

1311958 (Refugee) [2015] AATA 3510 (5 October 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1311958
COUNTRY OF REFERENCE:	Afghanistan
MEMBER:	Rea Hearn Mackinnon
DATE:	5 October 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 05 October 2015 at 5:40pm

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] August 2013.
3. The applicant appeared before the Tribunal on 27 August 2015 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Dari and English languages.
4. The applicant was represented in relation to the review by his registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed

from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
10. The issue in this case is whether the applicant can safely and reasonably relocate from his home area of Logar province to Kabul For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

Nationality

11. The applicant has provided copies of his taskera and passport. The delegate was satisfied of his identity and nationality. The Tribunal also accepts that the applicant is a national of Afghanistan and has assessed his claims against Afghanistan as his country of nationality and his receiving country. Whilst the applicant and his family lived in Pakistan from [a year] to [year], there is no evidence before the Tribunal which indicates that he has a legal right to enter and reside in Pakistan or any other third country.

Background

12. The applicant was born on [date] in [his home town], [District 1], Logar Province, Afghanistan. He is married with [number] children. His wife, children, mother and younger siblings remain in [his home town]. His father died of natural causes some years ago. He owns land and a house in [that town] and another house in [another] district of Logar.
13. The applicant and his family moved to [a town] in Kurram Agency, Pakistan in [year] following the Soviet invasion of Afghanistan and returned to Logar in [year], after the Taliban government was removed. He worked as a [occupation] in [this town] and on the reclaimed family farm after he returned to Logar. The notes of his entry interview indicate that he worked as a self-employed [different occupation] between 2008 and 2010 however he denied this employment at the hearing. He had 2 or 3 years schooling at a UN school in [the town] and left school at about [age] in order to work. He speaks Dari and some Pashto. He claims to be of Tajik ethnicity and Shia Muslim religion. At the hearing, he stated that his [specific] ethnicity is [name].
14. The Tribunal accepts that the applicant is a Shia Tajik from Logar province. Tajiks are the second largest ethnic group in Logar after Pashtuns and are located in [two districts]. Approximately 40-45% of Tajiks in [a certain district] are Shia. [His ethnic group] is one of [a number of] tribes in [one district].

Claims

15. The applicant claims to fear harm from the Taliban in [District 1]. He claims to have been specifically targeted because of his religion and because he joined the Afghan National Army (ANA); and to also fear harm because of the general insecurity in Logar. These claims are discussed below.
16. The applicant claims that he joined the ANA in [early] 2012 and that the Taliban subsequently sent him a letter threatening to kill him and abducted him.

The ANA

17. The applicant stated that he joined the ANA because the income from the family land and property was not sufficient to support the family.
18. When asked how he joined the ANA, the applicant stated that he first went to the elders and got a paper stating that he was a resident of [District 1]. He submitted the paper to the ANA headquarters in Logar. He underwent a medical assessment and three days later received a letter telling him to report for training at the headquarters in Logar. He no longer has the letter. He and several hundred trainees all lived in the army headquarters in Logar during the week and had Fridays off.
19. When asked what sort of training he received, the applicant stated that he woke up at 4.30am, said prayers, did exercises then queued for breakfast. After breakfast, he learnt marching and other formalities. In the first week he learnt marching and in the second week he learnt how to dress injuries. In the afternoon he did classes called Gaining Education. He completed about three weeks training and left in the fourth week. He had a uniform. He was supposed to be paid 5,000 Afghanis during training but was not paid because the first pay was due at the end of the month, after he left. Training was to take 6 months and was conducted by an Afghan commander called [name] and another commander.
20. According to a 2009 report, ANA recruits complete a week's orientation training at the Kabul Military High School then complete the remainder of their training at the Kabul Military Training Centre (KMTC).¹ A 2012 report states that all new recruits complete 12 weeks training at the KMTC.² In 2007, regional military training centres were opened in Gardez, Herat and Mazar-e Sharif.³ The Tribunal was not able to locate any information about an ANA training centre in Logar.
21. According to reports available to the Tribunal, ANA recruits undergo an 8 step vetting program which involves gathering background information from tribal elders, gathering personal information about family members, conducting criminal background checks, drug and medical screening and collecting biometric data.⁴ All recruits sign a 3 year contract.⁵ At the KMTC, ANA personnel provide instruction to between 7,000 and 9,000 ANA soldiers every day. The first five weeks comprises basic combat training involving elementary soldier and infantry skills such as

¹ RAND Corporation 2009, *The Long March*, 26 May

² Afghanistan Research and Evaluation Centre, 2012, *A to Z Glossary*, 13 May

³ RAND Corporation 2009, *The Long March*, 26 May

⁴ NATO, 2012, *Afghan National Security Forces (ANSF): Training and Development*, 5 December; United States Department of Defence, 2012, *Report on Progress Toward Security and Stability in Afghanistan*, 1 December

⁵ Afghanistan Research and Evaluation Centre, 2012, *A to Z Glossary*, 13 May

weapons, handling, shooting, guard duty, land navigation, first aid, mines and prisoner processing.⁶

22. The Tribunal does not accept that the applicant would not have any paperwork, such as a copy of a contract, relating to his claimed recruitment by the ANA. The Tribunal considered the applicant's evidence regarding the content of the training he underwent to be vague and inconsistent with the country information above. The Tribunal does not accept that the applicant joined the ANA or underwent military training as claimed.
23. The Tribunal notes however, that, in his entry interview, the applicant stated that the Taliban went to his home, detained him for a few days, told him he shouldn't work for the government and that they would kill him if they found him working for the government; and that he then left the army. The Tribunal accepts that it is possible that the applicant may have considered joining the Army and may have approached the elders to obtain the necessary documentation and may have then been threatened or detained by the Taliban and that he took no further steps to join the ANA.

Threatening letter

24. The applicant claims that he received a letter from the Taliban threatening to kill him if he did not leave the ANA and that other men who had joined the ANA also received threatening letters. He has provided inconsistent evidence about when and where he received the letter. In his written statement, he said that he received the letter while he was at the army base; that he left the army without permission; and that he returned to his village for about a month. He told the Tribunal that the letter was delivered to his home two or three weeks after he joined the army; that he did not take any action as other people were receiving similar letters and he did not expect anything to happen; and that he continued with his military training after the letter was received.
25. The applicant provided to the Tribunal a copy of the letter he claims to have received. The letter is dated [in] February 2012 and, according to the translation provided, states that "those young people who work as interpreter in the National Army, National police, National Security or other offices of the corrupt and puppet government or in military companies with Jews and unbelievers are subject to obligatory killing....One of them is you [applicant's name] a resident of [a specific] village, [District 1] District of Logar Province. In the near future you will be punished for your actions" and is signed by [a leader] of Commanding to Virtue and Preventing the Vices.
26. As the Tribunal does not accept that the applicant joined the ANA it does not accept that he received a letter from the Taliban threatening him because of that involvement. Further the applicant has provided inconsistent evidence about the letter as set out above. For these reasons, the Tribunal does not accept that the applicant received a letter from the Taliban and places no weight on the letter provided by the applicant.

⁶ The Long War Journal, 2012, *Afghan National Security Forces Order of Battle*, 6 September

Abduction

27. The applicant claims that he was subsequently abducted by the Taliban. In his written statement, he said that, after he left the army without permission, he took a car from [a venue] to his home. The driver and other passengers who were Pashtun hit him, blindfolded him and took him to a house in a pine forest. These Pashtuns told him they were Taliban and that he had to be killed because he is a Shia and from [District 1]. At the hearing, he said that he was abducted on the Friday of week four of his army training when he was taking a car from [the venue] to his home. The men who abducted him asked him why he was helping the government and told him that they would kill him soon.
28. The applicant claims that he then escaped from his abductors. In his written statement, he said that he was held in a dark room for three days in the house in the pine forest, and that, on the third night, a Pashtun woman told him he could escape through an adjacent toilet which had a window. He managed to open the door and escaped through the window at 3am. He then walked to the main road and waited for a car to take him back to [District 1]. At the hearing, he said that he talked to a Pashtun woman through a small hole for light at about midnight. The woman told him she would open the door for him so he could run away. She unlocked the door and he ran away at about 3 or 4 am.
29. *When asked how he knew where to run, the applicant stated that the woman told him if he ran through the forest for one or two hours he would reach the main road.* When the Tribunal noted the inconsistent evidence regarding his escape, the applicant stated that there might have been a problem with the interpreting and his representative submitted that the evidence may have been misunderstood or conflated; that the evidence that he spoke to the Pashtun woman through a hole in the door indicates a window and that his written statement "I managed to open the door" is consistent with his oral evidence that the woman unlocked the door.
30. The applicant told the Tribunal that, after he was abducted, he remained in the village for a month before leaving Afghanistan. He said that the Taliban would not come into the village – which is a Shia village - as soldiers in the district centre might stop them. When asked if his family have had any problems with the Taliban since he left, he stated that many families are fleeing [District 1] and they need guards at night. His family might go to Pakistan soon. The village is also subject to being shelled by rockets because it is close to the district centre.
31. In view of the inconsistencies in the evidence, the Tribunal does not accept that the applicant was abducted and escaped as claimed. As set out above, the Tribunal does accept that the applicant may have been threatened or detained by the Taliban and then released. This would explain why the Taliban did not search for the applicant or seek to recapture him after his release. The Tribunal does not accept that the Taliban could not have entered the applicant's village if they had wanted to.

Harm as Tajik and Shia

32. The applicant claims to fear harm from the Taliban because he is a Tajik. He claims that the Taliban regard Tajiks as foreigners, from Tajikistan, and as a Shia. He claims that his name identifies him as a Shia; that he is at risk of being kidnapped for

ransom; and that he will be perceived as western spy because he joined the ANA (discussed above) and because he has spent time in a western country

33. The applicant claims that the Taliban shelled his village because it is a Shia village and kidnapped local Tajiks for ransom money. He claims that there is no security in his area and that people are too scared to go out after 5pm. He claims that two of his mother's relatives were kidnapped during Ramadan in 2012 and released after a ransom was paid. He also claims that, about 6 or 8 months ago, one of his cousins was killed and dismembered by the Taliban. His cousin was part of a group of de-miners. The Taliban stopped their bus some distance from [District 1], released the Sunnis but killed his cousin. When the Tribunal asked his cousin's name, he could not remember it. He stated that his cousin's father had [number] children and he could not remember all their names. He also stated that his cousins lived in a house across from his.
34. The Tribunal accepts that the applicant's mother's cousins may have been kidnapped for ransom in 2012. This is consistent with country information discussed below. The Tribunal does not accept that the applicant's cousin was kidnapped and killed as claimed as it does not accept that the applicant would not know the name of a cousin who grew up in the house across from his. The Tribunal accepts that the Taliban has killed people associated with the government including de-miners but does not accept that the applicant's cousin was involved.

Security situation in Afghanistan

35. The security situation in Afghanistan generally is poor with Afghanistan currently ranked second in the World Security Risk Index after Syria.⁷ A number of different anti governments groups are operating in Afghanistan including the Taliban, the Haqqani Network, Hezb-e Islami Afghanistan (led by Gulbuddin Hekmatyar), the Islamic Movement of Uzbekistan and various other armed militias.⁸ Foreign fighters associated with Al Qaeda are present in the north and east.⁹ Daesh (IS) is exerting limited influence in some parts of Afghanistan and a number of disaffected Taliban insurgents are reported to have identified with IS. As well, there are a number of local militias, aligned to local warlords who are not necessarily opposed to the government but act to protect their own interests.¹⁰
36. In its recent report on security in Afghanistan, the European Asylum Support Office (EASO) noted that:

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

⁷ Global Intake, World Security Risk (www.globalintake.com), 12 November 2014

⁸ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January; Department of Foreign Affairs and Trade, 2015, *DFAT Country Information Report Afghanistan*, 18 September

⁹ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

¹⁰ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

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.The insurgents launch major assaults around the country on administrative centres and security checkpoints. The aim is to capture territory and hold it 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. ...¹¹

37. The Department of Foreign Affairs and Trade (DFAT) also notes in its most recent report that "insurgent forces contest many areas of Afghanistan and no part of the country can be considered free from conflict related violence. The situation remains fluid. While the government retains control of much of the country, particularly in the provincial and district centres, some areas are openly contested with varying levels of control exerted by the government and by insurgents. ... The security situation is better in areas where government forces maintain strong control, such as major urban centres like Kabul, but attacks remain a common occurrence even in these areas".¹²
38. The most common targets for insurgents in Afghanistan are government and security institutions, political figures, foreign missions, international organisations and recently in Kabul, foreign civilians.¹³ DFAT has noted that, whilst attacks may be directed at specific targets, the method of attack can be indiscriminate and result in a high number of civilian casualties.¹⁴
39. The United Nations Assistance Mission of Afghanistan documented 10,548 civilian casualties (3,699 deaths and 6,849 injured) in 2014, marking a 25 per cent increase in civilian deaths and a 21 per cent increase in injuries or an overall increase of 22 per cent in civilian casualties compared to 2013 which was the highest number of civilian deaths and injuries in a single year since the UNAMA began systematically recording civilian casualties in 2009. This increase was said to result mainly from increased ground engagements across Afghanistan in which parties to the conflict used high explosive weapons systems such as mortars, rockets and grenades in civilian-populated areas with devastating consequences for civilians. The use of improvised explosive devices had also increased in 2014 as had the number of

¹¹ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

¹² DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

¹³ European Asylum Support Office, 2015, *EASO Country of Origin Information Report: Afghanistan - Security Situation*, January

¹⁴ DFAT, 2015, *DFAT Country Information Report Afghanistan*, 18 September

civilian victims of suicide and complex attacks.¹⁵ The Afghan Analysts Network reported in August that targeted attacks on civilians was the biggest cause of civilian deaths (28%) and that the UNAMA had reported on targeted killings of aid workers, tribal elders, government officials, mullahs and places of worship.¹⁶

Situation in Logar

40. Sunni insurgent groups, including the Taliban, the Haqqani Network, Hizb-e Islami Gulbuddin Hekmatyar (HIG) and Al Qaeda are active in Logar.¹⁷ In 2012, the Taliban's control of Logar was reported to be nearly complete;¹⁸ insecurity was increasing; Pul-e Alam district was described as "mostly controlled by the Taliban" and inaccessible to Afghan forces; and Logar was an "increasing flashpoint for violence".¹⁹ The Haqqani Network was reported to have an extensive presence²⁰ with a significant number of attacks occurring in Pul-e Alam and its immediate surroundings.²¹
41. Most recently, the Pajhwok Afghan News website²² has reported ongoing and frequent security incidents, including the presence of Daesh fighters in [District 1], suicide attacks and civilian deaths during 2015. The 2015 EASO assessment describes Pul-e Alam as "one of the ten most violent districts of Afghanistan" in 2013²³ and states that civilians continue to be affected by the conflict in Logar; that the risk of civilian casualties in Logar is twice that outside the province; that Logar constitutes an "insurgents' highway" from Pakistan to Kabul resulting in a higher than average ration of foreign fighters; and that there is a big support base for Hezb-e Islami (Gulbuddin Hekmatyar's group) and Taliban forces. The assessment quotes the Institute of War and Peace that, "Taliban control of the province is so complete that even public servants turn to the Taliban courts, believing they are swifter and more honest than the state judiciary".²⁴ The neighbouring provinces of Pakiya and Wardak are also insecure.²⁵
42. The government has little influence or support outside the district centres in Logar and people associated with the government are at risk of reprisals from the Taliban:

Anyone here associated with government-backed initiatives or the occupation is at constant risk. Earlier this month, the dead bodies of two Afghans were found near Pul-i-Alam town, with the government offering differing versions of

¹⁵ 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.

¹⁶ Clark, K, 2015, 'War and peace, Highest Civilian Casualty Figures Ever: UNAMA details deaths by mortar, IED, suicide attack and targeted killing', *Afghan Analysts Network*, 5 August

¹⁷ Burns R and Reichman D 2012, 'Al Qaeda in Afghanistan is Attempting a Comeback', *Huffington Post*, 21 October

¹⁸ Azizi A, 2012, 'Taleban Justice Dominant in Logar Province', *Institute for War and Peace Reporting*, 2 August

¹⁹ 'Two NATO personnel killed in Afghanistan helicopter crash' 2012, *Dawn.com*, 5 September

²⁰ Roggio, B 2012, 'Afghan soldiers retake Kabul after Taliban assault', *The Long War Journal*, 22 June

²¹ The Afghanistan NGO Safety Office 2012, *The ANSO Report 1-15 April 2012*

²² www.pajhwok.com

²³ European Asylum Support Office, 2015, *EASO Country of Origin Information Report Afghanistan Security Situation*, January

²⁴ Ibid

²⁵ Ibid

who they were. One official account claimed they had been translators for NATO while another said they had been employees of a contractor working with the Afghan army.²⁶

43. In 2012, the UNHCR advised that, “in areas where AGEs [anti-government groups] exercise effective control, they are reported to take advantage of the absence of governmental mechanisms or services to enforce their own parallel ‘judicial’ structures” and that AGEs are controlling the local populations by means of threats and intimidation of civilians; restrictions on freedom of movement; extortion and illegal taxation; and forced recruitment. It also noted increasing levels of organized crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas.²⁷
44. Increased Taliban activity in the north of Afghanistan has reportedly resulted in ethnic tension and the re-arming of Tajik and other militia groups aligned to government officials and warlords.²⁸ The Tribunal notes that, despite this re-arming, the Taliban recently seized the city of Kunduz in the north.²⁹ Other reports indicate that the Taliban consider Tajiks to be their political opponents; and that Tajiks are “one of the more coherent political movements in a fragmented country”.³⁰
45. The Tribunal accepts that there is a real chance that the applicant will suffer serious harm if returned to Logar. He is from an ethnic minority in a highly insecure area controlled by the Taliban and where other insurgent groups are active. The Tribunal accepts that he may have already come to the attention of the Taliban because of an interest in joining the ANA. There is political tension between the Taliban and Tajiks in Afghanistan which is likely to have increased with the attack on Kunduz. The Tribunal is satisfied that there is a more than remote chance that the applicant will suffer serious harm in Logar. The Tribunal finds that the essential and significant reason for the harm will be an imputed political opinion of opposition to the Taliban or other armed insurgent groups.
46. Given that the Afghan government and security forces are struggling to exercise effective control over large parts of Afghanistan, including Logar province, the Tribunal finds that state protection will not be effective or available to the applicant.

Relocation

47. The Tribunal has considered whether the applicant can safely and reasonably relocate to Kabul or some other part of Afghanistan. The applicant claims that he cannot relocate because he has limited literacy skills and no family support outside of Logar. He claims that the income he derives from his land in Logar is not enough

²⁶ Qazizai, F & Sands, C 2012, ‘Afghanistan: Another province goes to the Taliban’, *Global Post*, 26 November

²⁷ UNHCR, 2013, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 6 August

²⁸ Abi-Habib, M. 2011 ‘Ethnic Militias Fuel Tensions in Northern Afghanistan’, *Wall Street Journal*, 21 April; Rashid, A 2011, ‘The Way Out of Afghanistan’, The New York Review of Books website, 13 January

²⁹ Sultani, F, 2015, Afghanistan: Taliban breach key city of Kunduz, seize governor’s office’, *The Age*, 29 September

³⁰ Downing B M, 2012, ‘Taliban’s peace options limited’, *Asia Times*, 28 March

to support him and family in Kabul or elsewhere in Afghanistan. He stated that the reason he sought to join the ANA was because he needed additional income.

48. The Tribunal has considered if there is anywhere the applicant could safely relocate to in Afghanistan. In 2013, the UNHCR noted a high level of insecurity in the south of Afghanistan which was largely under the control of the AGEs and an increasingly insecure north; that “much, and often extremely violent, insurgent activity is going on in the rural areas with relatively little coverage”; and that:

The proliferation of local militias and armed groups, both pro- and anti-government, particularly in the north, northeast and central highland regions, had a further negative impact on the security situation for civilians. The presence or re-emergence of armed groups was reported frequently to result in reduced protection for civilians and increased human rights abuses. In the north and northeast regions in particular, the “blurring of lines” between government and non-government affiliation of armed groups, resulting from the widespread recruitment of armed group members into the ranks of the Afghan Local Police (ALP), was reported to contribute to unchecked proliferation of abusive practices and reduced protection for civilians. Civilians were also reported to be increasingly caught in the line of fire between pro-government armed groups and AGEs.

49. More recently, EASO has noted that, “the overall trend is one of decreasing government control outside the larger towns and cities, escalating violence and more insurgent attacks”. Major roads have been cut off, especially in the north. Insurgents have launched major assaults on administrative centres and checkpoints with the aim of capturing as much territory as possible and operate in fronts of several hundred fighters. “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”.³¹
50. In view of this information, the Tribunal accepts that relocation to a rural part of Afghanistan or to one of the provincial cities is not safely available to the applicant.
51. The Tribunal has considered whether the applicant could safely and reasonably relocate to Kabul. Kabul has a population of between 3 and 7 million people. It is ethnically diverse with no ethnic group dominating³² and it is currently under government control. The Tribunal is satisfied that the applicant could live in Kabul without being targeted by insurgents.
52. The UNHCR has noted that the reasonableness of relocation in Afghanistan depends on the availability of traditional support structures such as family and tribal networks, access to shelter, the availability of infrastructure and access to essential services such as sanitation and health care, livelihood opportunities and the scale of internal displacement in the area.³³ DFAT also notes that “traditional extended family and tribal community structures are the main protection and coping mechanism for IDPs, particularly in rural areas. Afghans rely on these networks for their safety and

³¹ European Asylum Support Office, 2015, *EASO Country of Origin Information Report Afghanistan Security Situation*, January

³² European Asylum Support Office, 2015, *EASO Country of Origin Information Report Afghanistan Security Situation*, January

³³ *ibid*

economic survival, including access to accommodation and an adequate level of subsistence”.³⁴ The Tribunal accepts that the applicant has no family or tribal network in Kabul.

53. DFAT has noted that unemployment is widespread in Kabul and that the influx of IDPs and returnees has put pressure on the labour market; that many new arrivals tend to be at a disadvantage because they lack skills and the family network necessary to find employment with the result that many become relatively poorly paid day-labourers or resort to begging or street selling; and that many returnees and IDPs live in “informal” settlements with poor access or no access to electricity, water or sanitation.³⁵ The Danish Refugee Council has noted that most returning Afghan refugees “end up in one of the rapidly growing tent and mud house settlements, alongside a quarter million internally displaced (IDPs) Afghans”.³⁶
54. Further, the security situation in Kabul has deteriorated. DFAT has noted that insurgents regularly conduct high profile attacks in Kabul, primarily targeting government and military institutions, political figures and international security forces and organisations; and that these attacks often cause significant civilian casualties.³⁷ The EASO assessment noted that high profile and often complex attacks have targeted mostly government and international targets but without consideration for collateral damage to civilians. The UK Home Office has noted that:

A surge of terrorist attacks in Kabul in mid-May 2015 saw at least 26 deaths and over 80 injuries: On 13 May, an assault on the Kabul Park Palace Hotel killed 14 people. An explosion on the Kabul University campus left two professors wounded over the weekend of 16 May. On 17 May an explosion in the Kart-e-Naw neighbourhood was followed by an explosion on Hawashenasi Road, which killed three people, including two young sisters and wounded 20. A suicide bomb attack near Kabul airport killed three people on 17 May, while at least 18 people were injured. On 19 May a car bomb exploded next to the Ministry of Justice building, killing five and wounding at least 43 others.³⁸

55. Other sources report a suicide bombing at Kabul airport on 10 August 2015 which killed 5 people and wounded 18;³⁹ multiple bomb attacks on 8 August 2015 which killed 65 people and wounded hundreds;⁴⁰ a suicide bombing on a US convoy on 30 June 2015 which killed one person and injured 22;⁴¹ and an attack on the Parliament on 22 June 2015 which killed 2 people and wounded 30.⁴²

³⁴ Department of Foreign Affairs and Trade, 2014, *DFAT Country Information Report Afghanistan*, 26 March

³⁵ Department of Foreign Affairs and Trade, 2014, *DFAT Country Information Report Afghanistan*, 26 March

³⁶ Danish Refugee Council 2012, *Afghan refugees return to absolutely nothing*, 13 April

³⁷ *Ibid*

³⁸ UK Home Office, 2015, *Country Information and Guidance Afghanistan: Security and humanitarian situation*, August

³⁹ Mashal M, ‘After Kabul Attack, Afghan Leader Points Finger at Pakistan for Failing to Stop Taliban’, *New York Times*, 10 August 2015

⁴⁰ ‘Multiple bomb attacks shake Afghan capital with dozens killed targeting police, NATO and civilians’, *ABC News*, 8 August 2015; Shakib A and Norland R, ‘Waves of suicide attacks shake Kabul on its deadliest day of 2015’, *New York Times*, 7 August 2015

⁴¹ Goldstein J and Shakib A, ‘In Afghanistan, suicide blast and angry crowd target American soldiers’, *New York Times*, 30 June 2015

⁴² Salahuddin S and Deane D, ‘Taliban bombs rock Afghan Parliament in brazen assault’, *The Washington Post*, 22 June 2015

56. The applicant has no family or tribal networks or support in Kabul; and has very limited schooling. The Tribunal finds that he would have difficulty establishing himself and finding accommodation or employment in Kabul and would be forced to live in impoverished circumstances. Further the security situation in Kabul has deteriorated with a high number of attacks so far this year, which whilst not necessarily targeting civilians have caused a high number of civilian casualties. For these reasons, the Tribunal finds that relocation to Kabul is not reasonable in the circumstances.

CONCLUSION

57. 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

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

Rea Hearn Mackinnon
Member