

1406336 (Refugee) [2015] AATA 3673 (10 November 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1406336
COUNTRY OF REFERENCE:	Afghanistan
MEMBER:	Stuart Webb
DATE:	10 November 2015
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 10 November 2015 at 5:03pm

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Afghanistan, applied for the visa [in] November 2012 and the delegate refused to grant the visa [in] March 2014.
3. The applicant appeared before the Tribunal on 11 June 2015 to give evidence and present arguments. The Tribunal also received oral evidence from Ms [name], who identified herself as the applicant's cousin, and provided evidence as to the applicant's identity and home region in Afghanistan. The Tribunal hearing was conducted with the assistance of an interpreter in the Hazaragi and English languages.
4. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

RELEVANT LAW

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

Refugee criterion

6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory

conduct (s.91R(1)(c)). 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.

11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
15. 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

16. 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').
17. '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.

18. 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

19. 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

20. The applicant provided the following statement with his application.

Background:

I was born in [Village 1] in the Jaghori District of Ghazni Province, in Afghanistan. I am an Afghanistan citizen. Both my parents were also born in the Jaghori District of Afghanistan I am not a citizen of any other country. I do not have the right to reside in any other country.

I am of Hazara ethnicity and am of the Shi'a Muslim faith. I actively practice my Shi'a Muslim faith and observe festival and other religious observances such as Muharram and Ramadan, Shabe Qadar, I sometimes attend a mosque to pray and other times pray at home.

I am not married and have not children. My father was killed around two years ago by the Taliban near my village. My mother is still alive and living in Afghanistan. I also have [number of siblings] living in Afghanistan.

My family has a family farm in [Village 1]. I have worked on the family farm since I was around ten years old and was still working on the family farm just prior to my departure to Australia.

I travelled to [Country 2] for two months in [year]. I was sent to [Country 2] for medical treatment on my [body part] which had been injured in an attack by the Taliban. A Non Government Organisation (NGO) arranged for my trip to [Country 2] as part of a charitable effort to assist young injured Afghanistan people. Other than my trip to [Country 2] and this journey to Australia, I have not been to any other countries outside of Afghanistan.

I have received [number] years of school through the public school in Ghazni City. I completed my schooling [in year], prior to embarking on this journey to Australia.

On [a date in] June 2012 (approximately), I left [Country] by boat. I arrived in [Australia] around [date] June 2012.

The country I fear returning to

I fear returning to Afghanistan.

The reasons I left Afghanistan

[Village 1] is a Hazara village. There are around [number] houses there. [Village 1] borders Pashtun areas and there has been tension between the Hazara and Pashtun communities ever since I can remember. These Pashtun people live in the village of [name]. [That village] is twenty minutes walking distance from [Village 1].

Part of our family farm was occupied by the Pashtun people when the Taliban were in power. The Taliban confiscated our land and gave it to the Pashtun villages to farm. When the Taliban were no longer in power in our district, after the Coalition forces took control (the US armed forces in my area), our land was given back to us. Currently Ghazni Province is patrolled by the Polish armed forces. The return of our family farming lands to us caused a lot of resentment to the Pashtun villagers. In 2006, the Taliban gradually regained power. The Pashtun villagers took an action in a court controlled by the Taliban and our land was returned to them.

Against this background of hostility between Pashtun villagers and the Hazara villagers and the dispute over our land, I was attacked in [year]. I was riding my motor bike on the way to purchase food for Eid. I was stopped on the road by three armed people wearing balaclavas. These people demanded that I stop. I tried to flee the situation. However, they opened fire and shot me when I was around 50 metres away. I was hit by bullets in the side of my body. The people then caught up with me and bashed me whilst I was on the ground. I was unconscious. My [body parts] were broken as well as [other body parts]. My father found me on the road and took me to the hospital in Jaghori. I was then transferred to Kabul Hospital where I stayed for six months. I was flown from Kabul to [Country 2] as part of my treatment and stayed in [Country 2] for two months.

I am sure that I was attacked by Taliban and that the attack was in response to the animosity over the land and the fact that I am a Hazara and a Shi'a Muslim. I had received threats from the Taliban that I would be killed by them. Pashtun people who were Taliban were telling me directly and through messengers that I had to leave or be killed because I am a Hazara and a Shi'a Muslim.

Two years ago, my father was working on the family farm. My father went to talk to the Pashtun neighbours and was shot dead. My father was shot because he is a Hazara and a Shi'a Muslim and over the land dispute.

Late last year, I was again threatened by the Taliban. I was told that I would be killed because I am a Hazara and a Shi'a Muslim and because the Pashtun people wanted more of our land. The threats were sent by messengers from the Taliban. The messenger told me that the Taliban had killed my father and they would soon kill me if I did not leave the village.

I was in fear of my life as I had already been attacked in [year] by the Taliban. I fled Afghanistan to save my life.

What I fear may happen to me if I return

The Taliban will carry out their threat and kill me. I take the threat seriously because my father was killed just two years ago by the Taliban and I was attacked and nearly died in [year].

I fear that I will be persecuted in Afghanistan because I am a Hazara and follow the Shi'a Muslim faith. Afghanistan is not safe for Hazara and Shi'a Muslim followers.

In Afghanistan, Shi'as and Hazaras are targeted and persecuted. For instance, I am told that a bomb exploded Kabul and in Mazir Sharif on the day of Ashora celebrations, targeting Shi'a worshippers and killing more than fifty people.

Who might harm me if I return

The Taliban or Pashtun people who seek more of our family land will kill me if I return to Afghanistan. I fear that I will be harmed or even killed by the Taliban who target Hazara and Shi'as. I was almost killed in [year] by an attack by the Taliban.

Do I think the authorities can protect me if I return?

The authorities are not willing or able to protect Hazara and Shia Muslim people in Afghanistan.

Can I go anywhere else in my country, apart from where I used to reside?

The Taliban have connections and spies throughout Afghanistan. There is nowhere safe for me to go in Afghanistan.

There is no place in Afghanistan I could safely reside including in Kabul. The cost of living is prohibitive in cities like Kabul and I need access to a social network such as close family members in order to gain employment and housing. I would be attacked in Kabul by local Taliban or Pashtun Taliban sympathisers.

21. The applicant provided some documentation regarding his identity. He provided photographs of his time in [Country 2]. A short submission on issues raised at the delegate's interview was provided. He could not provide evidence of his relationship with [the agency], who organised his trip to [Country 2]; he could not provide his passport; he could not provide original school certificates; he could not provide evidence of land ownership; he could not provide ownership papers for his motorbike; he could not provide evidence of renting a room in [town]. It was stated that the applicant had chosen his family [name] himself.
22. The applicant was interviewed by the department. He chose the [family] name because he liked it, he had not used it in Afghanistan. The delegate had significant concerns regarding the genuineness of the applicant's Taskera, which was issued in conflict with country information about Taskera. The date of birth and naming in the Taskera caused significant concern, especially as an assumed name would not be placed in an official document. The delegate had further concerns about a Taskera purporting to be his father's. The delegate had concerns about the genuineness of a passport the applicant used to travel outside of Afghanistan. The delegate had concerns about his identity. However for the purposes of the protection visa the delegate accepted the general claim of the applicant's name and age, but stated that it may need to be verified at a later date. The delegate noted that the applicant had been inconsistent and evasive about his age and education, and put concerns about this element to the applicant in writing after the interview. The delegate noted that there were significant issues with the amount of education the applicant had completed, and where this was conducted.
23. The delegate accepted that the applicant was a Hazara from Afghanistan. The delegate noted had been consistent in his claim that he had been born in [Village 1], Jaghori, however had significant difficulty identifying this location. He could not identify the location within Jaghori. He eventually stated that it was near the border with Zabul, however was unable to name the district in Zabul he resided near. The delegate noted that Hazaras were the predominate ethnic group in Jaghori and that Pashtuns were only found in certain areas. The delegate did not accept that the applicant was from a village from the Jaghori Zabul border.

24. The delegate noted further concerns with the applicant's evidence. With respect to his being unable to be treated in Jaghori for injuries, the delegate noted that the district had a hospital that was the best equipped in the highlands, which did not support the claim that the applicant need to go to Kabul for treatment.
25. The delegate noted that the applicant had money to afford education for the children and to have multiple vehicles. The delegate considered that the applicant's education was consistent with his being from Jaghori, given education was prioritised in that district, the other aspects of the applicant's claims caused the delegate to have considerable concern about the applicant's claim that he is from Jaghori.. Despite being requested to provide any documentation regarding his residence and education in Jaghori, the applicant was unable to do so, despite being requested in writing under s91W of the Migration Act. The applicant's Taskera was suspected to be fraudulent. The delegate did not accept this claim that the applicant was from Jaghori.
26. The delegate considered the applicant's claim that his family had a land dispute within Pashtuns, the family owned 'a lot of land' makes 'a lot' of money. The applicant claimed he was studying in [town] when his father was killed. The applicant claimed he returned to work on the land after he finished school. He also stated he was in hiding after his father died. Given the discrepancies in the evidence of the applicant, and his lack of credibility, the delegate did not accept that the land dispute occurred.
27. The delegate had concerns about the cause of the applicant's injuries in [year]. The delegate considered it was plausible that the applicant was harmed in a violent attack, but had not reason to believe that the applicant was specifically targeted. The delegate noted that the applicant could have equally been injured in a non-violent accident.
28. The delegate considered that the applicant has been inconsistent in the death of his father, including the date of it and who was responsible. The delegate did not accept the reason for the death, the land dispute. The delegate did not accept that the applicant's father was killed as a result of a violent attack.
29. The applicant's agents provided a submission on the applicant. It was stated that he had a cousin and uncle who could attest to the applicant's identity and place of birth. It was submitted that the applicant feared harm because of his residence in [Country 2] and Australia. The submission made remarks about the applicant's home area, and the plausibility of his coming from a location near Pashtun areas. It was submitted that the applicant has been credible through his claims.
30. It was submitted that the applicant fears harm because of his Hazara Shia background, a land dispute that may be linked to his family's race, though may be criminal, and his membership of a particular social groups of Afghans previously resident in Western nations. General submissions in relation to state protection and relocation were provided. Appendix submissions generally about Hazara Shias, discrimination, persecution of returnees, the general security situation and the risk in Ghazni were provided.
31. A post hearing submission was received from the applicant's agent. This stated that there were ongoing issues in relation to the applicant's home region of Jaghori, including that the applicant's home region in Jaghori is in the vicinity of other ethnic groups, being close to the border of the district. It was submitted that the road to Jaghori, Route 1a through Nawur, discussed at the hearing as assessed as being the most secure route, was in fact not that secure, and would necessitate the applicant travelling through Wardak Province. The submission noted that the Nawur route was assessed as 'the most secure one for now', emphasizing the possibility of a deterioration in the route. It was submitted that the risks of travelling this route were not mitigated. It was submitted that there was the prospect of

Hazara being targeted by individual Taliban commanders, despite the Taliban having a general position that was not anti-Shia or anti Hazara as a whole. It was submitted that attacks in Kabul, while acknowledging that the targets were related to government or international forces, showed that the Taliban had greater capabilities to attack in this area, and showed the general deterioration of the security situation. There was limited capacity of the state to provide protection. It was submitted that civilians face appreciable risks of harm through greater overall violence. It was also submitted that there are presently significant economic issues, which will make it more difficult for the applicant to find shelter, employment and living conditions allowing him to subsist. The mass unemployment in Kabul is a significant issue. It was submitted that the applicant's uncle, who resides in Kabul would not be able to provide support if the applicant could not find employment, making it unreasonable for the applicant to relocate. It was also submitted that the security situation in Afghanistan will deteriorate in the future, making the situation worse.

FINDINGS AND REASONS

Nationality

32. The applicant has provided the Department with documentary evidence of his nationality. It would appear that the delegate had concerns regarding the identity, and references a s91W letter sent to the applicant pertaining to his identity in their decision. No such letter is on the department file. The applicant's representatives provided a number of submissions regarding the applicant's identity¹. The last submission referenced a response to a s91W letter. The delegate expressed concerns regarding the documentation as provided by the applicant, but did not refuse the applicant on these grounds, and accepted that the applicant was a Hazara from Afghanistan.
33. The applicant appeared before the Tribunal. He answered the Tribunal's questions in Hazaragi, and has the typical features of a Hazara. The applicant has consistently claimed he was a citizen of Afghanistan. The applicant's cousin attended the hearing, and provided evidence regarding the applicant's identity. She had left Afghanistan in 2002, but knew the applicant prior to her coming to Australia. She provided correct information pertaining to family members of the applicant. She provided information regarding the location of the family village, concordant with information as provided by the applicant. Based on the information before me and in the absence of any information to the contrary, the Tribunal accepts that the applicant is a citizen of Afghanistan and that Afghanistan would be his country of return for complementary protection considerations.

Third country protection

34. 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.

Claims

35. The applicant has claimed that he is a Hazara Shia from the Jaghori region of Ghazni Province, Afghanistan, who has who has resided most of his time in Afghanistan, aside from a period of time receiving treatment from an injury in [Country 2] in [year]. He returned to Afghanistan in [year] and remained there until 2012. His father was killed in land dispute in 2010. He will be harmed on return to Afghanistan because of his race and religion, due to his time outside of Afghanistan, in particular Australia would mean that he would be targeted for harm on return.

¹ DIBP folios 71-73, 78-79, 80-81, 92, 93-99

36. The Tribunal discussed the applicant's claims. The Tribunal found the applicant to be relatively honest in his evidence, he conceded that there were inconsistencies in relation to elements in his claims, including estimated dates and timing of events. The applicant himself has limited personal claims, but has raised issues arising from his ethnicity, background, travelling on the roads of Afghanistan and relocating to Kabul, which it is submitted has a deteriorating security situation and provides limited opportunity for a young man with very little social support.
37. The Tribunal has considered whether the applicant has a well-founded fear of persecution in the reasonably foreseeable future for reason of being a Hazara Shia if he returns to his home area of Jaghori.
38. The Tribunal has given considerable weight to a number of reports by the Australian Department of Foreign Affairs and Trade (DFAT) as these are authoritative, very recent and the Department has been specifically charged with the provision of this advice to the Australian government. In its September 2015 report, DFAT have stated that they are not aware of any credible evidence that everyday Shia Muslims are systematically targeted on the basis of their religious affiliation and that they assessed that Sunni-Shia sectarian violence is infrequent, although occasional violence does occur. They also stated that Hazaras had made significant gains (albeit from a small base) since the Taliban were removed from power in 2001. They stated that while conditions for Hazaras had greatly improved since 2001, they still face some societal discrimination. They stated that they had no evidence to suggest that Hazaras are systematically targeted in insurgent attacks on the basis of their ethnicity alone and that with the exception of kidnappings, Hazaras are not currently at any greater risk of violence than other ethnic groups in Afghanistan.² This view of the level of general threat posed to the Hazara community is supported by Professor Amin Saikal of ANU.³
39. DFAT have also reported that the number of active ISIS (Daesh) militants remain low and that they assessed that ISIS currently has limited capacity and influence in Afghanistan and that civilians in Afghanistan face a low risk of violence from groups affiliated with ISIS compared to the risk of violence generally in the country.⁴
40. In its *Thematic Report – Hazaras in Afghanistan and Pakistan* DFAT assesses that there is a low risk of violence for Hazaras in Ghazni. DFAT states:

4.11 At least 11 Pashtun-majority districts of Ghazni Province are not considered to be safe. The threat level in these districts is high due to the presence of Taliban and other insurgent groups. However, the threat level in Hazara-majority districts of Ghazni, including Nawur, Malistan and Jaghori remains low. Security is provided by the Afghan National Police (ANP), without any Afghan National Army (ANA) deployments to these districts. DFAT assesses that there is a low risk of violence for Hazaras in these particular areas.

4.12 There have been incidents of conflict between Hazara factions in Ghazni, primarily revenge attacks. However, the Government had asserted effective control over the main Hazara districts of the Province in recent years, including by preventing the dissemination of weapons, the confiscation of weapons, and the detention of individuals responsible for violent crime.

² Department of Foreign Affairs and Trade, DFAT Country Information Report Afghanistan, 18 September 2015.

³ Saikal, Amin 2012, 'Afghanistan: The Status of the Shi'ite Hazara Minority', *Journal of Muslim Minority Affairs*, March, Vol.32, No.1, pp.80-87.

⁴ Department of Foreign Affairs and Trade, DFAT Country Information Report Afghanistan, 18 September 2015.

4.13 The comparatively good security environment in Ghazni's Hazara districts means that government officials and the international community have relative freedom of movement in these areas. These districts therefore enjoy relatively good access to services and a permanent presence of government officials—including from the Departments of Rural Rehabilitation and Development, and Education. However, security on roads linking Hazara-majority districts of Ghazni to Kabul and other parts of Afghanistan is less safe.⁵

41. The UK Home Office in its October 2011 Country of Origin Report highlighted the June 2011 International Crisis Group (ICG) report that noted “[i]n the rural areas of Ghazni, Wardak, Logar and other nearby provinces, where unemployment runs high and government presence is low, the insurgency has found safe havens far from the borders of Pakistan.⁶ The ICG report also noted Ghazni province that:

...Those who do not actively support the Taliban, as one Afghan security official in Ghazni explained, offer passive support, giving the Taliban wide berth to operate. “90 percent of the people in Ghazni hate the Taliban but they don't feel they have a choice. When we've travelled to different districts we've asked the people what do you want from the government. They say: ‘We don't want schools. We don't want clinics. We want security’”.⁷

42. An April 2012 *Washington Post* article provides a U.S military and government perspective on the security situation in Ghazni province. The article notes:

American officials consider Ghazni a linchpin for stability in central and eastern Afghanistan. For years, the province has been plagued by insurgents, who have regularly attacked U.S convoys along Highway 1, the main road that connects Kandahar province to Kabul, slicing through Ghazni for 90 miles. As NATO troops continue to leave Afghanistan, Ghazni is the only province that will see a net gain in the number of foreign troops on the ground in the coming months.⁸

43. In April 2009, the Cooperation for Peace and Unity report on Ghazni province provided the following information with reference to the ethnic makeup of, and security situation in Ghazni district. The report notes:

The Afghanistan NGO Safety Office in its 2nd *Quarterly Data Report* for 2012 provides statistics on the number of incidents per province, including armed opposition group attacks (AOGs) and indicates that Ghazni province remains volatile. In this report, Ghazni province is listed in the ‘over 2 incidents per day’ category, the highest category for recorded incidents across the Afghan provinces. The report states that 61% of all incidents were caused by AOGs and the province sits 6th overall in terms of total incidents behind Kandahar, Nangarhar, Khost, Helmand and Kunar.⁹

44. There are reports indicating that over the last twelve months Hazara travellers have been increasingly targeted in different parts of Afghanistan. The following list is taken from the DIBP's Country of Origin Information Service *Issues Paper on Hazaras* issued in March 2015. Footnotes have been removed:

⁵ Department of Foreign Affairs and Trade, DFAT Thematic Report Afghanistan, Hazaras in Afghanistan and Pakistan, 26 March 2014.

⁶ UK Home Office 2011, *Afghanistan: Country of Origin Information (COI) Report*, 11 October, Sec. 8.37, p51

⁷ International Crisis Group 2011, *The Insurgency in Afghanistan's Heartland*, 27 June, Asia Report No 207, 18

⁸ Sieff, K 2012, ‘Taliban closes dozens of Afghan schools’, *The Washington Post*, 27 April <http://www.washingtonpost.com/world/taliban-closes-dozens-of-afghan-schools/2012/04/26/gIQA7IzUjT_story.html>

⁹ Afghanistan NGO Safety Office 2012, ‘Quarterly Data Report Q2, June, Sec. 1.2 <<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>>

15 March 2015 A bus was stopped travelling between Ghazni and Jaghori. Ten Hazaras were abducted. After some hours nine were released with one continuing to be held at the time of writing. Unconfirmed reports believe the remaining captive worked for the government.

23 February 2015 Masked men stopped two vehicles traveling on the highway near Zabol and identified and abducted 30 Hazaras. The Hazaras were reported to be Afghan refugees returning from Iran. Different reports identified the abductors as possibly foreign and either members of the Taliban or ISIS. As of the time of publication, the men had not been found, although one Hazara escaped on 25 February.

20 January 2015 Eight or nine Hazaras were killed in Gilan district in Ghazni when their van was exploded by a remote controlled bomb. The Hazaras were travelling from Kabul to Jaghori district. The pro-Hazara source Kabul Press claimed that 'These victims were civilians who were going from Kabul to Jaghori, did not work for any government offices and did not have any connection with any of Afghanistan's political parties', though other sources do not give such details about the victims.

20 September 2014 Australian-Afghan Sayed Habib Musawi, a Hazara from Jaghori district in Ghazni, was reportedly killed by the Taliban while travelling from Kabul to his home district of Jaghori. He was reportedly killed as he was an Australian, but the fact that he was also a Hazara may have been relevant.

c.16 September 2014 Zainullah Naseri, a Hazara from Jaghori district in Ghazni, was reportedly abducted and tortured by the Taliban for two days in Ghazni province after being deported from Australia. He escaped to Jaghori then returned to Kabul. DFAT was unable to confirm the report.

25 July 2014 Suspected Taliban fighters halted two minibuses in Lal-o-Sar Jangal district in the western province of Ghor, identified 14 Shia Hazara passengers, including three women and a child, bound their hands, then shot them dead by the side of the road.

28 June 2014 The Taliban killed (Hazara sources say 'beheaded') between 14 and 17 people, usually described as policemen or ex-policemen, in Gizab district of Uruzgan Province. This incident was little reported and reports do not give much detail. According to Hazara sources, the victims were Hazaras, mostly students and workers, though other sources do not mention their ethnicity. Other information tends to support the assertion that the victims were Hazaras: Hazaras comprised a disproportionately large part of the police force in Uruzgan and particularly in Gizab, according to a 2010 NGO report on Uruzgan, and one of the reports mentions that one of the victims was the nephew of Governor Amanollah Timuri who is elsewhere reported to be a Hazara.

45. DFAT have commented that the key Hazara districts of Ghazni Province (Nawur, Malistan and Jaghori) continue to experience relatively low levels of violence. No recent reports have been found of Taliban or other insurgent incursions into Jaghori. Based on country information and the applicant's individual circumstances, I therefore do not accept that the applicant in his home area of Jaghori faces a real chance of persecution, now or in the reasonably foreseeable future from the Taliban or any other insurgent group on account of being a Hazara Shia or any imputed political opinion.

Road travel

46. In October 2012 DFAT commented that there is a need of residents to travel outside areas such as Jaghori to access health services. Although the government and international community have been committed to improving health service delivery, relatively simple

procedures still require patients across the country to travel to provincial capitals or to Kabul. In terms of employment in Ghazni, DFAT noted:

... close to 80 per cent of employment is reliant on small-scale agriculture. We do not have detailed information on employment in Jaghori specifically, but seeking employment and improved economic opportunities remains a key motivator for the many Afghans moving every day from rural areas to provincial centres, to Kabul, and abroad.¹⁰

47. It is clear that the applicant would need to travel on the road from Kabul to return to his home area of Jaghori. In October 2012 DFAT commented that there is a need of residents to travel outside areas such as Jaghori to access health services. Although the government and international community have been committed to improving health service delivery, relatively simple procedures still require patients across the country to travel to provincial capitals or to Kabul. In terms of employment in Ghazni DFAT notes:

In Ghazni, close to 80 per cent of employment is reliant on small-scale agriculture. We do not have detailed information on employment in Jaghori specifically, but seeking employment and improved economic opportunities remains a key motivator for the many Afghans moving every day from rural areas to provincial centres, to Kabul, and abroad.¹¹

48. Given his individual circumstances, the Tribunal is of the view that it is likely that the applicant will have to travel regularly to continue work to support himself on a more than infrequent basis to find work to help support himself. Ghazni City is the closest provincial capital and it would also on occasions have to be visited to obtain necessary medical care for himself given the DFAT information set out above concerning the lack of medical care in district areas and that relatively simple procedures still require patients across the country to travel to provincial capitals or to Kabul at significant expense.

49. The Department's March 2015 *Country of Origin Information Service* report summarises the differing views regarding the safety of road travel for Hazaras:

Most security concerns for Hazaras in the Hazara districts of Ghazni relate to travel outside the district, as most roads travel through Pashtun districts where insurgents are active. There are conflicting views among external sources consulted by the RRT on whether Hazara travellers travelling to Ghazni City or Kabul are being targeted because of their ethnicity. In 2014-5 there have been three reported incidents involving Taliban attacks on Hazaras travelling into Jaghori from Kabul ...

There are conflicting views among external sources consulted on whether Hazara travellers travelling to Ghazni City or Kabul are being targeted because of their ethnicity. Advice by DFAT, Qayoom Surosh of Afghanistan Analysts Network and the Afghanistan Development Association indicates that there is no evidence of ethnic targeting on roads in Ghazni. In contrast, Thomas Ruttig, Professor Alessandro Monsutti, Professor William Maley and a Ghazni based NGO, the Ghazni Rural Support Program, maintain that travel for Hazaras is dangerous on roads passing through Pashtun districts¹²

50. DFAT has made the following comments about road security:

4.22 Afghanistan's road network, particularly in the mountainous central highlands, is generally poor. Travel in winter is even more difficult and roads at higher altitudes can

¹⁰ Department of Foreign Affairs and Trade 2012, *Security Situation for Hazaras in Afghanistan*, 31 October (CISNET CX298127)

¹¹ Department of Foreign Affairs and Trade 2012, *Security Situation for Hazaras in Afghanistan*, 31 October (CISNET CX298127).

¹² 'Afghanistan: Hazara Issues Paper', *Country of Origin Information Service*, March 2015, p.46-47.

be cut by snowfalls for long periods during winter. Speeding and unsafe driving further aggravates the problem—the majority of deaths on Afghan roads are caused by traffic accidents.

4.23 Insecurity compounds the poor condition of Afghanistan's limited road network, particularly those roads that pass through areas contested by insurgents. Taliban and criminal elements target the national highway and secondary roads, setting up arbitrary armed checkpoints. Official ANP and ANA checkpoints designed to secure the road are sometimes operated by poorly-trained officers known to use violence to extort bribes. More broadly, criminals and insurgents on roads target all ethnic groups, sometimes including kidnapping for ransom. It is often difficult to separate criminality (such as extortion) from insurgent activity.

4.24 Individuals working for, supporting or associated with the Government and the international community are at high risk of violence perpetrated by insurgents on roads in Afghanistan. Carrying documentation that would indicate employment or another connection with the Government is dangerous. Because Hazaras are perceived to be affiliated with either the Government or international community, those Hazaras travelling these routes who work for the Government or international community frequently take precautions to ensure that, if they are stopped, they could not be identified as such.

4.25 Hazara MPs and several credible civil society contacts have told DFAT that 'dozens' of Hazaras were killed on roads to and from Hazarajat in 2013. However, DFAT has no reliable evidence to indicate that insurgents disproportionately target Hazaras on roads in Afghanistan. Hazaras are often the main travellers on roads to Hazarajat, so higher numbers of victims could also reflect the higher volume of traffic.

...

4.32 There are two well-established routes from Kabul to Ghazni city. One is short and insecure, via Maidan Wardak. The other passes through parts of Parwan Province on the Bamiyan–Charikar Highway. This is more secure, but long and arduous.

4.33 There are three routes from Ghazni city to the Hazara-majority Jaghori district. The most frequently used road passes through Nawur district, and is considered secure. The second route through Qarabagh district is considered less secure. A third through Muqur is insecure due to a Taliban presence, with occasional checkpoints and security incidents. DFAT understands that local residents with ties to the province and knowledge of the area—including Hazaras—are generally able to travel between Ghazni City and Hazara districts without incident and thousands of vehicles use these roads daily.¹³

51. The Department's Country of Origin Information Service (COIS) report from March 2015 on 'Afghanistan: Hazara Issues Paper', refers to reports of the Taliban 'block[ing] all routes to Malestan, Jaghori, Nawur and Ajrestan' in or around September 2014.¹⁴ Similarly, *Tolo News* recently reported in April 2015 on residents from these districts being stranded in Ghazni City for the past month, unable to return to their home areas 'due to high security threats on the roads in the area'.¹⁵

¹³ Department of Foreign Affairs and Trade, DFAT Thematic Report Afghanistan, Hazaras in Afghanistan and Pakistan, 26 March 2014.

¹⁴ 'Afghanistan: Hazara Issues Paper', *Department of Immigration and Border Protection, Country of Origin Information Service*, March 2015, p.46-47.

¹⁵ 'Insurgent Risks Leave Ghazni Villagers Stranded In City', *Tolo News*, 21 April 2015, available at <http://www.tolonews.com/en/afghanistan/19171-insurgent-risks-leave-ghazni-villagers-stranded-in-city>

52. Reports indicate that travel along key roads is dangerous, as militant groups, including the Taliban, regularly set up checkpoints and have killed and harmed those who work for or support the Afghan government and international community, including Hazaras.¹⁶ In recent years there have been regular reports of ambushes, robberies, kidnappings and killings by the Taliban and criminal groups along these roads, and the security of roads in the region has become volatile and increasingly dangerous. In March 2013 the director of the *Ghazni Rural Support Programme* advised the Tribunal that:

... all residents of Jaghori, Malestan, Qarabagh and other Hazara-Populated districts of Ghazni, like all other Hazara-populated districts of other provinces, are entirely dependent on highways and other roads crossing the Taliban controlled/dominated districts and areas of Ghazni; like Gilan, Moqor, Qarabagh in Ghazni province, and other districts in Wardak province, to the East, and to the West on Kabul-Kandahar highway. These areas are Taliban-dominated, if not entirely controlled, areas ...

The Afghan Security Forces (ASF) including the Afghan National Army (ANA) and the Afghan National Police (ANP) has failed to provide security for these travellers. Based on numerous accounts by the travellers and also by some reporters, in many instances the insurgents have established their checkpoints just a few hundred meters from the ASF security check points, and have searched vehicles for hours with no interruption from the ASF. It is said that in many places, particularly in the remote areas whether the ASF is existent or if non-existent Taliban operate with total freedom. The ASF in many places can barely defend their own posts. They do not walk away from their own checkpoints unless accompanied by the larger group of forces, which rarely comes across.

In such areas the Taliban insurgents have their checkpoints. They stop all cars, and pull off the passengers ... It implies that the Taliban have publicly announced that all those people who work with the Afghan government, the international forces, and with national and international NGOs are 'enemy' of the Islamic "Emirates", and thus are to be targeted and prosecuted anywhere they are found/captured ... The only roads that are secure are the roads inside Jaghori and other districts where the entire population of the district is Hazara. But since people are totally dependent on procuring their daily needs, (including food and fuel) they need to travel to Ghazni city, to Kandahar and to other places outside their districts. The same applies to students who have to travel to Kabul and Ghazni for taking exams and attending universities. Number of students have been killed and beheaded on their way to Kabul. So even if inside Jaghori is secure it does not help the people, and does not make any difference on the safety of Hazaras.¹⁷

53. 31 Hazaras travelling by bus on the highway from Kandahar to Kabul were abducted in Zabul Province on 23 February 2015. The armed men who carried out the abductions stopped the vehicles in which people were travelling and checked their identity cards before abducting the Hazara passengers.¹⁸ The Taliban denied involvement in the kidnapping and,

¹⁶ See 'DFAT Report 1450 – RRT Information Request: AFG41196', *Department of Foreign Affairs and Trade*, 5 November 2012; 'Country Information Report No. 11/56 – CIS Request No.AFG12298: Road security in Ghazni', *DIAC Country Information Service*, 21 September 2011; Ruttig, T, 'Comments provided by Thomas Ruttig on travel between Kabul and Ghazni for Hazaras', 25 May 2012; Maley, W, 'On the Position of the Hazara Minority in Afghanistan', 9 September 2012; 'Kabul-Kandahar highway is a symbol of what's gone wrong in Afghanistan', *The Telegraph*, 9 September 2012, available at <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/9530320/Kabul-Kandahar-highway-is-a-symbol-of-whats-gone-wrong-in-Afghanistan.html>; Zeerak, M, 'Email to RRT, Re: Request for advice on road security and ethnic targeting in Ghazni province', 25 March 2013.

¹⁷ M. E. Zeerak, 'Email to RRT: Re: Request for advice on road security and ethnic targeting in Ghazni province', 25 March 2013, CIS28576.

¹⁸ 'Fear stalks Afghan minorities after rare attacks', *News24 -South Africa*, 17 March 2015, CXBD6A0DE3141; 'Drivers explain how Hazara passengers were kidnapped in Afghan south', *Tolo TV*, 24 February 2015, CXBD6A0DE1909.

as referred to above, there have been suggestions that Islamic State was responsible.¹⁹ Reports suggest that traffic on the highway from Kabul to Kandahar has decreased by a half as a result of this and other incidents.²⁰ Further, on 15 March 2015 ten Hazaras were kidnapped in the Qarabagh district while travelling from Kabul to Jaghori in two cars. (Nine of the ten have since been released). Reports suggest that this was not an isolated incident.²¹ There was a report that another six Hazara passengers had been abducted by the Taliban on their way from Herat to Farah on 16 March 2015 but other reports do not mention that the passengers who were abducted were Hazaras. Four of those abducted were reportedly soldiers in the Afghan National Army and four of the kidnapped passengers were subsequently released in an army rescue operation.²²

54. DFAT have recently commented that whilst no ethnic group is immune from kidnapping that they assessed that Hazaras travelling by road between Kabul and the Hazarajat face a risk that is greater than other ethnic group. They said it was unclear whether this was due to ethnic targeting or is a result of the high numbers of Hazaras travelling on this route. They assess that if a bus with a mixture of ethnic groups on board is stopped in these areas, ethnic Hazaras (and other non-Pashtuns) are more likely to be subject to kidnapping and violence than Pashtun passengers. It was noted that kidnappings of Hazaras are relatively rare in a country-wide context.²³
55. The Tribunal considers, noting the country information as a whole, the applicant is at an elevated risk of being targeted in on the roads outside Jaghori because he is a Hazara Shia. Considering the country information as a whole and the applicant's individual circumstances, the Tribunal finds that he faces a real chance of serious harm amounting to persecution in the reasonably foreseeable future at the hands of the Taliban and other insurgent groups on the roads to and around his home area of Jaghori as a Hazara Shia.

State protection

56. DFAT have commented:

5.1 The ongoing insurgency, particularly in the south and east of Afghanistan means that the Government struggles to exercise effective control over parts of the country. As a result, the Government lacks the ability to adequately address human rights issues, protect vulnerable groups and prosecute human rights violators in those areas.

¹⁹ 'Taliban deny hand in abduction of 30 Hazara men in Zabul; Khalili says they are safe', *Afghan Zariza*, 7 March 2015, CXBD6A0DE2428; Frud Bezhan, 'Mass Abduction Of Hazaras In Afghanistan Raises Fears Of Islamic State', *Radio Free Europe/Radio Liberty (RFE/RL)*, 25 February 2015, CXBD6A0DE1904; Ali M. Latifi and Shashank Bengali, 'Afghan officials acknowledge Islamic State presence in their country', *Los Angeles Times*, 17 March 2015, CXBD6A0DE3139.

²⁰ '9 Newly Abducted Hazara Passengers Released', *Tolo News*, 15 March 2015, CXBD6A0DE2979; 'Protests in Ghazni Over 31 Hazara Hostages', *Tolo News*, 17 March 2015, CXBD6A0DE3146; 'Traffic on Kabul-Herat highway down by a half', *Pajhwok Afghan News -Afghanistan*, 18 March 2015, CXBD6A0DE3132.

²¹ 'Gunmen free 9 kidnapped passengers in Ghazni', *Pajhwok Afghan News -Afghanistan*, 15 March 2015, CXBD6A0DE2899; '9 abducted civilians freed by kidnappers in Ghazni', *Khaama Press*, 15 March 2015, CXBD6A0DE2889;

²² 'Another 6 Hazara Passengers Abducted from Herat-Farah Highway', *Tolo News*, 17 March 2015, CXBD6A0DE3029; 'Masked gunmen kidnapped 6 people on Farah-Herat Highway', *Khaama Press*, 17 March 2015, CXBD6A0DE3031; 'Kidnapped passengers rescued in ANA operation', *Pajhwok Afghan News Afghanistan*, 17 March 2015, CXBD6A0DE3032.

²³ Department of Foreign Affairs and Trade, DFAT Country Information Report Afghanistan, 18 September 2015.

5.2 Despite these challenges, DFAT assesses that the Government maintains effective control over major urban areas—particularly Kabul, all provincial capitals including Herat, Mazar-e-Sharif and Kandahar and the majority of district centres.

5.3 Many Afghans, including Hazaras, have expressed their concern about security in Afghanistan post-2014. In the absence of effective state protection outside of major urban areas, DFAT assesses that many local communities, including Hazaras, maintain their own militias to protect themselves from criminals and insurgents.²⁴

57. It is clear from the country information set out above and from the DFAT assessment in particular, that the government struggles to exercise effective control over parts of the country and it lacks the ability to adequately address human rights issues, protect vulnerable groups and prosecute human rights violators. The available information also indicates that there is an absence of effective state protection outside major urban areas. Given this information, the Tribunal finds that the applicant would not be able to access state protection in accordance with the principles in *MIMA v Respondents S152/2003*.

Is it reasonable for the applicant to relocate to another part of Afghanistan?

58. Having determined that the applicant does have genuine fears return to his home region, the Tribunal is required to consider whether the applicant could reasonably relocate to a separate part of Afghanistan. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights.
59. The issue of whether it would be reasonable to expect an applicant to relocate within Afghanistan only arises if the circumstances indicate that there is a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution, that is, where the feared persecution is localised rather than nation-wide.
60. The Tribunal has considered whether it is reasonable in the applicant's individual circumstances for him to relocate to Kabul to avoid the real chance of persecution in frequently travelling on the roads surrounding Ghazni City. Given his background, as well as the need for employment, at the hearing, the Tribunal identified Kabul as a location in Afghanistan where the applicant could relocate.

The general security situation and the situation for Hazara Shias generally

61. The Tribunal has considered whether the applicant has a well-founded fear of persecution in the reasonably foreseeable future if he returns to Afghanistan on the basis of the general security situation in Afghanistan and the situation for Hazara Shias generally in Kabul. The applicant has claimed that the Hazara Shia face systematic discrimination and persecution at the hands of the Taliban, including that there is a historical enmity towards the Hazara from the Taliban.

²⁴ Department of Foreign Affairs and Trade, DFAT Thematic Report Afghanistan, Hazaras in Afghanistan and Pakistan, 26 March 2014.

62. In its March 2014 report DFAT assessed that insurgents—including the Taliban—generally do not target individuals solely on the basis of ethnicity and that no particular ethnic groups are disproportionately subject to violence. It did note however that ethnicity (or religion) is sometimes a contributing factor.²⁵ DFAT has also stated that there is currently a low risk of criminal or insurgent violence for Hazaras in Afghanistan relative to the overall security situation, and that Hazaras are not currently at any greater risk of violence than other ethnic groups.²⁶ This view of the level of general threat posed to the Hazara community is supported by Professor Amin Saikal of ANU.²⁷

63. Specifically regarding Kabul, DFAT stated:

The security situation for Hazaras in Kabul does not differ significantly from that experienced by the general population of the city and Hazaras are not disproportionately targeted by criminals or insurgents in Kabul. The bombing of the Shia Abu Fazl mosque in Kabul during Moharram in December 2011 reportedly killed at least 70 people, many of whom were Shia Hazaras. DFAT assesses this to be an isolated incident and has no information about other recent attacks against the Shia or Hazara community in Kabul.²⁸

64. A Hazara Issues Paper issued by the Department of Immigration in March 2015 stated:

Hazaras in Kabul have not been systematically targeted by insurgent attacks or other ethnic groups since 2001 because of their ethnicity or religion, apart from one deadly attack aimed on a Shia mosque in 2011 where many of the victims were Hazaras.

65. Professor Alessandro Monsutti agreed, stating in January 2012 that insecurity in Kabul is the result of indiscriminate attacks, and Hazaras are not less safe than any other ethnic group.²⁹

66. Regarding the attacks on Shia in Kabul, it was noted On 6 December 2011 a suicide bomber exploded a bomb among Shia worshipers celebrating Ashura at a Shia shrine in Kabul. The attack, which was the bloodiest single incident against Afghan civilians since 2008, killed 55 people, most of who were Hazaras, and wounded around 150. The shrine was located in Murad Khane, a mainly Shia neighbourhood along the Kabul river, in the center of Kabul. A Pakistan-based militant group, Lashkar-e-Jhangvi al-Almi, a splinter group of Lashkar-e-Jhangvi (LeJ), reportedly claimed responsibility for the attack, though the Taliban condemned the bombing.³⁰ Mohammad Bakir Shaikzada, the top Shia cleric in Kabul, said that it was the first time that Shias in Kabul had been attacked in decades. He said he could not remember a similar attack having taken place.³¹ In September 2013, heavily armed members of the LEJ attempted to attack another Shi'a mosque during Friday prayers in Kabul, but were intercepted and killed by Afghan security forces outside the mosque.³²

67. The DIBP report stated that:

²⁵ Department of Foreign Affairs and Trade, DFAT Country Report Afghanistan, 26 March 2014.

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

²⁷ Saikal, Amin 2012, 'Afghanistan: The Status of the Shi'ite Hazara Minority', *Journal of Muslim Minority Affairs, March*, Vol.32, No.1, pp.80-87.

²⁸ Department of Foreign Affairs and Trade, DFAT Thematic Report Afghanistan, Hazaras in Afghanistan and Pakistan, 26 March 2014

²⁹ Monsutti, A 2012, Comments by Professor Alessandro Monsutti on Hazaras in Afghanistan Provided to the Independent Protection Assessment Office on January 2012

³⁰ Boone, J 2011, 'At least 55 dead in Kabul suicide attack on Shia pilgrims', *The Guardian*, 6 December <http://www.guardian.co.uk/world/2011/dec/06/55-dead-kabul-suicide-shia>

³¹ Boone, J 2011, 'Kabul shrine worshippers killed in Afghan sectarian attack', *The Guardian*, 6 December <http://www.guardian.co.uk/world/2011/dec/06/kabul-shrine-blast-kills-worshippers>

³² US Commission on International Religious Freedom (USCIRF) 2014, *USCIRF Annual Report 2014 – Tier 2: Afghanistan*, 30 April

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.

68. In 2014, analysis of attacks in Kabul by insurgents³³ found that insurgents targeted Afghan military personnel, police officers, political figures and foreigners, as well as government buildings, hotels and embassies.³⁴
69. The UNHCR, in a detailed report dated 6 August 2013, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* advised that the position of members of (minority) ethnic groups including Hazaras requires a particularly careful examination of the possible risks. It reports that while overt discrimination by Sunnis against the Shia community is decreasing, violent attacks targeting the Shia population continue to occur. Specifically, it refers to the murder of five Hazaras by the Taliban in Andar district of Ghazni province and the murder, allegedly by the Taliban, of five Hazaras from Bamyán province when travelling on the road connecting Bamyán province to Kabul via Wardak province.
70. In contrast to the assessments of DFAT and UNHCR, Professor William Maley indicated in a paper dated 9 September 2012 that Hazaras in Afghanistan continue to experience abuse. Professor Maley claims that security assessments by DFAT and non-government agencies such as the UNHCR tend to under-report the scale of abuse experienced by Hazaras due to the danger of conducting first hand field research.³⁵ In the paper submitted at hearing, *On Return to Kabul of Members of the Hazara Minority in Afghanistan 3 February 2014*, Professor Maley expressed the view that it was a serious mistake to conclude that Kabul is safe for Hazaras. He states that this is demonstrated by the Ashura Day bombings referred to above. He opines that this should not be seen as an isolated incident. However, despite the nature of these attacks, the Tribunal is of the view that the available country information indicates such attacks have been relatively rare, and as such the chance or risk of the applicant being harmed in such a circumstances would be best described as remote, and not a real chance or real risk.
71. The Tribunal has also considered a report Professor Maley wrote dated 16 February 2015, which the Tribunal received in relation to a comparable RRT case from Afghanistan. It is titled *On the Return of Hazaras to Afghanistan* and contains similar analysis to that contained in the 3 February 2014 paper. This references a Hazara man who was deported from Australia to Afghanistan in August 2014 and who claims he was seized and tortured by the Taliban while attempting to travel to his home village. The second involves an Australian citizen of Afghan Hazara origin who was murdered when he was taken from the minibus in which he was travelling. As discussed with the applicant, these events occurred in locations outside of Kabul, and in locations the Tribunal does not consider that the applicant would travel to, having relocated to Kabul so not to be persecuted on the roads around Ghazni City.
72. In the Tribunal's view, DFAT's March 2014 assessment that violence against Hazara Shia and associated sectarian violence is infrequent in Kabul still appears to be correct. The Tribunal finds that Hazara Shia do not face systematic discrimination and persecution at the hands of the Taliban or other insurgent groups.

³³ 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>

³⁴ European Country of Origin Information Network 2015, General Security Situation in Afghanistan and Events in Kabul, 12 January,

³⁵ Maley, W 2012, 'On the Position of the Hazara Minority in Afghanistan', 9 September.

73. The Tribunal has considered the submissions of the applicant's representative in relation to the general security situation and the situation for Hazara Shias. Considering the available information, the Tribunal accepts that there are some incidents where Hazara Shias have been targeted, and where ethnicity and religion would appear to be a factor. However, and notwithstanding the views of Professor Maley, the Tribunal does not accept that all Hazara Shias in Kabul face a real chance of persecution now or in the reasonably foreseeable future.
74. 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

75. The applicant has claimed that as a returnee from the West, the applicant would be identified by spies in the local community who would inform on him returning, which would lead to him being harmed. The applicant claimed this in connection to the Taliban on the road, whom he claimed would seek to find him due to his past activities, and because of his return from a Western country.
76. The Tribunal noted the following country information about returnees from outside of Afghanistan.
77. 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.
78. 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.
79. 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.³⁶
80. Specifically regarding returns from the West, DFAT stated:

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

³⁶ Department of Foreign Affairs and Trade, DFAT Country Report Afghanistan, 26 March 2014

economic or educational opportunities. Even under the Taliban regime, Afghans continued to travel abroad to work or study, and then returned to the country.³⁷

81. The Tribunal has considered the issue of being from the West more generally. The Tribunal notes the reports, as mentioned above, 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. The Tribunal noted that in relocating to 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.
82. The Tribunal does not accept that the applicant face harm because of his residing outside of Afghanistan and in a Western country. The Tribunal considers that the applicant will be able to reside in Kabul, a location where many Afghans have returned to in recent years, and would not be targeted because of his residence in the West or outside of Afghanistan.
83. 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.
84. Having regard to the country information concerning the overall situation for Hazara Shias and failed returned asylum seekers from western countries and the country information that indicates that the Government maintains effective control of Kabul and the applicant's individual circumstances, the Tribunal do not accept that the applicant faces a real chance of persecution in the reasonably foreseeable future in Kabul on account of being a Hazara Shia or an imputed political opinion or for membership of a particular social groups consisting of failed returned asylum seekers from the West or his family from the Taliban, ISIS, other insurgent groups, Sunnis, the state or anybody else.
85. Having regard to the country information concerning the overall situation for Hazara Shias and failed returned asylum seekers from western countries and the country information that indicates that the Government maintains effective control of Kabul and the applicant's individual circumstances, the Tribunal finds find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan that there is a real risk that he will suffer significant harm in Kabul on these basis.

Reasonableness of relocation

86. Having determined that the applicant does not face a real chance of serious harm or a real risk of significant harm in Kabul, the Tribunal has considered whether it is reasonable, in all the circumstances for the applicant to relocate to Kabul. The Tribunal has have had regard to the information in this most recent DFAT report that suggests generally there are options available for members of most ethnic and religious minorities to be able to relocate from other parts of Afghanistan to relative safety in Kabul. The Tribunal has also taken into account the guidance from the UNHCR Eligibility Guidelines December 2012 with respect to relocation
87. DFAT have recently commented:

2.14 Although there are no reliable statistics, unemployment is widespread in Kabul and underemployment is also common. The influx of IDPs and returnees to the city has put pressure on the local labour market. The decrease in the international

³⁷ Department of Foreign Affairs and Trade, DFAT Thematic Report Afghanistan, Hazaras in Afghanistan and Pakistan, 26 March 2014

presence and the tight budgetary situation of the Afghan government have further reduced the availability of quality employment opportunities.

...

2.20 The health care system in Afghanistan has improved greatly since 2001. Basic public health care is free, but medicines are not, which excludes the poor from treatment for common illnesses. Medical facilities in the public system, while still basic, tend to be better in Kabul than in other areas of Afghanistan, particularly remote rural areas. Better quality services are provided by private practices, but many residents cannot access these services because of their high cost.

...

2.22 Access to electricity is highly variable, even in formal areas of the city. Electricity 'load shedding' is common, causing blackouts (including scheduled blackouts) that can last up to 15 hours. For many residents of Kabul's informal areas, electricity is supplied by a community generator for which a fee is charged by the operator, a relatively expensive form of supply. According to the World Bank and the United Nations High Commissioner for Refugees (UNHCR), although most established residents have access to some electricity, up to 84 per cent of IDPs lack access to any electricity.

2.23 Most informal and illegal areas do not have reliable access to municipal water supply, relying instead on wells and water deliveries. Sanitation in these areas is poor. Waste collection is better in informal areas than illegal areas. Many communities burn their waste which contributes to high levels of air pollution.

...

3.6 Large urban areas in Afghanistan are home to mixed ethnic and religious communities and offer greater opportunities for employment, access to services and a greater degree of state protection than many other areas. As Afghanistan's largest urban centre, Kabul provides the most viable option for many people for internal relocation and resettlement in Afghanistan.

...

3.8 Traditional extended family and tribal community structures are the main protection and coping mechanisms for people in Afghanistan, who rely on these networks for their safety and economic survival, including access to accommodation and an adequate level of subsistence. People tend to move and settle in large groups, often with several other families, for this reason. As a consequence, large groups of people can arrive in a particular area, resulting in rapid population growth and a strain on infrastructure and services.

...

3.10 Kabul's size and diversity means that there are large communities of almost all ethnic, linguistic and religious groups in the city. Given the growth of Kabul's population since 2001, many individuals may have members of their extended family in Kabul who can assist with their relocation. Ethnic-based violence in Kabul is rare.

3.11 DFAT assesses that, notwithstanding road safety concerns and the security situation in Kabul, there are generally options available for members of most ethnic and religious minorities to relocate from other parts of Afghanistan to relative safety in Kabul. This relocation is more likely to be successful where the individual travels as part of a larger group, or has established networks that can assist with the provision of basic necessities.

...

3.12 In practice, DFAT assesses that a lack of financial resources and lack of employment opportunities are the greatest constraints on successful internal relocation. This is compounded by Kabul's relatively high cost of living, particularly for housing.

3.13 Internal relocation to urban areas is generally more successful for single men of working age, provided they are able to make use of family or tribal networks. Unaccompanied women and children are least likely to be able to successfully relocate to urban areas, particularly if these networks are lacking.

88. The UNHCR in its latest Eligibility Guidelines said the following:

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

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

Whether an IFA/IRA is "reasonable" must be determined on a case-by-case basis, taking fully into account the security, human rights and humanitarian environment in the prospective area of relocation at the time of the decision. To this effect, the following elements need to be taken into account: (i) the availability of traditional support mechanisms, such as relatives and friends able to host the displaced individuals; (ii) the availability of basic infrastructure and access to essential services, such as sanitation, health care and education; (iii) ability to sustain themselves, including livelihood opportunities; (iv) the criminality rate and resultant insecurity, particularly in urban areas; as well as (v) the scale of displacement in the area of prospective relocation

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

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

prevented livelihood activities, including by restricting access to agricultural land, water, health care and education.

In light of the foregoing, UNHCR generally considers IFA/IRA as a reasonable alternative where protection is available from the individual's own extended family, community or tribe in the area of intended relocation. Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. A case-by-case analysis will, nevertheless, be necessary given the breakdown in the traditional social fabric of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas.³⁸

89. Information was located that reported on the employment situation for Hazaras in Kabul. The March 2012 DIS *Country of Origin* report provides the following information on employment opportunities for Hazaras in Kabul:

When asked to what extent Hazaras in Kabul have access to the labour market, Civil Society and Human Rights Organization (CSHRO) stated that there are not many job opportunities in Kabul and it is a considerable challenge for many to sustain their livelihood. A large number of Hazaras are low-paid day-labourers or work in construction. According to CSHRO, every morning one can see many Hazara day-labourers in Kabul waiting for someone to come and offer them an occasional job. As an example of occasional jobs, CSHRO mentioned that a great majority of those being hired in the winter season to sweep the snow off the roads and in people's houses are Hazaras.

CSHRO mentioned that Hazaras' access to the labour market is limited with regard to public offices, embassies and international organization, and that there are very few Hazara employees in these organizations. This is despite the fact that a large number of Hazaras are educated people, and one generally finds many Hazaras receiving education in Kabul University and other educational institutions in the city.³⁹

90. The DIS also presents an overview on the access to the labour market in Kabul, noting:

According to Ministry of Refugees and Repatriation (MoRR), the main problem in Kabul is employment for people coming from the provinces or returning from abroad.

Afghan Independent Human Rights Commission (AIHRC) pointed out that the employment rate is very low in Afghanistan. 36% of the workforce is unemployed and another 36% is earning less than one dollar a day. Kabul has a relatively better employment rate, but people coming from the provinces will have difficulties in finding sustainable jobs.

According to AIHRC, there are both wealthy people and poor people who have fled conflicts in their area of origin. The economic situation of most of the people has not improved by coming to Kabul. People who lived under poor conditions in their area of origin will also live in poor conditions in Kabul. There are people who had their land and were living from agriculture but who have ended up as daily labourers in Kabul.

Asked about the access to employment, UNHCR explained that it is better in the big cities than in the country side. According to UNHCR, many people come to Kabul in search of jobs because they think that there are lots of jobs in Kabul due to the presence of the international community. However, because of the rapid growth of the population of the city in recent years, the access to employment is more acute in

³⁸ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, UNHCR, 17 December 2010, pp. 38-40.

³⁹ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process*, 25 February to 4 March, p. 47.

Kabul compared to other cities, and it is difficult for newcomers to establish a livelihood there.

...Danish Refugee Council (DRC) assumed that persons with vocational skills have a reasonable chance of providing a minimal livelihood, and that is the reason why DRC has started activities with vocational training in motorbike repair, cell phone repair, tailoring and carpet weaving in some settlements. DRC also pointed out that persons with foreign language and computer skills have very good job opportunities in Kabul.

Compared to single women or families, single young males – even those with no education – have better chances to find jobs and survive in Kabul, according to DRC.

...International Organization for Migration (IOM) stated that employment in general is a big problem in Afghanistan. IOM added that the labour market in Kabul is under a huge pressure as a result of the considerable growth of the city's population within the last ten years.⁴⁰

91. If support from the individual's own extended family, community or tribe in the area of intended relocation is available, the UNHCR, in its most recent guidelines, considers that relocation is a reasonable alternative.⁴¹ The UNHCR also notes that:

Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. A case-by-case analysis will, nevertheless, be necessary given the breakdown in the traditional social fabric of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas.⁴²

92. The UNHCR's 2012 *Country Operations Profile* for Afghanistan indicates that the situation for returnees is severely hampered by ongoing security concerns. The report states:

Insecurity, political instability and economic and social problems are likely to continue in 2012 and may increase as international forces transfer security responsibilities to national partners. Military operations, including those in response to violent incidents and armed fighters, may cause further displacement. Efforts to access and provide immediate and timely humanitarian assistance to the newly displaced may be hampered by insecurity. Currently, the UN has direct access to less than half the country. Though UNHCR has put in place innovative measures to expand its reach, including through partners, access to people of concern remains precarious. UNHCR will continue to review its operational environment to ensure staff safety and security. Appropriate mitigation measures may have significant resource implications.

Sustainable reintegration is facing new challenges as competition for land, water, natural resources and employment grows sharper. Access to employment is frequently constrained by the lack of social and economic networks. Moreover, the overwhelming development

⁴⁰ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process*, 25 February to 4 March, pp. 13-14.

⁴¹ United Nations High Commissioner for Refugees 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December, p.40

⁴² United Nations High Commissioner for Refugees 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December, p.40

needs in the country make it increasingly difficult for UNHCR to secure sufficient resources to support returning refugees.⁴³

93. An April 2012 article from the Danish Refugee Council (DRC) describes returning Afghan refugees settling in slum like conditions with little to no resources or assistance. The report states:

Most of the returnees end up in one of the rapidly growing tent- and mud house settlements, alongside a quarter million internally displaced (IDPs) Afghans, who are also trying to make a living in the urban slum areas. "The returning Afghans have nothing to return to. There are no schools, no access to medical aid, no water. They live in mud houses and sleep directly on the ground. Children are freezing to death as a consequence of their miserable living conditions," says Ann Mary Olsen, head of the international department of the Danish refugee council (DRC) after visiting the settlements in Kabul.⁴⁴

94. The 2012 DFAT Hazara community update notes that '[n]one of our contacts considered there were significant protection issues for returnees - although returning was considered a failure and therefore not spoken of widely in communities'. It also noted that 'Hazaras outside of the Hazarajat were more vulnerable and avoided travel outside their immediate communities'.⁴⁵
95. A September 2010 DFAT response on the situation for Hazara returnees to Afghanistan and conditions for the Hazara community in Ghazni province notes that '[c]onditions facing Hazara returnees vary according to circumstance' and that '[r]eturning to their areas of origin is more difficult if they have been out of Afghanistan for years and have no networks there'.⁴⁶
96. The Danish Immigration Service (DIS)'s 2004 fact finding mission to Kabul consulted a number of organisations in Kabul and their report stated that "All sources consulted were of the opinion that it is difficult to settle down in any town in Afghanistan if one does not have a helping network. In addition various sources were of the opinion that people who are persecuted in one area have difficulty in obtaining protection elsewhere."⁴⁷ In 2010, DFAT advised that it would be difficult for individuals returning to any part of Afghanistan where they no longer had a family, land or social network.⁴⁸
97. The Tribunal has had regard to the applicant's personal circumstances as a young unskilled Hazara man with limited literacy skills who has very limited family or social connection in Kabul. The Tribunal notes that the UNHCR Guidelines⁴⁹ and the 3 October 2014 DFAT thematic report *Conditions in Kabul* advise that traditional extended family and tribal community structures are needed for relocation. They stress that internally displaced

⁴³ UNHCR 2012, *Country Operations Profile – Afghanistan*, <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6>

⁴⁴ Danish Refugee Council 2012, *Afghan refugees return to absolutely nothing*, 13 April (CISNET CX285280)

⁴⁵ Department of Foreign Affairs and Trade 2012, *Afghanistan – Hazara Community Update*, 12 March (CISNET CX283654)

⁴⁶ DIAC Country Information Service 2010, *Country Information Report No. 10/60 – AFG10736: The Hazara*, (sourced from DFAT advice of 28 September 2010), 29 September .

⁴⁷ Danish Immigration Service 2004, *The political conditions, the security and human rights situation in Afghanistan – Report on fact-finding mission to Kabul, Afghanistan 20 March – 2 April 2004*, November, pp.44-5

⁴⁸ DIAC Country Information Service 2010, *Country Information Report No. 10/34 – CIS Request No.AFG10334 Sayyed Hazara*, (sourced from DFAT advice of 16 June 2010), 16 June

⁴⁹ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* ,

Afghans rely on these networks for their safety and economic survival, including access to accommodation and an adequate level of subsistence. DFAT assesses that a lack of financial resources and lack of employment opportunities are the greatest constraints on successful internal relocation. They assess that this is exacerbated by Kabul's relatively high cost of living, particularly the cost of housing. They note that relocation is generally more successful for single men of working age. Returnees generally have lower household incomes and higher rates of unemployment than established community members. Although DFAT assess that men of working age are more likely to be able to return and reintegrate successfully, UNHCR and the reports mentioned above have highlighted the importance of employment skills.

98. In his individual circumstances, particularly his lack of family and social links and his limited employment skills, the Tribunal does not consider it reasonable for the applicant to relocate to Kabul. These circumstances would also be applicable to the reasonableness of him relocating elsewhere in Afghanistan.
99. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

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

Stuart Webb
Member