried out such attacks in Kabul against ISAF Camp Eggers, in January, and private security contractors engaged by ISAF in February. Also attacked was the IEC headquarters in March, the MoI in April and the electoral campaigning team of Abdullah Abdullah and High Peace Council member Mohammad Masoom Stanekzai's convoy in June. The military compounds of Kabul International Airport (KIA) and a compound of the counter narcotics brigade near the airport were attacked in July, an ISAF convoy in August, a member of parliament in September and another ISAF convoy in September.

³ see European Country of Origin Information Network 2015, General Security Situation in Afghanistan and Events in Kabul, 12 January <http://www.ecoi.net/news/188769::afghanistan/101.general-security-situation-in-afghanistan-and-events-in-kabul.htm>

⁴ European Country of Origin Information Network 2015, General Security Situation in Afghanistan and Events in Kabul, 12 January,

⁵ EASO Country of Origin Information Report Afghanistan Security Situation January 2015

⁶ UNOCHA, 2015 Humanitarian Needs Overview Afghanistan, November 2014 (<https://docs.unocha.org/sites/dms/Afghanistan/humanitarian-needs-overview>)

Other specific targets of suicide and complex attacks include the Lebanese restaurant Taverna du Liban in January, a suicide attack in front of an Ismaili (Shia) cultural centre in February, an attack on the Serena Hotel in March and a Christian NGO guesthouse in March. These attacks deliberately targeted mostly foreign civilians. In another case a Swedish-British journalist was murdered in the streets of Kabul and three American doctors were killed. Although it is unclear who carried out these killings, and the exact motive, these cases spurred the belief among analysts that, in 2014, foreign civilians were a specific new target for the AGEs in Kabul. The attack on the Ismaili cultural centre, which killed one guard, is an exception in a conflict that does not, so far, feature the sectarianism associated with the violence in Syria, Iraq or neighbouring Pakistan.

Kabul regularly came under rocket attacks during 2014. The targets of these attacks were high-profile sites, mostly government property and, in one case, the Iranian Embassy. These attacks caused almost no civilian casualties. Also notable are the repeated rocket attacks on the mainly military installations at KIA.

Victims

As seen from the incidents already outlined, the violence in Kabul city targets mostly government officials. The prime target is [personnel] and their vehicles. Although many of these attacks happen without consideration for collateral damage to civilians, according to analyst Fabrizio Foschini the choice of targets appears to indicate that AGEs are somehow looking for legitimacy for their actions. As such, it appears that civilians do not seem to be a target of the AGEs.

The exact number of civilian casualties in the city is unknown. The only figures publicly available are those provided by UNOCHA, but they only cover the entire province of Kabul. From September 2013 to August 2014, 108 civilians were killed and 275 injured in the province. Another five were killed and nine injured by mines or unexploded ordnances.

On a UNOCHA map showing the level of civilian casualties by district from 1 September 2013 to 31 August 2014, Kabul city is ranked highest, with from 151 to 234 civilian casualties (killed and injured respectively).

Although Kabul district has a high number of victims compared to most other districts in the province, and the country as a whole, according to UNOCHA the risk to a civilian in Kabul province is relatively low. This is because Kabul has a very high population; UNOCHA estimates there are about 4 million inhabitants in Kabul province, more than double the second most populated province, Herat, and almost triple that of the third province, Nangarhar.⁷

45. The submission by the applicant's agent after the hearing further demonstrates the Tribunal's point. The submission lists a series of violent acts in Kabul, from the attack on the Parliament, airport, NATO convoys and so forth. These attacks are on official locations and persons, and while there have been civilian casualties associated with the attacks, they are not targeting civilians. The Tribunal also notes the country guidance from DFAT as to the level of security in Kabul, detailed below.

⁷ UNOCHA, 2015 Humanitarian Needs Overview Afghanistan, November 2014 (<https://docs.unocha.org/sites/dms/Afghanistan/humanitarian-needs-overview> pp36-37)

46. The Tribunal considers that the country information cited demonstrates that it is the targeting of certain high profile individuals and locations, and not, as Foschini states, civilians. The Tribunal does not accept that the applicant, as a civilian in Kabul, has a real chance or a real risk of being harmed by the Taliban, Daesh or any other insurgent group.
47. The Tribunal then has turned its mind to the specific concerns of the applicant with respect to why he would be targeted on return to Kabul.

Pro Afghan Government imputed political opinion / Government Employment

48. There is country information that supports the contention that certain government officials are at risk of harm in Afghanistan. The most recent UNHCR Eligibility Guidelines on Afghanistan identify this group as requiring further analysis. However, it does appear that it is a certain type of government official who is at risk of harm. The European Asylum Support Office (EASO) published a report in December 2012 which stated:

‘High ranking officials and government employees face a real risk of being intimidated or targeted by insurgents in all parts of Afghanistan. Low ranking officials and government employees also face a real risk of being intimidated or targeted in peripheral unsafe areas and a low risk of being targeted in safer areas in Afghanistan which are not under the insurgents’ control, for example the cities of Kabul, Herat and Mazar.’⁸

49. The Tribunal discussed the applicant’s claim that he would have an imputed pro-Government opinion arising out of his previous employment, and that he would be harmed because of this. The Tribunal noted that the applicant had been employed in private and public clinics [in the health industry], which included employment as a Ministry of Health employee. The Tribunal noted and the applicant agreed that he had been employed in Logar Province in a private and public capacity from 2002 – 2005, and for a short period (2005- 2006) in Kabul, again in a private and public capacity. The Tribunal asked why the applicant ceased working [in the health industry]. The applicant stated he was told by the hospital he was working at that he would no longer be employed, so could not survive solely on his private work. The Tribunal asked if he had ever been threatened because of this employment. The applicant stated he had not. The Tribunal noted that it had been almost a decade since he worked for the Ministry of Health, and had serious concerns that the applicant would be threatened because of this previous work experience, or that it would be imputed as being pro-Government. The applicant agreed that he had little concern arising out of this previous employment.
50. The Tribunal discussed the applicant’s more recent employment as a teacher, which the applicant stated he was in until he came to Australia. The applicant had been employed fulltime as a teacher in a boy’s [school]. The applicant gave various times as to how long he worked there, it was between 6 months and a year. The Tribunal noted that in his application he had stated he had been residing in [a suburb of] Kabul, from 2010 to 2012⁹. The applicant stated he rented a room to be closer to his school. He had not received any threats of harm arising from this employment, including his teaching of English. The Tribunal noted that in 2007 the applicant had also been employed as a teacher. The applicant stated it was a [school] which he taught at the same time he was working in [Occupation 5]. The Tribunal also noted that the applicant had [siblings] who were employed as teachers, one in Logar and one now in

⁸ European Asylum Support Office (EASO) Insurgent strategies - intimidation and targeted violence against Afghans (Executive summary), December 2012. http://easo.europa.eu/wp-content/uploads/192143_2012_5967_EASO_Afghanistan_II.pdf

⁹ DIBP Folio 19

Kabul. The applicant was not aware of any threats that had been made against them and that they have not been harmed.

51. The applicant provided some country information that some teachers had been targeted for harm, including a report from Logar province of a teacher being killed. The applicant also raised the issue that some female students had been the victims of a poison attack in Kabul. The Tribunal referred to detailed country information in the delegate's decision, which discussed the targeting of teachers.

52. Afghanistan's Ministry of Education website provided (undated) information, stating that nearly 7 million children were enrolled in schools, there were 170,000 teachers and over 4,500 school buildings.¹⁰

53. An EASO report of December 2012 stated:

'Insurgents do not oppose education as such any longer and, thus, do not target educational staff or students for the single reason of their involvement in education. However, there are still several circumstances in which educational staff or students might be targeted by insurgents (e.g. situations of political struggle between the government and the insurgents in which the insurgents hijack education in order to put pressure on the government; educational staff or schools not complying with Taliban's demands; schools which are perceived by the insurgents as a platform for government recruitment or proselytism; girls' education). For low profile persons (e.g. teachers), it is possible to escape insurgents' threats by quitting a job or obeying the Taliban's demands, unless there are specific individual circumstances that could lead to continued targeting. An example of these circumstances could be the accusation by the Taliban of spying or collaboration with the government. If a low profile person quits his activity and can flee the area and resettle in a safer area, he can normally escape intimidation or targeting by insurgents, unless there are specific individual circumstances which would preclude this possibility.'¹¹

54. The US State Department's Country Report for 2013 stated:

'Violent attacks against schoolchildren, particularly girls, also hindered access to education. Violence impeded access to education in various sections of the country, particularly in areas controlled by the Taliban. The Taliban and other extremists threatened and attacked school officials, teachers, and students, particularly girls, and burned both boys' and girls' schools. While the Ministry of Education reported an increase in attacks on education employees during the year, neither the Ministry of Public Health, the Ministry of Education, nor the Ministry of Interior reported poisoning incidents during the year.'¹²

55. The Tribunal notes that the applicant's teaching employment was in Kabul, a location that DFAT assesses is firmly under the control of the Afghan Government. In a report of October 2014 on the conditions in Kabul, DFAT made the following assessment.

3.1 Overall, DFAT assesses that the Government maintains effective control of Kabul, due to a range of counter-measures put in place to prevent and respond to

¹⁰ UNAMA, Annual Report 2014, Protection of civilians in armed conflict, p57-58, <http://unama.unmissions.org/Default.aspx?tabid=13941&language=en-US> February 2015

¹¹ European Asylum Support Office (EASO) Insurgent strategies - intimidation and targeted violence against Afghans (Executive summary), December 2012. http://easo.europa.eu/wp-content/uploads/192143_2012_5967_EASO_Afghanistan_II.pdf

¹² US State Department Country Reports on Human Rights Practices for 2013; Afghanistan, 27 February 2014. (Section 6. Children. Education)

insurgent attacks. The relatively high level of state protection available in the city, including in formal, informal and illegal areas, has been an important driver of large-scale urban migration to Kabul since 2001.¹³

56. This information showed that while there had been a series of violent attacks by the Taliban against teachers and schools, it is predominantly in locations where the Taliban were in significant control. The country information has also noted that the Taliban had been targeting female education, something the applicant had no experience in and has made no claims about.
57. The country information also does not identify that the teaching of English, which was a one of the responsibilities of the applicant, has been a reason for the Taliban to target any teachers. The Tribunal has not seen any country information to show that English teachers have a real chance of serious harm or real risk of significant harm than other teachers because of this responsibility. The Tribunal does not accept that the applicant has a real chance of serious harm or a real risk of significant harm arising from his employment as an English teacher.
58. The Tribunal does not accept that the applicant will be harmed because of his employment as a teacher, his employment by the government in this role or his teaching of English in this role. The Tribunal considers that the country information quite clearly shows that the Taliban are not indiscriminately attacking all education providers and teachers, but have embarked on a strategy that has targeted female education in certain circumstances and in locations they can easily affect. The applicant did not teach at a school with female students, and thus would not be targeted by the Taliban for this reason.
59. The applicant on return to Kabul may seek to return to his previous employment in education. As is detailed in the country information, the threat to teachers has been in locations mostly under Taliban control or influence, which does not include the applicant's home region of Kabul. In Kabul, the limited acts of violence against teachers or students have occurred in female schools, not something that the applicant has experience in. The violence in Kabul in this regard is also very limited. The Tribunal considers that should the applicant return to his employment in this field, in Kabul, the chance that he would be harmed one that is speculative only, and does not constitute a real chance, or a real risk, of occurring. The Tribunal does not accept that the applicant will be face a real chance of serious harm, or a real risk of significant harm, if he was to return to Kabul to be a teacher.
60. The applicant claimed that there had been instances of Departmental officials being targeted for harm by the Taliban, and noted that a Department of Finance employee, a prosecutor and a senior policeman had been killed in Kabul having come from different location within Afghanistan. The Tribunal considers that these examples are of individuals who were far more closely aligned to the government than the applicant and his personal circumstances.
61. The Tribunal considers that the applicant's connections to the government to be tenuous and limited. He has been employed twice in positions that are in the public sector, in his days in the health field, which ceased in 2006, and more recently as a teacher. The Tribunal does not accept that these low level roles in the nominal public service would lead the Taliban to impute that the applicant is pro-Afghan government, or would lead them to seek to harm the applicant because of his employment in these publically paid roles.

¹³ DFAT Thematic Report Conditions in Kabul 3 October 2014

62. The Tribunal finds that the applicant's claims that he would be harmed because of an imputed pro-Government political opinion because of his employment, or that he would be harmed because he has been a teacher, is not made out. The Tribunal finds that the applicant does not have a real chance of serious harm for these reasons, now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for these reasons.

Pro International Community political opinion / Employment as [Occupation 5]

63. The applicant has claimed that he has an imputed political opinion arising out of his employment as [Occupation 5] in Kabul, from 2006 to 2011. The applicant claims he was employed as [Occupation 5] for [Organisation 4] office in Kabul from 2006- 2008, and then was employed by [a company] in the same role until 2010. He claimed to have been provided accommodation by [Organisation 4]. The applicant then claimed he was [Occupation 5] for [another] firm. These are not NGOs but are international interests. The applicant claimed that because of his employment as [Occupation 5], he was threatened by the Taliban as a supporter of the international organisations in Afghanistan.
64. Again the Tribunal noted that the applicant had not been threatened or harmed in Kabul because of this employment. The Tribunal also noted that the applicant had ceased this employment and had become a teacher before leaving Afghanistan.
65. The Tribunal notes the information cited above that insurgents had targeted foreign interests, and that accommodation compounds, restaurants and places of work that were used by foreign interests were sites of attacks in the recent past. There is also information that certain Afghan employees are at risk of harm, in particular interpreters, which the applicant identified at the hearing. A Danish Immigration Service's report of May 2012 agreed, stating:
- 'People working for US military or ISAF run a higher risk than other groups, according to IOM. Translators are more at risk than other employees such as cleaning staff, which IOM explained by the fact that translators are more in contact with the military staff.'¹⁴
66. The applicant was employed for a period of time [in Occupation 5] for these organisations. [Personnel in this industry] in certain locations have been targeted for harm, but as noted in the delegate's decision, the locations have been in Provinces where the Taliban have significant influence, such as Helmand or Kandahar¹⁵. The Tribunal also notes that [personnel in this industry] have been killed in 2014, however they were not the target of such attacks, the primary target being other officials for whom the [personnel] were employed.¹⁶
67. The Tribunal considers that the role of [Occupation 5] in Afghanistan, either for [an Organisation 4] office or for a private foreign company in Kabul is not one that would lead

¹⁴ Danish Immigration Service - Afghanistan; Country of Origin Information for Use in the Asylum Determination Process; Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012; published May 2012 (p 17)
<http://www.nyidanmark.dk/NR/ronlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>

¹⁵ Delegate's decision p7.

¹⁶ [Information deleted].

the applicant to have a high profile that would lead to his being specifically targeted by the Taliban. The Tribunal considers that the applicant performed his duties, as required, and was not threatened or harmed in Kabul while conducting this work. The Tribunal does not accept that the role of [Occupation 5] for foreign interests in Afghanistan is a role that is high profile or leads to specific targeting insurgent groups opposed to the foreign interests being in Afghanistan.

68. The Tribunal notes that in 2011 the applicant stated he ceased this work and became a teacher, thus no longer being [Occupation 5] for international interests of any kind.
69. The Tribunal has also considered in this context the threats made against the applicant in Logar Province, that he was working for foreigners, Jews and Christians, including a claimed visit to the family home in 2010, a letter sent in November 2011, and an incident involving [Relative 3] in September 2012 when the applicant was in [another country]. The applicant states that these threats of the Taliban located in Logar were made because of his employment [as Occupation 5]. The applicant never personally received these threats.
70. The Tribunal noted that despite these threats, the applicant had actually never been harmed. The Tribunal noted that the Taliban whom the applicant claimed had made the threats had never approached the applicant personally, had never come to Kabul or sought to harm the applicant in his occupation. The applicant stated that Logar Province is not far from Kabul. The Tribunal noted this, and thus questioned the intention of the Taliban to harm the applicant, seeing he was in Kabul and the Taliban had never approached or threatened him in that location in Afghanistan.
71. The Tribunal does not accept that any Taliban or insurgent group who have the ability to operate in Kabul would seek to target the applicant, a low level [employee] for a period of time that is now over. The Tribunal considers that any threats against the applicant because of his employment made by the Taliban up to 2012 are no longer relevant, as the applicant has moved on from that role and the Taliban, now and in the foreseeable future, would not target the applicant for such a limited position held by the applicant in the past. The Tribunal does not consider that the applicant has any reason to fear being harmed arising from a death threat received in the past or due to the holding of [Relative 3] overnight by the Taliban in September 2012. The Tribunal does not accept that the Taliban would seek to harm the applicant arising out of any pro International Community political opinion arising from employment that ceased at least 4 years ago, or as determined in this decision, for any other reason.
72. It has been submitted that the applicant will be targeted because of an imputed support of the International Military Force (IMF) that has been working with the Afghan National Army in Afghanistan. It is an extension of the applicant's claims that he will be targeted because of his imputed pro-international interests arising from his work for the government and international interests, and his residence in Australia, part of the IMF coalition. The Tribunal has not accepted that the applicant will be harmed because of any imputed support for the Afghan government, arising from his employment, or that he will be harmed for an imputed opinion in support of international interests arising from also arising from his employment. Below, the Tribunal has not accepted that the applicant will be harmed because of his residence in Australia. The Tribunal has not accepted that the applicant will be targeted for reasons of his actual activities in employment and the imputed opinion in support of the government and international interests that went along with those activities. The applicant has not had any personal dealings with the IMF, his association with this military force is

imputed as arising from his imputed support of the present governance arrangements that include the presence of international interests and forces. The Tribunal does not accept that simply because he is assumed to be supportive of international interests, including the IMF, he will be targeted for harm by insurgent groups. The Tribunal does not accept that the applicant will be harmed for any pro-international imputed opinion, NGO, private firm or military force. The Tribunal considers that the assumption that the applicant will be harmed for this reason to be without basis.

73. The Tribunal finds that the applicant does not have a real chance of serious harm for these reasons, now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for these reasons.

Returnee from the West / Failed Asylum Seeker / accused of spying / imputed political opinion arising from his living in a Western country

74. The applicant has claimed that as a returnee from the West, he would be readily identified, which would lead to him being harmed by the Taliban. The applicant has also claimed that due to his experience overseas he would be assumed to be a spy. He would also have an imputed political opinion in support of the foreign interests in Afghanistan arising out of his residence overseas. The applicant's agents referenced a report from the Edmund Rice Centre from April 2012 about returnees being targeted on return to Afghanistan.

75. The Tribunal noted the following country information about returnees from outside of Afghanistan.

Since 2002 an estimated 5.8 million Afghan refugees—25 per cent of Afghanistan's population—have returned to Afghanistan, predominantly from Pakistan and Iran; 4.7 million of those with the assistance of the UNHCR. The rate of returns slowed in 2013 compared to previous years. The UNHCR estimates 40 per cent of these returnees have been unable to reintegrate in their home communities due to a lack of internal security and problems with access to land, shelter, services and livelihoods. Approximately a third of returnees have chosen to settle in new locations, mostly in urban areas.

Returnees generally have lower household incomes and higher rates of unemployment than established community members. Those returnees who receive cash or in-kind reintegration assistance on return to Afghanistan are therefore more likely to resettle successfully. Men of working age are more likely to be able to return successfully than unaccompanied women and children without the assistance of family or tribal networks. Returnees who have obtained foreign language and computer skills (often as a result of their time in another country) may be best placed to find well-paid employment, including in major urban areas. Those who have not obtained useful skills whilst seeking protection outside Afghanistan often seek to depart Afghanistan again.

At present, all involuntary and most voluntary returnees from Western countries are to Kabul. A high proportion of returnees choose to remain in Kabul rather than return to other places of origin. DFAT assesses that because of Kabul's size and diversity, returnees would be unlikely to be discriminated against or targeted on the basis of ethnicity or religion.¹⁷

76. Specifically regarding returns from the West, DFAT in March 2014 stated:

¹⁷ Department of Foreign Affairs and Trade, DFAT Country Report Afghanistan, 26 March 2014

DFAT assesses that there is no evidence to indicate that low-profile individuals are subject to discrimination or violence as a result of them having spent time in western countries.

More broadly, many Afghans—including Hazaras—regularly travel abroad, to Iran, Pakistan and also to Europe and other western countries to seek work and greater economic or educational opportunities. Even under the Taliban regime, Afghans continued to travel abroad to work or study, and then returned to the country. Representatives of the several European countries that regularly conduct involuntary returns to Afghanistan have told us they are not aware of any returnees having suffered harm due to a prior claim for asylum¹⁸

77. The Tribunal also notes information about civilians who are accused of being spies. The UK Home Office in a report on those perceived to be supporting the government and/or international forces¹⁹ provided the following information about civilians accused of spying.

2.2.37 The EASO report provided the following information about people accused by the Taliban of being spies:

‘Civilians accused by the Taliban of being a spy face a high risk of being targeted in areas under the sustained control of the Taliban, which will very often result in the death of the victim. This risk is low in the cities of Kabul, Herat and Mazar. However, individual and specific circumstances might lead to an increased risk. If a low profile civilian accused of being a spy can flee the area and resettle in a safer area, he can normally escape targeting by insurgents, unless there are specific individual circumstances which would preclude this possibility.’²⁰

78. The Tribunal accepts this country information and does not accept that the applicant or will be targeted because of any accusation of being a spy in Kabul. The Tribunal considers that this location is under the control of the Afghan authorities, not the Taliban, and he will not be targeted for this reason.
79. The Tribunal has considered the issue of being from the West more generally. The Tribunal notes more recent reports of two men being harmed after returning to Afghanistan from Australia. The Tribunal noted that these men were harmed outside of Kabul, travelling back to their home region in Jaghori. The Tribunal notes that in Kabul, where the Tribunal was assessing the prospect of being harmed, the country information was available that the applicant would not be targeted for harm because of his living in the West. This assessment of DFAT is more recent than that of the Edmund Rice report, provided by the applicant’s agent.
80. The applicant stated that he came from a culture where it was expected that he would attend special events, and thus he could be harmed on going back to Logar, where some family remained. The applicant also stated that his fiancé was in Logar and he would be expected to return there for a wedding.

¹⁸ Department of Foreign Affairs and Trade, DFAT Thematic Report Afghanistan, Hazaras in Afghanistan and Pakistan, 26 March 2014

¹⁹ Country Information and Guidance Afghanistan: persons supporting or perceived to support the government and/or international forces February 2015

²⁰ European Asylum Support Office (EASO) Insurgent strategies - intimidation and targeted violence against Afghans (Executive summary), December 2012. http://easo.europa.eu/wp-content/uploads/192143_2012_5967_EASO_Afghanistan_II.pdf

81. The Tribunal noted the contradiction in the general protection principle that this claim provided, that the applicant was in Australia saying he could not return to Afghanistan because of his fear of being harmed. The Tribunal noted that the applicant was in Australia and not attending the celebration and mourning events, if this was the cultural expectation that he attend these events he was demonstrating that he could not follow these events by seeking to remain in Australia. He was further not being involved with his fiancé, which the Tribunal noted would continue for the foreseeable future, given the specific restrictions that would apply to him if he was provided with protection under Australian law as a consequence of his mode of arrival, by boat. The applicant stated that if he was unable to see her he would divorce her.
82. Similarly, if the Tribunal determined that the applicant could return to Kabul, where it might be found that did not face persecution, the Tribunal stated that the applicant could remain there and not attend these events. The Tribunal acknowledged that the applicant faced cultural pressures to attend community and family events, but the Tribunal also notes that the applicant had left Afghanistan to get away from harm in his home region. The Tribunal considers that this was done with the support and agreement of the same family members he now claims would expect him to return to his home area.
83. The Tribunal noted at the hearing that [Relative 2] in Kabul had determined not to return to Logar, for fear of his safety, and had broken with the cultural expectations that the applicant states requires family members to return to locations like Logar. The Tribunal considers that the applicant could follow the example of [Relative 2] in this regard, and that his family would not expect him to return to Logar.
84. The Tribunal does not accept that the applicant face harm because of his residing outside of Afghanistan and in a Western country, or for any imputed political opinion arising from this residence. The Tribunal considers that the applicant will be able to reside in Kabul, a location where the applicant has resided for many years, and would not be targeted because of his residence in the West or outside of Afghanistan.
85. The Tribunal finds that the applicant does not have a real chance of serious harm for this reason, now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for this reason.

Criminal activity in Kabul

86. The applicant's agent claimed that there is increased criminality in Kabul, and that they would target the applicant in the general instability in the area. The applicant claimed there was deterioration in the security situation in Kabul, and that there would be a greater risk of this criminal acts occurring. The applicant noted that a report to Parliament by the Director of Security, reported in the Pajhwok News on 17 December 2014, stated that there was 107 criminal gangs in Kabul.
87. The Tribunal accepts that there may be criminal activity in Kabul, as there is in most urban locations in Afghanistan and elsewhere in the world. The question for the Tribunal is whether the applicant would be targeted on return in the instability, or because of his return from Australia. The Tribunal has considered the following country information from the DFAT report on Conditions in Kabul. Under the heading of state protection, the following information is provided.

State Protection

3.1 Overall, DFAT assesses that the Government maintains effective control of Kabul, due to a range of counter-measures put in place to prevent and respond to insurgent attacks. The relatively high level of state protection available in the city, including in formal, informal and illegal areas, has been an important driver of large-scale urban migration to Kabul since 2001.

Police

3.2 The Afghan National Police (ANP) has primary responsibility for internal law and order, including in Kabul, and plays an active role in fighting insurgent groups. Policing in Kabul tends to be more effective than in most other urban and rural areas, but as in many poorer nations, the capacity of the ANP to maintain law and order is limited by a lack of resources, poor training, insufficient and outmoded equipment and political manipulation.

3.3 In many cases, individuals needing protection may be reluctant to seek protection from the police. This may be due in part to residents' lack of confidence in the police's ability to protect them, the difficulty police will have in prosecuting offenders through the judicial system, and also to credible allegations of corruption among the police.²¹

88. The Tribunal has also considered the report of criminal activity as provided in the EASO report, discussed earlier, on Kabul.

Criminality is another source of insecurity in Kabul. Analyst Fabrizio Foschini notices a steady growth in criminal violence. Particularly, kidnapping of wealthy Afghans has reached an alarming level. Yet Foschini describes the crime level as comparatively low for a city of this size with such economic and social problems. In May 2014, the Minister of Interior Mohammad Omar Daudzai warned he would reshuffle the top positions in the city's police force if it failed to combat crime. In September 2014, NDS announced the arrest of a most-wanted criminal who, it said, controlled several kidnapping networks and coordinated armed robberies and murders in and around the city.²²

89. In its current *Travel Advice* for Afghanistan, the Department of Foreign Affairs and Trade (DFAT) states that '[t]here is a high level of serious crime in Afghanistan, including in the capital, Kabul.'²³ A January 2015 *Pajhwok Afghan News* report, however, included a statement by Kabul Police Chief General Abdul Rahman Rahimi who reportedly referred to the 'latest figures' which noted a '16 percent decline in the crime rate in the capital Kabul.'²⁴ A January 2015 *Tolo News* report also referred to a claim by Rahmatullah Nabil, Director of the National Directorate of Security, that '[c]riminal cases' had 'declined by 58 percent' in the previous two months in Kabul.²⁵ A December 2014 report from *The Guardian* described Kabul as 'a city beset by criminality and economic malaise' and noted that '[a] significant share of Kabul's economy is driven by illicit businesses, such as the drug trade, facilitated by corruption.' The report also included a comment by Jolyon Leslie, 'an architect who has

²¹ DFAT Thematic Report Conditions in Kabul 3 October 2014

²² UNOCHA, 2015 Humanitarian Needs Overview Afghanistan, November 2014 (https://docs.unocha.org/sites/dms/Afghanistan/humanitarian-needs-overview_p38)

²³ Department of Foreign Affairs and Trade 2015, *Travel Advice – Afghanistan*, smartraveller.gov.au, <<http://www.smartraveller.gov.au/zw-cgi/view/Advice/Afghanistan>>

²⁴ Hamdard, A 2015, 'Crime ratio declined in capital Kabul: Police chief', *Pajhwok Afghan News*, 4 January <<http://www.pajhwok.com/en/2015/03/10/crime-ratio-declined-capital-kabul-police-chief>>

²⁵ Majidi, S T 2015, 'Rates of Crime, Attacks Down in Kabul: Police Chief', *Tolo News*, 22 January <<http://www.tolonews.com/en/afghanistan/17934-rates-of-crime-attacks-down-in-kabul-police-chief>>

worked on urban development in Afghanistan since the late 1980s', who referred to 'growing crime' in Kabul.²⁶

90. Reports have been located which refer to recent activities against criminal activity by the Kabul Police. A January 2015 Pajhwok Afghan News report referred to the arrest of a significant number of criminals by the Kabul Police. The criminals had been involved in a range of criminal activities including drug smuggling, robbery and vehicle theft. The report stated:

Kabul police on Sunday claimed arresting 139 criminals, seizing 134 weapons of different brands and recovering 89 kilograms of narcotics in the last couples of weeks in the capital city.

Police Chief Gen. Abdul Rahman Rahimi said the individuals had been detained from different areas of the city wanted to the police in criminal cases, including robbery, vehicles thefts and other cases.

He said a group of criminals wanted in jewelry theft case from a shop at the Licy Maryam bazaar was also busted. He said 89 kilograms of opium had been recovered and eight alleged smugglers detained, including three women and two children.²⁷

91. The Tribunal has considered this claim. The Tribunal notes that the applicant has not previously raised this as part of his protection claim, and it would appear that the applicant's agent has raised it because of some country information he was aware of. The Tribunal notes that despite the relevant report being from December 2014, the applicant's agent did not include this claim as part of the general submissions provided dated 10 June 2015, the submissions discussing the general security situation in Kabul²⁸. No mention of criminal activity was made in these submissions, and the Tribunal considers that the applicant's agent has provided this with limited consideration as to how the applicant himself will be specifically targeted in this situation. The Tribunal has not accepted that the applicant would be targeted because of his returning from a western country by insurgent groups. The Tribunal does not accept the premise that simply because he has returned from Australia he will be targeted by criminal gangs. As stated above, there are many people who have come back to Afghanistan, and many of these coming to Kabul, from countries bordering Afghanistan, and beyond. While there is crime in Kabul, the Tribunal does not consider that there is real chance or a real risk that the applicant would be caught up in such crime, despite coming back from overseas. The level of criminal activity has been stated as comparatively low, and some activity on behalf of the authorities in managing the crime. The Tribunal considers that this claim is mere speculation on the applicant's behalf, an assumed claim based on some general information he has received about the generalised violence in the area, and not one that is a real chance or a real risk.
92. The Tribunal does not accept that there is either a real chance or a real risk that he will be targeted on return to Kabul for this reason. The Tribunal finds that this claim is not made out.

Presence of Islamic State

²⁶ Rasmussen, S E 2014, 'Kabul – the fifth fastest growing city in the world – is bursting at the seams', *The Guardian*, 11 December <<http://www.theguardian.com/cities/2014/dec/11/kabul-afghanistan-fifth-fastest-growing-city-world-rapid-urbanisation>>

²⁷ Hamdard, A 2015, 'Crime ratio declined in capital Kabul: Police chief', *Pajhwok Afghan News*, 4 January <<http://www.pajhwok.com/en/2015/03/10/crime-ratio-declined-capital-kabul-police-chief>>

²⁸ Pps 9-12 of submissions 10 June 2015, Folios 58-60 of RRT file

93. The applicant raised the issue of the growth of IS/DAESH in Afghanistan, and that they purported to be a risk to Hazaras. The applicant claimed that there was evidence of the IS harming Hazaras in Afghanistan. The Tribunal also notes that ISIL had been blamed for a non-Hazara Shia related attack in Jalalabad Afghanistan. The President Ashraf Ghani stated that Daesh (ISIL) had claimed responsibility, and the Taliban had denied responsibility.²⁹ The Kabul bank in Jalalabad provided, amongst other services, pay for Afghan police.
94. However a further incident in which 31 Hazaras were taken off a bus, in Zabol Province, for which the IS were blamed, turned out to be a different group involved. 19 of the passengers were released unharmed after a prisoner exchange for some Uzbek prisoners, leading to a suggestion that hostage-takers might be from the insurgent group the Islamic Movement of Uzbekistan (IMU). IS was not mentioned in the news reports.³⁰ Similarly the UN has questioned the presence of IS or Daesh in Afghanistan, stating it '*should be meticulously evaluated to ascertain if the same militants were committing violence with a different name*'.³¹
95. The Tribunal noted that the applicant had no reason to be in the vicinity of Zabol or Nangarhar, the location of these two incidents, which the applicant did not disagree with. The Tribunal does not consider that the applicant will be in the vicinity of locations where ISIL have operated, now or in the reasonably foreseeable future.
96. The Tribunal finds that the applicant does not have a real chance of serious harm for this reason, now or in the reasonably foreseeable future. The Tribunal finds that the applicant does not have a well-founded fear of persecution for this reason.
97. Further, based on the consideration of the country information and evidence, The Tribunal finds that the applicant does not have a real risk of significant harm for this reason.

Withdrawal of foreign forces from Afghanistan.

98. The applicant has claimed that with the withdrawal of western forces from Afghanistan, there will be a significant rise in violence. He has also claimed he will be imputed with an imputed political opinion in support of the IMF in Afghanistan.
99. The Tribunal notes that the withdrawal of Western forces is almost complete, there is presently 1800 US troops engaged in what has been described as 'anti-terrorist activities'³², and a further 8000 troops deployed in non-combatant training. The withdrawal is mostly complete, the Afghan National Army is responsible for the significant provision of security services in Afghanistan, which has been the scenario since the Afghans took the lead in combat operations in 2013. Reports from NATO suggest that the foreign forces will remain for a further year, to provide much needed guided and advice to the local forces.

²⁹ Afghan President Blames ISIS for a Bombing
http://www.nytimes.com/2015/04/19/world/asia/afghanistan-jalalabad-suicide-bombing-bank.html?_r=0

³⁰ Afghanistan Hazara kidnapped passengers released <http://www.bbc.com/news/world-asia-32686953> 11 May 2015

³¹ CXBD6A0DE4805 UN wants Daesh existence in Afghanistan verified, Pajhwok Afghan News – Afghanistan, 19 April 2015

³² CXBD6A0DE4174 Suicide Bomber targets protests in eastern Afghanistan, kills 17, Reuters 2 April 2015

American and NATO advisers are working to close gaps within Afghan forces, by honing their intelligence-sharing capabilities, as well as streamlining their logistics and support chains, Sarat said.

NATO Secretary-General Jens Stoltenberg announced in May that the alliance would keep a military presence in Afghanistan beyond 2016, when U.S. forces are expected to withdraw, though he said troop numbers had yet to be worked out.³³

100. The European Asylum Support Office in its report on the security situation in Afghanistan published in January 2015 referred to two studies suggesting that, following the withdrawal of the international forces, the insurgents had made territorial gains but they had been unable to capture major towns and cities:

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

Ruttig and Münch reported that since 2013, insurgents have made increasing territorial gains and cut off major highways, especially in the north. They sometimes symbolically capture abandoned ISAF [International Security Assistance Force] bases, such as Kejran, Daykundi in October 2013 and ANSF bases, such as Omna district, Paktika, in late May 2014 and Ghaziabad, Kunar, in February 2014. The insurgents launch major assaults around the country on administrative centres and security checkpoints. The aim is to capture territory and hold it, such as at Yamgan, Badakhshan, and Qaisar and Ghormach districts of Faryab. They operate in fronts of several hundred fighters. So far, the ANSF has repelled most attacks and regained control over district administrative centres and security installations, but the UN Secretary General reported that ANSF have not been able to curtail insurgents’ presence and freedom of movement, especially in remote districts. However, the expansion of the ALP [Afghan Local Police] and local uprisings have pushed them back from other areas, for example in Ghazni province.

UNAMA [United Nations Assistance Mission in Afghanistan] confirmed that the closure of ISAF bases and transfer of responsibilities to the ANSF caused changing dynamics in the conflict. In the second half of 2013 and the first half of 2014, AGES [Anti-Government Elements] challenged the ANSF by conducting attacks in larger groups of fighters and more civilians were caught in crossfire and ground engagements. However, in some areas, ANSF succeeded in holding the territory after the closure of an ISAF base, which resulted in fewer civilian casualties in those respective areas.

Between 1 March and 15 August 2014, the UN recorded a total of 11,320 security incidents relevant to the work, mobility and safety of civilians in Afghanistan. This

³³ CXBD6A0DE7555: "NATO presence in Afghanistan gives Afghan forces ‘another year of improvement’", Stars and Stripes, 30 May 2015,

was an increase compared to 2012 and 2013, but the number was still lower than in 2011.³⁴

101. UNAMA said that, as the withdrawal of international military forces and combat air support had continued in 2014, it had observed more frequent and larger ground operations by both the Afghan National Security Forces and Anti-Government Elements, notably in Helmand, Kunar and Faryab provinces, with fighting often occurring near district centres. It said that civilian deaths and injuries were caused when civilians were caught in the crossfire between insurgent and Afghan security forces fighting in and around civilian-populated areas. UNAMA said that the use of improvised explosive devices (IEDs) by Anti-Government Elements had also increased in 2014 as had the number of civilian victims of suicide and complex attacks. It said that the targeted killing of civilians had fallen five per cent from 2013 and that victims had included tribal elders, civilian government officials, mullahs and civilian justice officials.³⁵

102. The UN Secretary-General stated in his most recent report on the situation in Afghanistan that:

‘Since the end of the summer period, the Government has faced a sustained and determined challenge in securing key districts that remained under insurgent pressure. The post-elections political impasse and the delayed signing of the security agreements with the United States and NATO created an environment of uncertainty, which appeared to embolden anti-Government elements in their actions across the country to undermine public confidence in the Government and its security forces. During the reporting period, multiple attacks took place on district administrative centres, security force checkpoints and major roads. Apart from their apparent intent to project insurgent strength and generate media attention, none of the attacks succeeded in permanently capturing the intended targets.’³⁶

103. The UN Secretary-General said that the most significant attacks had been in Helmand and Kandahar provinces in the south, Ghazni, Paktia and Paktika in the south-east, Nangarhar in the east, Kunduz in the north-east, Faryab in the north and Herat, Farah and Ghor in the west.³⁷ There are reportedly now 13,500 foreign troops, mostly from the USA, in Afghanistan, and the withdrawal of the foreign forces has had a significant impact on foreign investment along with the political impasse.³⁸ Recent reports have suggested that the United States will drop plans to cut the number of its troops in Afghanistan to 5,500 by the end of 2015. An official announcement is expected when President Ghani visits Washington this week.³⁹ In an opinion piece published in the *Wall Street Journal* at the beginning of

³⁴ European Asylum Support Office, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January 2015, CISEC96CF1191, pages 22-23, omitting footnotes.

³⁵ United Nations Assistance Mission in Afghanistan (UNAMA), *Afghanistan Annual Report 2014: Protection of Civilians in Armed Conflict*, 18 February 2015, CISEC96CF1205, pages 4, 6-7.

³⁶ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, 9 December 2014, A/69/647-S/2014/876, available at: <http://www.refworld.org/docid/549808194>, paragraph 17.

³⁷ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, 9 December 2014, A/69/647-S/2014/876, available at: <http://www.refworld.org/docid/549808194.html>, paragraph 18.

³⁸ ‘Afghan Economic Crisis Looms as Foreign Aid Dollars Depart’, *The New York Times*, 26 January 2015, CXBD6A0DE2545.

³⁹ ‘Afghanistan Welcomes US Move to Drop Drawdown Plan’, *Voice of America (VOA)*, 17 March 2015, CXBD6A0DE3138.

February, Michael O'Hanlon of the Brookings Institution provided the following overview of the current situation:

'As President Obama prepares to pull all U.S. combat forces from Afghanistan by the end of next year, the recent news coverage of America's longest war is depressingly violent and familiar. Suicide bombings and insider attacks in Kabul, Taliban comebacks in parts of Helmand and Kunduz provinces (in the south and northeast respectively), continued insurgent activity throughout much of the east, and high casualties to Afghan soldiers and police.

But after my systematic survey in consultation with the U.S. command in Afghanistan, unclassified reporting and other information, I would argue that the security situation is on balance stressed but generally holding. It has deteriorated somewhat over the past couple of years, as NATO forces have dramatically downsized, from a high of nearly 150,000 in 2010-11 to about 15,000 today. But thanks largely to the hard work and sacrifices of Afghan security forces as well as recent political compromise in Kabul, Afghanistan is by no mean a failing state.

The core Western requirement of preventing a large-scale extremist sanctuary on Afghan soil continues to be met. This central fact should guide Mr. Obama, Congress and the 2016 presidential hopefuls. The war is not won, but those who base their thinking on the premise that the war is lost need to reconsider.

While Afghanistan's woes are well known, its strengths are often forgotten. The country has a security force of 350,000 that, unlike the Iraqi army in 2014, has not dissolved in the face of battle or split along ethnic lines. President Ashraf Ghani and Chief Executive Abdullah Abdullah have fashioned a workable political compromise out of last year's tortured election process, bridging major ethnic and power-broker divides and this January beginning to forge a cabinet.

This political reconciliation makes it likely that the security forces will continue to respect central-government authority. The nation's citizenry remains strongly anti-Taliban, partly due to a much-improved quality of life since 2001, and evinces much greater political awareness and participation.

Most major cities remain safer for Afghan citizens than they were even four or five years ago. There has been some worsening on balance over the past one to two years, in Kabul particularly, and some smaller cities in the south and northeast. But on balance the country's largest cities after Kabul—Kandahar, Herat, Mazar-e-Sharif—are not becoming more violent or anarchic. Kandahar, where the Taliban movement originated, is probably safer than at any time in the past seven or eight years. Of the country's 34 provinces, no capital cities are inaccessible to the government.

Many rural areas remain contested and not in government hands. Most have not benefited in a lasting way from the "clear, hold, build" paradigm recommended by standard counterinsurgency logic and advocated by Gens. Stanley McChrystal and David Petraeus. Yet there are only a few significant swaths of territory where the central Taliban organization truly controls an area, as in parts of Helmand, Kunduz, Wardak, Kunar, Nangahar and Khost provinces.⁴⁰

104. The Tribunal considers that there is a violent situation in Afghanistan, and the withdrawal of troops has led to an increase in violence. However the Tribunal does not accept that the

⁴⁰ Michael O'Hanlon, 'How Not to Squander Hard-Won Gains in Afghanistan', Wall Street Journal, 5 February 2015, CX1B9ECAB9629.

withdrawal has led to the deterioration of security to such an extent that the government has lost control of significant locations in Afghanistan, and most relevantly for the applicant, locations such as Kabul.

105. The Tribunal does not accept that the applicant has a real chance of serious harm or a real risk of significant harm arising from the withdrawal of foreign troops from Afghanistan, now or in the reasonably foreseeable future.

Religion

106. The Tribunal notes an error in the applicant's agent's submission, that the applicant he is at greater risk of being targeted because he is a Shia Muslim and that the Taliban had attacked religious minorities in Afghanistan. In fact, as per his application, the applicant is a Sunni Muslim, as was also determined in the delegate's decision, which was not disputed by the applicant. Also in the submission was a reference to an Edmund Rice Centre report of April 2012 that some who have returned from the West are held to have converted to Christianity. The applicant has not raised his religious affiliation in other contexts during his application.
107. The Tribunal considers that the applicant is a Sunni Muslim, as per his application, and will not be targeted by insurgent groups because of his religious beliefs. He is not part of any minority religious group in Afghanistan. Further, he has also not claimed to have converted to Christianity, and has discussed his interest in marrying under his cultural expectations, which are Sunni Islam based expectations. The Tribunal has not accepted that simply because he has resided in a Western country he will be targeted for harm. This Tribunal considers that this remains true of any assumption of his religious affiliation, that he will not be assumed to be a Christian simply because of his being in a Western country. The applicant identifies as a Sunni Muslim, and the Tribunal does not accept that the applicant will be targeted for any religious reason. The Tribunal finds that the applicant does not have a real chance of serious harm or a real risk of significant harm for this reason.

Risk of significant harm from generalised violence

108. The applicant's agent raised the issue of the applicant being significantly harmed in the generalised violence in Kabul, referenced s.36(2B)(c) of the Migration Act and referred to the case of *SZSFF v MIBP* [2013] FCCA 1884. The Tribunal questioned how the threat of violence for the applicant in Kabul was different to that of the general population. The agent stated that because of the particular circumstances of the applicant he was a greater risk of harm than the general population.
109. *SZSFF v MIBP* was not determined on this point, but the presiding judge was perhaps the first to consider the qualification in s.36(2B)(c) to the complementary protection criterion. In that case the Judge was requested to consider an extension of time to seek judicial review of a decision of the Refugee Review Tribunal. In the course of the consideration the Judge considered elements of the substantive claim, and determined that the claim could not be sustained.
110. Subsection 36(2B)(c) of the Migration Act states:

(2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:

...

(c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

111. The Judge noted the submissions on this point with approval.

Nevertheless, the Minister accepts that s.36(2B)(c) contemplates that a risk may be faced by a section of the population and by the applicant personally, as the applicant states at particular (e). Properly construed, the complementary protection provisions and, specifically, s.36(2B)(c) emphasise the requirement that the real risk of significant harm must be a personal risk. That is, it must be a risk which is faced by the individual personally in light of the individual's specific circumstances.

The prevalence of serious human rights violations (in the context of generalised violence) in the destination country will not, of itself, be sufficient to engage a non-refoulement obligation for all people who may be returned to that country. However, where serious human rights violations in a particular country are so widespread or so severe that almost anyone would potentially be affected by them, an assessment of the level of risk to the individual may disclose a sufficiently real and personal risk to engage a non-refoulement obligation under the ICCPR and/or CAT. As such, s.36(2B)(c) does not necessitate in all cases that the individual be singled out or targeted for any particular reason. What is ultimately required is an assessment of the level of risk to the individual and the prevalence of serious human rights violations is a relevant consideration in that assessment.⁴¹

112. The Tribunal has considered the applicant's circumstances with respect to this point. The Tribunal has not accepted that the applicant will be specifically targeted for harm in his personal circumstances by the Taliban or other insurgent groups in Kabul. The Tribunal notes that there is a level of violence in Kabul, but noted that the country information shows that the Taliban are at present targeting individuals and locations that are associated with government and foreign related interests. The applicant's agent submitted that the situation was going to get worse in Afghanistan generally and in Kabul through the continued withdrawal of international forces. The applicant's agent submitted that the Taliban had started to target the general population, though the country information provided by the applicant in fact references the attacks on government and foreign interests in Kabul. The applicant stated that the Tribunal did not know the true picture on the ground in Kabul, he did. The applicant stated that the violence was not being reported, that the agencies reporting did not go into the centre of Kabul and see what was going on.

113. The Tribunal accepts that there has been violence against the civilian population in Kabul, that there have been a number of civilian casualties (deaths and injuries) of civilians who have been caught up in the targeted attacks. The Tribunal does not accept the submission that there is a failure of reporting and limited information about the violence. The Tribunal noted an April 2015 report from UNAMA that detailed specifically the casualties, including whether they were children or women, in the first 3 months of 2015.

114. The Tribunal also does not accept that the drawdown of international forces will lead to any significant increase in violence in Kabul. The international troops have been largely withdrawn, 1500 US specialised anti-terrorist troops remain, with 8000 non-combat trainers. The drawdown is almost complete, and while there is certainly an increase in violence, the Tribunal does not consider that the evidence of violence, as demonstrated above, shows that the increase in violence is significant.

⁴¹ SZSFF V MIBP paras 33 - 34

115. While the Tribunal accepts that there is a level of generalised violence in Kabul, the Tribunal considers that this is a risk that is faced by the population generally, and that the applicant is not personally at greater risk in this generalised violence context than the general population in Kabul. The Tribunal does not accept that there is any particular attribute of the applicant that would lead him to be at a greater risk of harm in the generalised violence in Kabul, now and the reasonably foreseeable future.
116. Having considered the country information detailed above, and the information as provided by DFAT regarding the level of security in Kabul, including the risk of deterioration in the security situation, the Tribunal does not accept that the level of generalised violence in Kabul, now and the reasonably foreseeable future is so widespread or so severe that almost anyone would potentially be affected by them.
117. The Tribunal finds that the applicant does not face a real risk of significant harm arising from the generalised violence in Kabul.

Other matters

118. The Tribunal has considered the guidance as provided by the High Court in the case of *MIBP v SZSCA* [2014] HCA 45. This case is relevant as it discusses the reasonableness of expecting the applicant to remain in Kabul, with the majority of the Court determining that the same considerations as are relevant to relocation apply when the Tribunal identifies an area where the visa applicant may be safe, so long as he or she remains there. The applicant's personal circumstances can be distinguished to the circumstances of the applicant in *SZSCA*, in that in the *SZSCA* case the applicant had some claim to be a truck driver, which potentially could require the applicant in that case to be required to drive outside of Kabul. In the present circumstance, the applicant's employment history suggests that he will be able to return to being a teacher in Kabul, that was his employment when he left, and his [sibling] currently is a teacher, perhaps [in a senior role], as stated by the applicant, and a potential provider of employment for the applicant. The Tribunal considers that the applicant's employment as a teacher would mean that the applicant would be able to live and work in Kabul without the need to leave the city for employment purposes. The Tribunal considers that the applicant will be able to work within the city of Kabul, and would not require the applicant to travel outside of Kabul, where he claims he is at risk of harm. The Tribunal considers that it is reasonable in the sense of being practicable that the applicant remain in Kabul to re-establish his life, employment and future family opportunities.
119. Having considered the individual and cumulative effects of the applicant's background, claims and circumstances, the Tribunal does not accept that there is a real chance that the applicant will be persecuted for one or more of the Convention reasons if he returns to Afghanistan. The Tribunal does not accept on the evidence before it that the applicant has a well-founded fear of being persecuted for one or more of the Convention reasons if he returns to Afghanistan now or in the reasonably foreseeable future.
120. Having regard to the findings of fact above, the Tribunal does not accept on the evidence before it, that there is a real risk that the applicant will suffer significant harm because of any imputed political opinion arising from any of his employment and imputed support of the Afghan Government or international interests, his being in Australia and seeking asylum, his being accused of being a spy, his religion, from Islamic State, from criminal activity in Kabul, from the generalised violence or because of any political opinion which he may hold or which may be imputed to him or because of his membership of any of the particular social

groups which he and his representative has suggested based on these circumstances. The Tribunal has considered these claims individual and cumulatively. The Tribunal is satisfied that there would not be a real risk that the applicant will suffer significant harm as defined in subsection 36(2A) of the Migration Act if returns to his home region of Kabul. The Tribunal therefore find that there is taken not to be a real risk that he will suffer significant harm in Afghanistan in accordance with paragraph 36(2B)(a) of the Migration Act.

121. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
122. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

123. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Stuart Webb
Member