FEDERAL MAGISTRATES COURT OF AUSTRALIA

SZQEN v MINISTER FOR IMMIGRATION & ANOR *[2011] FMCA 648*

MIGRATION – Review of decision of Independent Merits Reviewer – whether applicant's deceased brother's children could be part of applicant's nuclear family – whether consideration given to extended family by IMR – whether IMR applied correct test to question of relocation – where correct test is that of reasonableness or whether relocation is practicable in the particular circumstances of the applicant – where relocation an alternative reason for refusing to grant visa – where IMR considered applicant would not face persecution if returned to his hometown – whether jurisdictional error affecting question of relocation affects decision as a whole – whether IMR correctly identified applicant's hometown – merits review – whether *Wednesbury* unreasonableness.

PRACTICE AND PROCEDURE – Application – extension of time.

Migration Act 1958, ss.36(2), 477
Handbook on Procedures and Criteria for Determining Refugee Status

MIEA v Wu Shang Liang [1996] 185 CLR 259
Randhawa v Minister for Immigration (1994) 124 ALR 265
SZATV v Minister for Immigration & Anor [2007] HCA 40
SZFDV v Minister for Immigration (2007) 233 CLR 51
Plaintiff M13/2011 v Minister for Immigration and Citizenship [2011] HCA 23
SZMCD v Minister for Immigration & Anor [2009] FCAFC 46
Gardi v Secretary of State for the Home Department (No.1) [2002] 1 WLR 2755
Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223

Applicant:	SZQEN
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	JOHN BLOUNT IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER
File Number:	SYG 824 of 2011

Judgment of:	Raphael FM
Hearing date:	17 August 2011
Date of Last Submission:	17 August 2011
Delivered at:	Sydney
Delivered on:	24 August 2011

REPRESENTATION

Counsel for the Applicant:	Mr J Gormly
Solicitors for the Applicant:	Schofield King
Counsel for the Respondent:	Mr T Reilly
Solicitors for the Respondent:	Australian Government Solicitor

ORDERS

(1) Application dismissed.

(2) Applicant to pay the first respondent's costs assessed in the sum of $5,850.00.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 824 of 2011

SZQEN
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

JOHN BLOUNT IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER
Second Respondent

REASONS FOR JUDGMENT

1. This application for review of a decision of an Independent Merits Reviewer ("IMR") is brought by a citizen of Afghanistan who left his homeland in 1998 together with his family. He had lived in Quetta in Pakistan from that time until February 2010 when he left Pakistan and travelled to Malaysia and Indonesia before boarding a boat for Australia. The applicant is an ethnic Hazara and a Shia Muslim. He claimed to fear persecution in Afghanistan because of his ethnicity and religion. He believed that he would come under attack from the Taliban and that he would not be provided with effective protection in any part of the country. The applicant's claims were considered by a departmental assessor [CB 87 – 98] who found that the applicant did not have a genuine fear of harm and that there was not a real chance of persecution occurring. The applicant sought review of that decision from an Independent Merits Reviewer and obtained the assistance of a migration agent/lawyer who provided a detailed submission in support [CB 106 – 161]. A further submission was made but undated

[CB 164 – 201]. On 23 January 2011 the IMR interviewed the applicant with his advisor and an interpreter in Hazaragi language. On 17 February 2011 the IMR concluded that the applicant did not meet the criterion for a protection visa set out in s.36(2) of the *Migration Act 1958* (the "Act") and recommended to the Minister that he not be recognised as a person to whom Australia owed protection obligations.

2. The applicant came from a farming family in Jaghori in Ghazni Province. His father had also owned land in Lashkargar in Helmand Province. The applicant worked as a farmer in Jaghori from 1971 to 1989 and from 1989 to 1996 [CB 88]. In 1996 his brother, who had been looking after the land in Lashkargar, was killed, allegedly by the Taliban, whilst bringing wheat from Lashkargar to Kabul. The applicant then took over responsibility for the Helmand land which had been left to him and his brother by his father. He also took on the guardianship of his brother's children. In 1998 a local Pashtun land owner took over the applicant's land. The applicant fled to Lashkargar town where he spoke with an Uzbec neighbour to whom the same thing had happened. The neighbour warned the applicant that the Pashtun land owner would pursue and kill him. The applicant then left Lashkargar and fled into Pakistan.

3. In 2007 the applicant returned to Lashkargar to see whether he could reclaim his land now that the Karzai government was in power. He met with considerable opposition both bureaucratic and, he said, from the Pashtun landowner. After fourteen days he realised that he was not going to achieve the return of his patrimony and he remained fearful for his life so he returned to Pakistan where he stayed until he left for Australia in February 2010.

4. The IMR discussed with the applicant the situation in Lashkargar and acknowledged [[46] CB 210] that it was said to be a Taliban stronghold where fighting continued. He accepted that the village where the land was situated was nearby and adjoined the district:

> "IMR: I accept that Helmand Province can be an insecure province at the moment. Helmand Province is 92% Pashtun and is said to be an area where the Taliban are strong and where fighting has continued. So it becomes necessary to give serious consideration to whether it is different elsewhere in Afghanistan and what the options ware for returning to Afghanistan but not to Lashkargar or to Helmand. Obviously there is a question as to whether this landowner is able

> or likely to pursue you elsewhere in Afghanistan, either in nearby Provinces or whether throughout the whole country. I would have to consider whether there is a real chance that that would occur.
>
> Putting that aside for the moment I want to consider whether it would be a reasonable view to move back to Jaghori where you lived until you went to Lashkargar for the short time you were in Afghanistan or somewhere else, such as Kabul so I just want to talk about Jaghori for a little bit first and then perhaps go on and discuss some factors that may be relevant in Kabul." [T15]

5. The Reviewer went on to discuss with the applicant the situation in Jaghori and the available of a route between Jaghori and Ghazni and onto Kabul. The IMR noted that whilst parts of this route are not safe the lack of safety was not directed at Hazara's specifically but at all ethnic groups. The IMR asked the applicant:

> "IMR: I would be interested in any comments you have got about the possibility of simply going back to your home district of Jaghori and the normal situation one would look at would be someone in the first instance living in their home district." [T16]

6. The applicant's comments related to his ability to survive in that town financially and indicated he believed he would be in danger from the land owner should he ever leave Jaghori:

> "IMR: You're saying that wherever you are in Afghanistan, except may be within Jaghori itself, this man from Helmand will be able to identify and pursue and target you? Is that your concern?
>
> A: Yes I am sure it is and also the same way that he killed my brother he is going to kill me.
>
> IMR: I have noted that concern, I will obviously think about it, lets move onto Kabul because I think the factors that apply are somewhat different." [T17]

7. The IMR and the applicant then discussed the situation in Kabul. The IMR referred to independent country information concerning that city and the fact that there was a very large Hazara community there drawn from provinces and districts throughout the country. The IMR pointed out that the UNHCR had suggested that adapting to Kabul might be difficult for someone whose life experience had been spent subsistence farming in a remote mountainous area but pointed out that the applicant's position was somewhat different:

"IMR: Since 1998 you've lived and worked in a large city Quetta, where you've operated a grocery shop, rather than a rural environment, and I think that you stated at the last interview, the RSA interview, that you're are quite wealthy.

…

A: Of course I can't reject anything that you are telling me, and I'm not familiar myself and I don't know, but what I know is about my own situation, and if I didn't have that situation I didn't come here and I would not have left Afghanistan." [T18]

8. The IMR divided his Findings and Reasons into a series of headings which indicated he accepted the applicant's ethnicity and religion and the dangers to such a person in Helmand Province. He accepted that a local landowner had taken over the applicant's land in 1998 and that he had been threatened and assaulted by an employee of that landowner and accepted that the applicant's non Pashtun ethnicity was a significant factor in the belligerent attitude of the Pashtun landowner [[84] CB 216]. However, he was less sanguine about identifying the Pashtun landowner as a Taliban. He did not accept the applicant's claim that his brother had been killed by the same person:

> *"The Reviewer is satisfied that the claimant's attempt (after the RSA rejection) to link his brother's disappearance with the Pashtun landowner with whom he had difficulties eighteen months later has been fabricated in an attempt to strengthen his claims. The Reviewer does not accept that the Pashtun landowner in Helmand was involved in the disappearance of the claimant's brother between Jaghori and Kabul in 1996*. [[88] CB 217]

9. The Reviewer did accept the applicant's story concerning his attempt to regain his land in 2007. He found:

> *"These considerations are specific to the situation in Helmand Province where the land in question is situated, where the Pashtun landowner in question is located, and where the extent of Pashtun dominance and of violence and insecurity gives rise to heightened dangers. The reviewer is satisfied that they do not apply to the claimant's situation in Afghanistan generally, including in his own home district of Jaghori.*
>
> *The reviewer does not accept that, the claimant's title to his land having been decisively rejected by officials in Helmand, the Pashtun landowner in Helmand is now motivated or able to locate, pursue and target the claimant elsewhere in Afghanistan."* [[92 – 93] CB 217]

10. The Reviewer then went on to consider the ability of the applicant to return to Jaghori:

> *"[94] The reviewer is satisfied that the claimant can simply return to his own district of Jaghori where he had lived for most of his life.*
>
> *[95] The reviewer has considered a range of specific information in relation to Jaghori, the more significant items of which have been listed under the heading "Independent Country Information".*
>
> *[96] It is relevant to note here that (as put to the claimant at interview) the claimant's own district, Jaghori, is overwhelmingly populated by Hazaras with Pashtuns only at the borders of the district (and controlled by Hazara parties). Although issues of access are often raised in relation to Jaghori, evidence put to the claimant indicates that there is a frequently used and secure route from Jaghori to Ghazni city through Mawur and Jaghatu districts – both Hazara districts). Relevant information is contained in, inter alia, the September 2010 DFAT report and in the December 2009 Finnish Immigration Service Report, Current Situation in the Jaghori District of Ghazni, and in the Cooperation for Peace and Unity (CPAU) report of 27 April 2009, Conflict Analysis: Jaghori and Malistan districts, Ghazni province.*
>
> *[97] The reviewer is not satisfied that there is a real chance that in the particular circumstances the claimant would be targeted in relation to the dispute in Helmand should he return to his home village or local area in the Hazara-controlled Jaghori district.*

11. After coming to the conclusion above the Reviewer turned to what he headed "Relocation" stating:

> *"[99] In the circumstances, it is appropriate to consider also whether the claimant might return to Afghanistan and live safely elsewhere and not only in Jaghori. The reviewer has therefore considered the question of possible relocation in a large urban centre such as Kabul. The reviewer is satisfied that any particular harm directed towards the claimant in the specific circumstances of Helmand would not be relevant in Kabul. Relocation is therefore a relevant option."*

He then opined:

> *"[100] The remaining issue is whether relocation would be reasonable: would the conditions in a proposed area of relocation be so unacceptable that the claimant would be constrained to return to the area where he faces a chance of persecution (i.e. Helmand)?*
>
> *[101] The issue was discussed with the claimant by the reviewer at interview."*

12. The IMR concluded from the basis of the independent country information he had discussed with the applicant that it was reasonable for him to relocate to Kabul:

> *"[106]The reviewer has considered the particular circumstances of the claimant. The claimant has lived and worked in a busy urban environment, in Quetta, since 1998. He has that he is financially well-off and that he operated his own shop in Quetta for ten years. He is not in the same position as an unskilled rural labourer with no experience of urban life. As already noted, UNHCR generally considers 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."*

13. The reviewer concluded:

> *"[110]The reviewer is satisfied that the totality of the circumstances are not such that the claimant would be unable to live in Kabul and might therefore be constrained to return to Helmand.*
>
> *[111] The reviewer therefore finds that the claimant does not meet the criterion for a protection visa set out in s 36(2) of the Migration Act 1958."*

14. On 29 April 2011 the applicant filed with this court an application for review of the decision of the IMR. The decision had been written on 17 February 2011. The letter, providing a copy of the decision to the applicant, was dated 25 February 2011. It is accepted that s.477 of the Act applies to an application of this type and the applicant has 35 days in which to make an application to the court on the date of the letter advising him of the decision. This 35 days expired on 1 April 2011 thus the applicant was approximately 28 days out of time. The applicant has applied to this court to extend the time under s.477(2). In an affidavit provided to the court by Frances Milne, the convenor of the organisation known as "Balmain for Refugees" she states that she first contacted the applicant within the 35 day period and sought out legal advice, however, that advice could not be turned into an application until after the expiry of the period. The respondents' only objection to extending the period is that the application is without merit and therefore it is not in the interests of justice for the court to extend it. It seems to me that the issues raised by the applicant are important and that it is very possible that I may come to conclusions which a superior court may find wanting. If I was to decline to grant the extension of time on the basis that I would not find in favour of the applicant then he would lose any rights of appeal against my findings. This seems to me to be inappropriate in a case where the grounds of application

suggest a serious error on the part of the IMR as these do. The grounds of the Further Amended Application are fourfold:

"That the decision of the second respondent was affected by legal error in that:

1. The second respondent (the reviewer) failed to ask the correct question in relation to relocation in recommending that the applicant was not a person to whom Australia owed protection.

Particulars

- The reviewer wrongly put as the test of the reasonableness of relocation: would the conditions in a proposed area of relocation be so unacceptable that the claimant would be constrained to return to the area where he faces a chance of persecution (ie Helmand).

2. The second respondent (the reviewer) failed to afford procedural fairness to the applicant in not taking in to account a relevant consideration in determining reasonableness of relocation.

Particulars

- In considering the particular circumstances of the applicant in relation to the reasonableness of relocation to Kabul the reviewer failed to take into account that the applicant's family unit extended beyond his nuclear family to include his deceased's brother's three children as dependents in addition to his own five children.

3. The second respondent (the reviewer) failed to afford procedural fairness to the applicant in that the reviewer did not bring to the attention of the applicant or allow the applicant an opportunity to comment on information from which the reviewer drew conclusions adverse tot eh applicant's claims.

Particulars

- The information was drawn from the UNHCR Eligibility Guidelines for Assessing the International Protection needs of Hazaras December 2010

- The UNHCR Guidelines came into existence after the Refugee Status Assessment (RSA).

- The particular information used by the reviewer in his recommendation was 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".

- At the interview between the reviewer and the applicant the reviewer put to the applicant that the subject of this information was "single males and family units can live without extended family support." The reviewer did not say or otherwise put to the applicant that the subject of the information was "single males and nuclear family units.

Part 4.1 and Annexure D of the Independent Merits Review Guidelines (IMR Guidelines) are a source of the requirements of procedural fairness in relation to this ground of review.

4. The second respondent (the reviewer) asked himself the wrong question to conclude that the applicant could return to Jaghori as if this was not a relocation from a place of a well founded fear of persecution.

- In asking the wrong question the reviewer failed to take into account that, at the time of making the recommendation, the applicant did not own land in Jaghori but in Helmand, and that the applicant's family had left Jaghori for Iran, such that any move by the applicant to Jaghori would not be a return to his home district, but a relocation from Helmand, the place it was accepted his fear of persecution was well founded and where he owned land.

- Further, as a result of asking the wrong question the second respondent did not consider the reasonableness of the relocation to Jaghori."

15. I shall deal first with Grounds 2 and 3 because they both proceed upon the assumption that the applicant's deceased brother's children could not be considered part of the applicant's nuclear family. The applicant had told that he became the guardian of these children upon the death of his brother and as such they would appear to fall within the definition of nuclear family found in the Macquarie Dictionary as:

> "The family as a unit of social organisation comprising only parents and children where the children are the responsibility of the parents alone."

16. To the extent that any of those children might have grown up and were no longer living with the applicant they would not be the concern of an IMR in Australia deciding whether or not the applicant was a person who had a well founded fear of persecution for a convention reason. I am satisfied that the IMR gave consideration to the applicant's family unit and did not fall into jurisdictional error in the manner suggested in the application.

17. I have set out at [11 and 13] of these reasons the two references to the IMR's formula for consideration of relocation outside Jaghori at [100]

and [10]. It would be difficult to argue in this context that the IMR did not in these paragraphs propound a test that per [100] he proposed to apply and per [110] he had applied and made a conclusion upon. The respondent in its argument refers to the use of the word "reasonable" and urges the court not to look at the decision with an eye attuned to the perception of error; *MIEA v Wu Shang Liang* [1996] 185 CLR 259 at [272]. It is correct to say that the word "reasonable" has high import in decisions concerning relocation. The Full Bench decision of *Randhawa v Minister for Immigration* (1994) 124 ALR 265 per Black CJ, Beaumont and Whitlam JJ is generally considered to be the *fons et origo* of the requirement for it to be reasonable to expect an applicant to relocate. As Black CJ opined after making reference to paragraph 91 of the *Handbook on Procedures and Criteria for Determining Refugee Status* published by the UNHCR:

> "As Simon Brown J pointed out in *R v Secretary of State for the Home Office Ex parte Gunes* at 282, it is implicit in the final clause that if, in all the circumstances, it would be reasonable to expect someone to return to another part of the country of nationality then that is a matter that can properly found an adverse decision on a claim for refugee status.
>
> In the present case the delegate correctly asked whether the appellant's fear was well-founded in relation to his country of nationality, not simply the region in which he lived. Given the humanitarian aims of the convention this question was not to be approached in a narrow way and in her further analysis the delegate correctly went on to ask not merely whether the appellant could relocate to another area of India but whether he could reasonably be expected to do so.
>
> This further question is an important one because notwithstanding that real protection from persecution may be available elsewhere within the country of nationality, a person's fear of persecution in relation to that country will remain well-founded with respect to the country as a whole if, as a practical matter, the part of the country in which protection is available is not reasonably accessible to that person. **In the context of refugee law the practical realities facing a person who claims to be a refugee must be carefully considered**." [emphasis added] [270]

At [278] Beaumont J says:

> "If relocation is, in the particular circumstances, an unreasonable option, it should not be taken into account as an answer to a claim of persecution."

18. *Randhawa* has been approved and discussed in many cases including *SZATV v Minister for Immigration & Anor* [2007] HCA 40 where Hayne and Crennan J commenced their decision with a discussion of

the relocation principle. Their Honours refer to *Randhawa* and then quote from Black CJ at [440 – 441] before saying at [11]:

> "The appellant points to the absence from the test of the Convention definition of any reference to relocation to a safe area within the country of nationality or a former habitual residence. He correctly submits that any notion of "relocation" and of the "reasonableness" thereof is to be derived, if at all, as a matter of inference from the more generally stated provisions of the definition."

Their Honours continued at [24]: saying:

> "What is "reasonable", in the sense of "practicable", must depend upon the particular circumstances of the applicant for refugee status and the impact upon that person of relocation of the place of residence within the country of nationality."

19. Kirby J in a lengthy and reasoned opinion in which he was critical of the relocation argument but accepted it as the law of Australia said at [97]:

> "To consider what it is reasonable for the refugee applicant to do by way of internal relocation is not to hypothesise supposedly reasonable conduct such as "living discreetly". This was rejected in S395. The supposed possibility of relocation will not detract from a "well-founded fear of persecution", if otherwise established, where any such relocation would, in all the circumstances, be unreasonable. It will be unreasonable where to propound it amounts to an affront to any of the specified Refugees Convention-based grounds of persecution, which it is the object of the Refugees Convention to prevent, discourage and redress."

He returned to the subject in *SZFDV v Minister for Immigration* (2007) 233 CLR 51

> "[36] Failure to address well-foundedness: Secondly, because of the way in which the Tribunal approached the matter (contrary to the requirement of individual factual prediction established in S395), it failed to address the issue of reasonable relocation within India in the only way that is permissible under the Refugees Convention. Specifically, it failed to examine the "well-foundedness" of the appellant's current fear of persecution, based on the reality of what in fact he would reasonably do if he were returned to India.
>
> [37] This was not a hypothetical or theoretical problem in the case which the appellant propounded. Relocating from Tamil Nadu to Kerala is not the same thing as relocating from Victoria to Tasmania or relocating within Ukraine. The appellant's family, upbringing, language, culture, cuisine, tradition, friends, political colleagues and other links were all with the Tamil speaking people in the State of Tamil Nadu. The postulate that the appellant would move to a significantly different linguistic, cultural, political and familial

> environment of Kerala, simply because it is within the country of his nationality, portrays not only a naïve ignorance of the diversity of India but also a failure to address the relocation test in the correct way, as explained in *SZATV*."

In *Plaintiff M13/2011 v Minister for Immigration and Citizenship* [2011] HCA 23 Hayne J sitting alone, dealt with an application for review of the decision of a delegate and stated at [21] and [22]:

> "[21] Consideration may be given to the possibility of a claimant for protection relocating in the country of origin if relocation is a reasonable (in the sense of practicable) response to the fear of persecution. As three members of this court pointed out in SZATV v Minister for Immigration and Citizenship, "[w]hat is 'reasonable', in the sense of 'practicable', must depend upon the particular circumstances of the applicant for refugee status and the impact upon that person of relocation of the place of residence within the country of nationality".
>
> [22] When the delegate's reasons are read as a whole, it is evident that the particular circumstances of the plaintiff were not considered by the delegate in forming the opinion that she could relocate to avoid the risk of persecution. So much follows from the delegate not knowing from where the plaintiff would have to relocate. The particular circumstances of the plaintiff not having been considered, the delegate did not correctly identify a question that had to be answered in determining whether there was a real risk of the plaintiff suffering persecution on account of her religious beliefs if she were to return to Malaysia. By not correctly identifying the relevant question, the delegate made a jurisdictional error."

20. It is clear from these decisions and others in the same vein**,** *SZMCD v Minister for Immigration & Citizenship* (2009) 174 FCR 415, *NAIZ v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCAFC 37, *WALT v Minister for Immigration and Multicultural and Indigenous Affairs* [2007] FCAFC 2, that the test of relocation is one of reasonableness in the sense of practicality. It is not whether the conditions in the proposed area of relocation are so unacceptable that the claimant will be constrained to return to an area from where he faces a chance of persecution. That may be the result of an unreasonable or impracticable relocation but to define a test by its result is putting the cart before the horse. I am satisfied that in propounding this test the IMR fell into jurisdictional error and that the making of reference to "reasonable" does not save it from that fate.

The test was clearly applied in the terms stated not in the manner the authorities have considered acceptable.

21. Regrettably for the applicant, the matter cannot end there. The IMR considered relocation in Kabul as an alternative to return to the applicant's hometown of Jaghori. If the finding in respect to Jaghori was jurisdictionally sound then it constitutes an alternative and independent ground for affirming the delegate's decision; *SZMCD* at [122]. The respondent argues that the finding was jurisdictionally sound because the IMR's consideration of Jaghori was not as a place of relocation but a place of return and it would not be appropriate to apply the *Randhawa* test in respect of a place of return. This was explained by Lord Justice Keene in *Gardi v Secretary of State for the Home Department (No 1)* [2002] 1 WLR 2755 at [25 – 31].

22. A close reading of the fourth ground of the Further Amended Application reveals that what it is really doing is arguing with the IMR's finding that Jaghori was the applicant's home. A finding as to this matter must be a question of fact and so to seek that the court differ from the view of the IMR is to seek impermissible merits review unless it could be said that the conclusion was one which was so unreasonable that no reasonable finder of fact could have come to it; *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223. It is not necessary to go very far to conclude that this cannot be the case and that the Reviewer was entitled from the evidence that was given to him to make that conclusion. At [CB 165] the applicant's agents in their submission to the department state:

> "We submit that our client's circumstances warrant further consideration given the situation facing Hazara Shi'a in Afghanistan, given the growth of Taliban insurgency over the last year. For this reason, we submit that our client faces danger should he be refouled to his home province of Ghazni, or to Kabul."

23. In addition to this admission by the applicant there was the accepted fact that he had lived in Jaghori for over 40 years and that he had only lived in Helmand for two years. Whilst I accept, as the IMR appeared to, that some members of his family had left the town and the area, it would go without saying that a 40 year resident of a town from where his father also appears to have come, would continue to have association with it notwithstanding the short time in Helmand and the

rather more lengthy time in Pakistan. This is not a finding of fact by the court but is a necessary implication from the discussions between the IMR and the applicant. It is also an implication to be taken from the decision of the assessor who stated at [CB 93]:

> *"The claimant spent most of his lifetime living in Jaghori in the Ghazni province, however spent two years living in Lashkargar, Helmand province. During the early part of the RSA interview the claimant stated that his sister lives in Jaghori however later on in the interview the claimant said he didn't know where his sister lived. Considering the claimant's previous experience in Jaghori and the fact he has family members situated in the province I believe he can return to the Jaghori district. The situation in Jaghori has improved significantly as country information also suggests that the Taliban don't enter Jaghori as it contains 94% Hazaras with local Hazara Militia's operating to protect the district. Therefore Jaghori has become safe for Hazara's and I believe he could return and not be subjected to danger."*

24. In the applicant's discussions with the IMR he did not refute those findings (other than indicating that the sister who lived in Jaghori was no longer there). In these circumstances I am satisfied that there was available evidence from which the IMR could conclude that Jaghori was the applicant's home and therefore he was not required to apply a relocation test when considering the applicant's return. I am satisfied that this finding was independent of the IMR's findings in relation to Kabul which I have accepted being the product of jurisdictional error. It follows that the application must be dismissed and that the applicant must pay the first respondent's costs which I assess in the sum of $5,850.00.

I certify that the preceding twenty-four (24) paragraphs are a true copy of the reasons for judgment of Raphael FM

Date: 24 August 2011