

1212321 [2012] RRTA 775 (28 August 2012)

DECISION RECORD

RRT CASE NUMBER:	1212321
DIAC REFERENCE(S):	CLF2012/124112
COUNTRY OF REFERENCE:	Afghanistan
TRIBUNAL MEMBER:	David Corrigan
DATE:	28 August 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(aa) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Afghanistan applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] June 2012.
3. The delegate refused to grant the visa [in] August 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

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

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

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

15. Whether an applicant is a person to 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.

Relocation

16. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. 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. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

State protection

17. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the State is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [23]. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29]. Harm from non-State actors which is not motivated by a Convention reason may also amount to persecution for a Convention reason if the protection of the State is withheld or denied for a Convention reason.

Complementary protection criterion

18. 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 to 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').

19. '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.
20. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. This material includes:
 - Entry interview dated [May] 2012;
 - Application for protection visa with accompanying statutory declaration dated [June] 2012;
 - Untranslated documents described as copies of his father's taskera and his marriage certificate;
 - Delegate's interview dated [June] 2012;
 - Agent's submission dated [July] 2012;
 - Further agent's submission dated [August] 2012.
22. The applicant's claims can be summarised as follows. He is a Hazara Shia and had a grocery business (which he owned for seven years) and a farm. He travelled to Ghazni City on average once a month for the purposes of the shop. He sold the stock of the business to help to leave Afghanistan. He was born in [year deleted: s.431(2)] in [Jaghori], Ghazni, Afghanistan. His parents died in [year deleted: s.431(2)] and his brother [name deleted: s.431(2)] in approximately [two years later]. His [other brother] [name deleted: s.431(2)] and his sister [name deleted; s.431(2)] still reside in [town deleted: s.431(2)], Afghanistan and are both studying. He married his wife [name deleted: s.431(2)] in [year deleted: s.431(2)] and they have three children ([ages deleted: s.431(2)]). His mother-in-law and [nephew] are also dependent on him.
23. Three years ago, whilst working as a shopkeeper the applicant met a man called [Mr A]. [Mr A] and he became friends and he would often stop by the shop to talk. When they would talk, [Mr A] would often make comments about Islam and how many Islamic countries were war torn and suffering from sectarian violence. In approximately October 2011, [Mr A] came to his house in the middle of the night distressed and terrified. [Mr A] said he was wanted by

the police as they were accusing him of opposing Islam and preaching Christianity. He explained that he could not go home and the applicant let him stay with him. [Mr A] stayed there for two nights and one day and the applicant gave him money and whatever he needed. The applicant drove him to the local taxi stand about 20 minutes away. The applicant has not heard from him since then.

24. About 20 days after [Mr A] left, the applicant was in Ghazni obtaining supplies for his shop. He contacted his wife to check to see if everything was OK and his wife told him that the police had come to their house to look for him. The police stated that he was a criminal and that he had to go with him to be punished. When they discovered he was not at home they took his son, [name deleted: s.431(2)] and went to his shop. When the police came to the shop they beat his son badly and tortured him to find his whereabouts. His son didn't tell them where he was and they eventually let him go.
25. The applicant was terrified of returning home and decided to flee Afghanistan. He believes the police acted as they did because he assisted [Mr A]. He then fled across the [border] to Afghanistan. Since he left Afghanistan the police have come to his house to look for him but his family have not told them of his whereabouts. He is afraid the police will execute him for opposing Islam and that the Taliban will get a report about him assisting [Mr A] from their spies.
26. The applicant also fears returning because of the security situation. He fears that it would not be safe to travel as the Taliban stop and kill many Hazara Shias.
27. Given my findings as set out below, I did not invite the applicant to attend a Tribunal hearing.

Independent country information

28. The UNHCR, in a detailed report dated 17 December 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, discusses in part: the current security conditions in Afghanistan; the potential risk profiles; and relocation. The UNHCR outlines in part the political and security landscape in Afghanistan thus:

UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF); (ii) humanitarian workers and human rights activists; (iii) journalists and other media professionals; (iv) civilians suspected of supporting armed anti-Government groups; (v) members of minority religious groups and persons perceived as contravening Shari'a law; (vi) women with specific profiles; (vii) children with specific profiles; (viii) victims of trafficking; (ix) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (x) members of (minority) ethnic groups; and (xi) persons at risk of becoming victims of blood feuds.
29. The Guidelines comment that:

Although available evidence suggests that some members of (minority) ethnic groups, including Hazaras, may engage in irregular migration for social, economic and historical reasons, this does not exclude that others are forced to move for protection-related reasons. UNHCR therefore considers that members of ethnic groups, including, but not limited to those affected by ethnic violence or land use and ownership disputes, particularly in areas where they do not constitute an ethnic majority, may be at risk on account of their

ethnicity/race and/or (imputed) political opinion, depending on the individual circumstances of the case. **However, the mere fact that a person belongs to an ethnic group constituting a minority in a certain area does not automatically trigger concerns related to risks on the ground of ethnicity alone.** [my bolding] Other factors including, *inter alia*, the relative social, political, economic and military power of the person and/or his and her ethnic group in the area where fear is alleged may be relevant. Consideration should also be given to whether the person exhibits other risk factors outlined in these Guidelines, which may exacerbate the risk of persecution. In the ever-evolving context of Afghanistan, the potential for increased levels of ethnic-based violence will need to be borne in mind..

30. The Guidelines further comment that:

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

31. A March 2012 Department of Foreign Affairs and Trade (DFAT) update on the Hazara community in Afghanistan notes that '[s]ecurity in Ghazni had deteriorated in the past six months'. It states that the "community was not being persecuted on any consistent basis and that "Hazaras considering emigration were principally influenced by long term economic considerations rather than any immediate risk of persecution. It adds that '[c]urrently the situation was stable – winter was traditionally a quieter period with less fighting' and that 'violence would likely pick up in the spring', noting that this 'applied across the province' With reference to Jaghori district in particular, the report noted that '[v]iolence was not noticeably worse in the predominantly Hazara districts (Jaghatu, Nawr, Jaghori, Malistan)'. The same report also noted that 'the Hazara community did not face systemic violence or an existential threat'.¹ This view of the level of threat posed to the Hazara community is supported by Professor Amin Saikal of ANU who wrote in March 2012 that:

Undoubtedly, the Hazaras now enjoy a substantial share in the power structure, and economic and social life of Afghanistan. Their provinces have proved to be amongst the safest in Afghanistan. At the very least, they are no worse off than many other groups in the country. While there are acts of violence and persecution by the Taliban against them here and there, they are subjected to no more of this than other groups in a zone of continuing conflict and social divisions.²

¹ Department of Foreign Affairs and Trade 2012, Afghanistan – Hazara Community Update, 12 March (CISNET CX283654).

² 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.

32. Professor William Maley argues in a December 2011 opinion *On the Position of the Hazara Minority in Afghanistan* that there has been evidence of targeted violence against Hazaras in recent years and that the difficulty in obtaining reliable information, as well as the rapid pace at which the security situation changes, makes making positive assessments of the threat posed to individual groups or communities problematic. Regarding security for Hazaras in Ghazni specifically, Maley writes that ‘no part of Ghazni can realistically be considered safe for Hazaras, even in districts where they might seem numerically predominant’. He states that:

Many asylum seekers in Australia have come from the province of Ghazni. The Taliban are now extremely active in large parts of Ghazni. As early as 20 May 2003, it was described by Todd Pitman in an Associated Press despatch as ‘a hotbed of suspected Taliban activity southwest of Kabul’. The former governor was assassinated in 2006, and an analysis in April 2006 concluded that ‘A fierce Taleban led insurgency in recent months has placed Ghazni, which lies just 135 km south of Kabul, among the most volatile provinces in southern Afghanistan’: Borhan Younus, Taleban Call the Shots in Ghazni (Kabul: Afghan Recovery Report no.213, Institute for War and Peace Reporting, 25 April 2006). The situation since then has become even worse (see Christoph Reuter and Borhan Younus, ‘The Return of the Taliban in Andar District: Ghazni’, in Antonio Giustozzi (ed.), *Decoding the New Taliban: Insights from the Afghan Field* (London: Hurst & Co., 2009) pp.101-118). In June 2011, the International Crisis Group reported that the province of Ghazni ‘has slipped from being one of the most stable to the third most volatile after Kandahar and Helmand’ (The Insurgency in Afghanistan’s Heartland (Kabul and Brussels; asia Report no.207, International Crisis Group, 27 June 2011, p.17). No part of Ghazni can realistically be considered safe for Hazaras, even in districts where they might seem numerically predominant. Most disturbingly, a June 2010 study by the highly regarded Afghanistan Analysts Network warns of a risk to these areas: ‘The Taleban successfully have infiltrated Northern and Northeastern Afghanistan and destabilised certain areas, mainly in Kunduz province. Now, there are signs that they might attempt to push forward into mainly Hazara-settled areas [in] the central region. The main road into Jaghori, an important Hazara area, has been blocked raising fears of a new economic blockade or event an attack’ (Thomas Ruttig, *A New Taliban Front?*(Kabul: Afghanistan Analysts Network, 18 June 2010)). The Taliban now enjoy what the International Crisis Group (op.cit, p.18) calls ‘near total control’ of Moquer, Qarabagh and Gelan, the three districts that immediately adjoin Jaghori to the east. And on 18 June 2011, there was an explosive outbreak of violence against Hazara villages in the Nawor district of Ghazni, with witnesses testifying to Taliban involvement (see Fabrizio Foschini, *Who cares about the Kuchi-Hazara conflict, nowadays* (Kabul: Afghanistan Analysts Network, 23 June 2011)).³

33. Recent reports from the Afghanistan NGO Safety Office (ANSO) note ongoing attacks by insurgent groups in Ghazni throughout 2011 and 2012.⁴ A recent ANSO report, covering the period 1-14 April 2012, provides the following information on security incidents in Ghazni:

³ Maley, William. 2011, ‘*On the Position of the Hazara Minority in Afghanistan*’, 7 December <<http://bmrsg.org.au/wp-content/uploads/2011/10/Maley-Hazaras-Opinion-Updated2.pdf>> Accessed 18 July 2012.

⁴ Afghanistan NGO Safety Office 2011, ‘Quarterly Data Report Q.4 2011’ <<http://www.ngosafety.org/store/files/ANSO%20Q4%202011.pdf>> Accessed 29 May 2012; Afghanistan NGO Safety Office 2012, ‘ANSO Report – Issue 89, 1-15 January’ <[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(Jan%201-15%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(Jan%201-15%202012).pdf)> Accessed 4 July 2012; Afghanistan NGO Safety Office 2012, ‘ANSO Report – Issue 90, 16-31 January’ <[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(16-31%20Jan%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(16-31%20Jan%202012).pdf)> Accessed 28 May 2012; Afghanistan NGO Safety Office 2012, ‘ANSO Report – Issue 91’, 1-15 February <[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(1-15%20February%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(1-15%20February%202012).pdf)> Accessed 29 May 2012; Afghanistan NGO Safety Office 2012, ‘ANSO Report – Issue 92’, 16-29 February

Incident levels continue to rise, primarily as AOG [Armed Opposition Groups] in the province are markedly more active and IMF/ANSF [International Military Forces / Afghan National Security Forces] operations take on a higher tempo to combat this trend. Beyond the numerical increase, however, the incident profile remained much the same as in previous reports, with a variety of direct and indirect attacks targeting patrols, check posts and most prominently DACs [District Administrative Centre].⁵

34. According to a 7 October 2011 IHS Jane's report on Afghanistan, Ghazni province ranked 4th for insurgent attacks between the period 1 July 2010 and 30 June 2011, below Helmand, Kandahar and Nangarhar provinces.⁶ According to the ANSO fourth quarterly data report for 2011 Ghazni had the second highest number of armed opposition group attacks of any province for that calendar year.⁷
35. A June 2011 International Crisis Group (ICG) report provides the following information on security in Ghazni:

Insurgent activity in Kabul, Kapisa, Parwan, Logar, Wardak, Laghman and **Ghazni** provinces has greatly intensified as the nexus between insurgent groups, political elites and criminal networks solidifies in and around the capital.

...Insurgents have a stronger hold over Logar, Wardak and **Ghazni** than other provinces neighbouring the national capital. The Taliban is tightening its grip through its shadow governments and a campaign of intimidation and assassination.

...Further to the south and east, the Taliban have made substantial headway in **Ghazni** between 2008 and early 2011 under the leadership of Taliban shadow governor Mullah Najibullah, an ethnic Tajik.

The province has slipped from being one of the most stable to the third most volatile after Kandahar and Helmand, with its security rating downgraded by ISAF.

The Taliban are the strongest insurgent group in the province with a near total control of Andar, Moquer, Qarabagh, Giro, Gelan and Nawah districts. Taliban command structures in Ghazni are less defined than in other regions. While the

<[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(16-29%20February%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(16-29%20February%202012).pdf)> Accessed 29 May 2012; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 93', 1-15 March <[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(1-15%20March%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(1-15%20March%202012).pdf)> Accessed 29 May 2012; Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.1 2012', March <<http://www.ngosafety.org/store/files/ANSO%20Q1%202012.pdf>> Accessed 29 May 2012; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 94', 16-31 March <[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(16-31%20March%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(16-31%20March%202012).pdf)> Accessed 4 July 2012; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 95', 1-14 April <[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(1-15%20April%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(1-15%20April%202012).pdf)> Accessed 4 July 2012.

⁵ Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 95', 1-14 April

<[http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(1-15%20April%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(1-15%20April%202012).pdf)> Accessed 4 July 2012.

⁶ IHS Jane's 2011, *Afghanistan: An IHS Jane's Special Report*, 7 October, p.14

<http://jmsa.janes.com/public/jmsa/AFGN_IHSJanes.pdf> Accessed 21 June 2012.

⁷ Afghanistan NGO Safety Office 2011, 'Quarterly Data Report Q.4 2011'

<<http://www.ngosafety.org/store/files/ANSO%20Q4%202011.pdf>> Accessed 29 May 2012.)

Quetta Shura is generally believed to oversee the shadow government in Ghazni, the Peshawar Shura's regional military council exerts a measure of influence over some commanders in the province.⁸

36. A review of recent media reported insurgent attacks, confirms that the Taliban and other militant group operate in districts adjacent to Jaghori district and elsewhere in Ghazni province in 2012. No recent reports of attacks in Jaghori itself were located. For example:
- A 1 July 2012 *AFP* article reports that a road side bomb struck a mini bus on Sunday near Ghazni city, killing five and injuring eleven others.⁹
 - A June 2012 *Afghan Islamic Press News Agency* report noted 'two women have reportedly been killed in a clash between armed opponents [of the Afghan government] and government security forces in in the Jindi area in Gelan district' The article noted that the Taliban had not commented on the incident however quoted a Taliban spokesman, Zabihollah Mojahed, as saying that the "Taleban destroyed two foreign forces' vehicles in two separate explosions in Gelan District' and 'a large number of foreign soldiers had suffered casualties'.¹⁰
 - *Khaama Press* in an article on 29 May 2012 reported that 'in eastern Ghazni province at least 3 people were injured following a missile attack' and 'officials further added at least two missiles were fired by militants which hit near a mosque and Plan-3 areas of eastern Ghazni city' The report quoted the provincial security Chief Gen. Mohammad Hussain as saying that 'the missiles were fired by Taliban militants early Tuesday morning from western regions of Ghazni city'. The report added that 'no group including the Taliban militants have so far claimed responsibility behind the attack'.¹¹
37. A December 2009 Finnish Immigration Service Report on the situation in Jaghori district states the following regarding security:

Jaghori is a somewhat secure area where schools and health care can function without threats. The main problem concerning the district is getting in and out of it. Taliban's main focus has been on the road from Qarabagh to Jaghori. According to a Ghazni parliament representative, Shah Gul Rezai, insurgents and other criminal groups are actively killing passengers and stealing their cars on the road. In 2008, some 150 cars were stolen. Crimes are also being committed by regular criminals who pretend to be with Taliban.

People of Jaghori see Taliban as a serious threat: 95% of the population fear them according to Altai Surveys. Although not able to act effectively in Jaghori,

⁸ International Crisis Group 2011, *The Insurgency in Afghanistan's Heartland*, 27 June, pp.14, 16-18 <<http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/207-the-insurgency-in-afghanistans-heartland.aspx>> Accessed 3 July 2012.

⁹ 'Taliban bomb hit passenger bus, kills five' 2012, *AFP*, 1 July <<http://news.yahoo.com/taliban-bomb-hit-passenger-bus-kills-five-190213971.html>> Accessed 5 July 2012.

¹⁰ Afghan Islamic Press News Agency (AIP) 2012, *Two women killed in Afghan east fighting*, 11 June (CISNET CX288945).

¹¹ Sajad, 2012, 'Missile attack injures seven in eastern Ghazni province', *Khaama Press*, 29 May, <<http://www.khaama.com/missile-attack-injures-seven-in-eastern-ghazni-province-298>> Accessed 21 June 2012.

Taliban has showed interest in disrupting the area. Members of the former police chief Bashi Habibullah's family were killed in a Taliban raid to Angori in 2007.

Since 2007, the general escalation of violence in Ghazni has affected Jaghori, mainly by further isolating the area from the outside world. Taliban militiamen from neighbouring districts have staged attacks against bordering police posts in Hutqul. Taliban has also issued warning night-letters to villagers in the district.¹²

38. In a 2009 DFAT advice on the situation for Hazaras in Ghazni, Uruzgan and Dai Kundi provinces, the report lists one unknown source that explains that the "ethnicity (of Jaghori district) is 100% Hazara, albeit supporting 2 different factions – Hezbi Islamic of Gulbuddin Hekmatyar and Hezbi Wahdat.¹³ This is supported by a conflict analysis of Ghazni by the Cooperation for Peace and Unity (CPAU) in April 2009 which reports that Jaghori and Malistan are the only districts in Ghazni almost entirely populated by the Hazara.¹⁴
39. In March 2012, DFAT commented that travel into and out of most districts (and all three predominately Hazara provinces) could be still be dangerous in the context of the broader security situation in Afghanistan but the situation was equally risky for all travellers – there was no clear evidence any ethnic group was a particular target of it.¹⁵
40. In September 2011 DFAT provided the following information regarding road access from Kabul to Ghazni, and between Ghazni City and Jaghori:

R.1. According to an Afghan contact with extensive and recent experience in Ghanzi [Ghazni], there are two well-established routes from Kabul to Ghazni. One is short and insecure, via Maidan Wardak. Another via Parwan Road and Bamyan is secure, but long and arduous.

R.2. Interlocutors' assessments of routes from Ghanzi [Ghazni] to Jaghori and Malistan varied. Contacts within the international community and Afghans working with international organisations tended to describe the situation in more positive terms than Afghans with political ties to Ghazni. Some international interlocutors based in Ghazni described travel between Ghazni City and Jaghori as 'quite safe', although long, slow and rough. Others (predominately Hazaras) described travel as 'unsafe'. Some vehicles were stopped and harassed, and occupants occasionally abducted or killed. Interlocutors agreed that road travel within Hazara districts of Ghazni - and the broader Hazara 'belt' in the Central Highlands region - was very safe.

R.3. Levels of risk on roads in Ghazni depend on the individuals involved. Contacts agreed that people with links to the Afghan Government or IC were targeted, regardless of ethnicity. Carrying documentation which pointed to a

¹² Finnish Immigration Service 2009, 'Situation Report: The Current Situation in the Jaghori District of Ghazni', 10 December, p.3 (CISNET CIS18216).

¹³ DIAC Country Information Service 2009, *Country Information Response No. 09/14 – CIS Request No. AFG9509: Situation for Hazaras in Ghazni, Uruzgan and Dai Kundi Provinces*, (sourced from DFAT advice of 2 February 2009), 3 February, CISNET Afghanistan CX219955.

¹⁴ Cooperation for Peace and Unity (CPAU) 2009, *Conflict analysis: Jaghori and Malistan districts, Ghazni province*, April, p.10.http://www.cpaug.org.af/Research/Docs_our_publications/Ghazni%20Conflict%20Analysis%20Apr%2009%20Final.pdf – Accessed 1 June 2010.

¹⁵ Department of Foreign Affairs and Trade 2012, *Afghanistan – Hazara Community Update*, 12 March (CISNET CX283654).

connection with the Government was dangerous. According to Hazara contacts, Hazaras tended to receive more scrutiny and were at greater risk of harassment and violence on the roads outside Hazara districts. Other Afghan and IC contacts noted that locals - who had ties to the province and knowledge of the area - were generally able to travel between Ghazni and Hazara districts without incident. They were not aware of targeting of any particular ethnic group on the roads.

R.4. International interlocutors noted that attacks from armed opposition groups mostly targeted Afghan officials. They were usually limited to road-side Improvised Explosive Devices (IEDs) with various detonation mechanisms. They were too small to damage most coalition forces' vehicles but could do mortal damage to the vehicles that Afghan officials and citizens travel in. The same contacts described the road security situation in Qarabagh and Nawur as 'reasonable'. They hoped to see improvements and an increased volume of traffic following the completion of construction projects currently underway. They believed the majority of violence around these districts was related more to criminality than the insurgency, focusing on bribes and protection.

R.5-6. A contact in the international community provided the following information regarding routes within Ghazni:

* A short unpaved route to the Nawur and Jaghuri districts passes through the Peeraki area. This is not safe, but the Afghan National Police (ANP) recently established a checkpoint in Muhmand Kotal to secure the road. This did not necessarily guarantee the route's security, but the ANP had reported improvements in security in 2011.

* A long paved route to Jaghuri and Malistan passes the Zardaloo area of Qarabagh district. ANP has established checkpoints on this route, but movement of anti-government elements (AGE) does occur in this area. AGE have blocked the road several times for extended periods, warning locals not to work with GIRA. AGE have the ability to conduct direct attacks or plant IEDs on this route.

Both roads are used frequently by locals, but during winter passage is severely hindered by snowfalls¹⁶

41. Professor Maley writes in his December 2011 opinion that:

[T]ravel for Hazaras remains extremely dangerous, and claims that roads are 'open' need to be treated with great caution. On 3 December 2011, I received the following observation from a very highly respected Kabul-based observer: 'Dozens of Hazaras have been killed or abducted and never heard of while travelling between Ghazni and Jaghuri and also through Wardak province to Behsud and Bamyan. Ghulam Hussain Naseri, a Hazara member of parliament from Behsud, reported on November 10 that 10 Hazaras were forced off vans and

¹⁶ DIAC 2011, *CIS Request AFG12298: Road security in Ghazni Country information report NO. 11/56* (Sourced from DFAT advice of 20 September 2011), 21 September (CIS CX272986)

buses going to the Hazarajat in Wardak and killed in dreadful manners in front of other travelers during the preceding 10 days'¹⁷

42. In late 2010 an Afghan journalist, Kazem-Stojanovic, conducting research for Amnesty International advised that by then roads outside Kabul towards Ghazni were “lined with Taliban checkpoints where people are forced to pay ‘tolls’ or bribes, and get searched by armed and/or masked Taliban members ...”. Some may be kidnapped”. She said that “Locals are subjected to these conditions on a daily basis”. She also noted that “Taliban checkpoints move continually so their location cannot be predicted. Foreigners always travel in convoys as it has become very dangerous to travel by road” She observed that there were no flights to Ghazni as it was too close to Kabul¹⁸. Of Hazaras, Kazem-Stojanovic noted that they were “[a]lways more at risk because their ethnicity can be observed by their facial features. ...[T]his makes them susceptible to violent attacks on a daily basis and widespread daily discrimination. Their accent is also very easily identifiable which puts them at greater risk when moving around the country”. She went on to say that Hazaras were “more at risk than other ethnic groups” in Afghanistan. They were “treated more violently” and were “more at risk of death when involved in confrontations with Taliban or other militia forces”, apart from where Hazara militias had control. She stated that Hazaras were “likely to be attacked or killed by Taliban at checkpoints” Majority-Hazara areas were considered relatively safe but Hazaras were at risk outside these, currently shrinking, safe areas. They had “no safe passage”. Their movements were limited because of the danger of travelling, for example, to market. Such protection as there was in predominantly Hazara areas was afforded by a local warlord, a protection which she suggested was unreliable.
43. In 2010 a social anthropologist and specialist in Afghan migratory networks (Monsutti) wrote on the situation in Ghazni province and other parts of the country, having visited many rural regions that were current strongholds of the Taliban, and working primarily in Ghazni province itself. He observed that Hazaras were still currently constantly under threat of being harmed by the Taliban. They were “much more at risk from the Taliban in Afghanistan than Uzbeks or Tajiks” Even though the Taliban were not currently in power, they considered the Hazaras were “against them”. Hazaras returning to Afghanistan were being “killed on the roads because they are considered potential enemies” Currently this was occurring on the “extremely unsafe” road through Ghazni between Kabul and Kandahar, and on roads “especially around Ghazni”, a province strategically important for the Taliban. He added that “The Taliban use the uncertainty of whether or not they will attack to further intimidate and restrict Hazaras. Sometimes a Taliban will harm or even kill an [sic] Hazara and sometimes not. Hazaras can never be sure if a Taliban will turn on them or not”. He stated that in recent times the most dangerous areas for Hazaras had become around the Pashtun/Hazara ethnic boundaries in Uruzgan, Ghazni province, Wardak and toward Kabul. Jaghori in Ghazni was “rather safe” but the Taliban’s presence was noted from time to time there and “all the surrounding areas (West, South, East) are possibly among the most dangerous in the country”. He also observed that creating a dangerous environment was an intentional Taliban tactic. They promoted theft on the roads for this purpose. Hazaras were “particularly at risk in these conditions”. They were also “at risk of being robbed, attacked or killed by criminals

¹⁷ Maley, William. 2011, ‘*On the Position of the Hazara Minority in Afghanistan*’, 7 December <<http://bmrsg.org.au/wp-content/uploads/2011/10/Maley-Hazaras-Opinion-Updated2.pdf>> Accessed 18 July 2012.

¹⁸ Kazem-Stojanovic, H. Researcher, Asia Pacific Programme, Amnesty International, International Secretariat, Presentation to IMR, Sydney, 8 October 2010.

encouraged by the Taliban”.¹⁹. On this point Monsutti observed that using the main roads from Kabul it would be possible to travel to Jaghori in "half a day". However being forced to use alternative routes through the mountains (he gave the examples of Behsud and Nawur) could take up to one week. He also observed that the mountain routes were rough and in some places trucks could not get through. At times of seasonal extremes "most vehicles cannot travel on these routes". Monsutti reported that at the time of writing (August 2010) the Taliban were following a systematic strategy, including the use of random violence, "particularly against Hazaras" to maintain instability. The author expressed the view that Hazaras were "right to fear they would again be systematically targeted", and with "renewed vengeance", if the Taliban regained sufficient power in Afghanistan.

44. As to other perceptions the Taliban may have about individuals at checkpoints another source quoted an Afghan who said he had seen Taliban stop vehicles, look for papers and check mobile phones. If a number stored in a phone "seem[ed] suspicious", they rang it. If the person answering spoke in English, "they immediately kill the owner of the mobile".²⁰ In 2009 UNHCR similarly observed that at checkpoints manned by the Taleban passengers were being systematically searched for possession of dollar bills, or mobile telephones with contacts in English, all of which may be considered as proof of working for the Government or the international community at large.

45. The 2009 Finnish Immigration Service report states:

Jaghori District is very vulnerable to isolation because of its hostile Pashtun neighbors and closure of roads in winter after snowfall. This year, the first snowfall was on 24.11.

The road to Jaghori through Ghazni is unsafe according to all sources. If available, it would take four hours to reach Kabul. The most unsafe section of the highway to Kabul is the distance between Ghazni City – 2 hours from Jaghori – and Qarabagh. This section can, however, be avoided by taking a detour through Jaghatu.

An alternative route to the infamous Kabul – Kandahar Highway is a detour through the Hazarajat areas of Bamian, taking approximately 9 hours. The Bamian route is totally inaccessible after snowfall, usually from November to May.

The roads inside Jaghori are generally not in good condition, although some efforts have been made to improve them lately. The Gilan – Jaghori road is extremely insecure due to insurgency.

There is also a small, private airfield in the district. It was built in 2006 by an NGO with no government support.²¹

46. The Cooperation for Peace and Unity report on conflict analysis for Jaghori and Malistan districts of Ghazni province in April 2009 highlights '[a]nti government elements (AGE)

¹⁹ Monsutti, A. 2010, "The Situation for Hazaras in Afghanistan", 19 August.

²⁰ Pazira, N. 2006, "Taliban's Terror Tactics Reconquer Afghanistan", The Independent, UK, 20 August, <http://www.independent.co.uk/news/world/asia/talibans-terror-tacticsreconquer-afghanistan-412646.html>, accessed 6 April 2011.

²¹ Finnish Immigration Service 2009, 'Situation Report: The Current Situation in the Jaghori District of Ghazni', 10 December, pp.1-2 (CISNET CIS18216).

attacks on the Kabul-Kandahar road traversing Ghazni have severely and adversely affected aid and development in Jaghori and Malistan districts, particularly following recent years of drought'.²² A 2008 article by the *Guardian* reported that the Kabul to Kandahar highway 'is a symbol of instability across the country, the failure of government and international security forces to maintain law and order, and the increasing presence of the Taliban'.²³

47. Thomas Ruttig, Co-Director of the Afghanistan Analysts Network has recently stated that Hazaras mainly were still afraid to pass through Pashtun/Taliban influenced areas and could only do so by with a number of precautions such as deleting conspicuous phone numbers (that indicate contact with Westerners or government authorities) and not carrying papers of the same character. He indicated that the route from Kabul to Bamiyan province (via the Ghorband valley) through Nawur and then continuing to Hazara dominated areas of Ghazni province had two problems. First, it was blocked from autumn to spring by snow and that further to the north that there was still insurgent activity in the Ghorband valley up to the Shibar pass. These insurgents targeted government personnel mainly and through traffic in general most of which would be Hazaras. He indicated that there were occasional road blocks where individuals are singled out apparently reported by informers. He stated that there was a more direct way from Ghazni to Nawur used by most Nawur residents where there was occasional night time insurgency activities reported.²⁴

Shias

48. A report by *The Guardian* on 6 December 2011 refers to an attack by a suicide bomber on Shia worshippers gathered outside the Abul Fazl shrine in commemoration of Ashura, a Shia holiday marking the death of the grandson of the prophet Muhammad. The report states that 48 people died and more than 100 were wounded in the attack. The report notes that no organisation claimed responsibility for the attack and refers to comments from the top Shia cleric in Kabul that the attack in Kabul was the first of its kind:

Mohammad Bakir Shaikzada, the top Shia cleric in Kabul, said that it was the first time that Shias had been attacked in decades. He said he could not remember a similar attack having taken place.²⁵

49. Reporting on the same attack, *The Washington Post* cites Pakistan news outlets that claim Lashkar-i-Jhangvi, a militant group with ties to al-Qaeda and the Taliban, ordered the attack. The article also quotes comments by the US Ambassador in Afghanistan that sectarian attacks in Kabul were rare and unlikely to lead to sectarian violence, and notes that Shia anger in Kabul over the attack is directed towards Pakistan and its intelligence organisations. The article states that:

²² Bergh, G, Dennys, C & Zaman, I 2009, *Conflict analysis: Jaghori and Malistan districts, Ghazni province*, Cooperation for Peace and Unity, April, p. 10, Human Security Gateway, <http://humansecuritygateway.com/documents/CPAU_JaghoriMalistanDistricts_GhazniProvince_ConflictAnalysis.pdf> Accessed 22 June 2012.

²³ The Guardian 2008, 'What Started as the Road to Recovery has Turned into a Highway of Terror in Afghanistan', 20 October (CISNET CX213274).

²⁴ Ruttig, T., 2012, Email advice by Thomas Ruttig dated 25 May 2012 on Road Travel in Afghanistan provided to the Independent Protection Assessment Office, 25 May.

²⁵ 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>> Accessed 3 August 2012.

Mohammad Mohaqiq, a member of parliament who is among the country's most influential Hazaras, said Afghans would not be reeled into a cycle of sectarian violence, even if attacks against Shiite civilians were to become commonplace.²⁶

50. An assessment of reports cited in the ECOIN timeline of attacks in Kabul found that the vast majority of attacks targeted Afghan military personnel, police officers and political figures, as well as government buildings, hotels and embassies.²⁷ In its 2011 report on religious freedom in Afghanistan, the US Department of State found that although the Shia community continues to experience discrimination by Sunnis, an increase in Shia representation in government has reduced the more overt forms of discrimination. The report noted that Shia were generally free to participate fully in public life and that the highest ranking officials of the government including the president and speaker of the lower house attended Shiite religious ceremonies.²⁸

51. The improving situation for Shia in Afghanistan was also noted by the USCIRF which stated in its 2012 report that:

During the reporting period, Shi'a Muslims generally were able to perform their traditional *Ashura* public processions and rituals in Kabul without incident or hindrance. USCIRF staff saw large, temporary commemorative gates set up throughout Kabul in December 2010, and Shi'a Muslims with flags flying from their cars or motorcycles were a common sight.²⁹

52. However, in a cautionary note the same USCIRF report concluded that although conditions have improved markedly for the Shia minority since the fall of the Taliban "its members still are threatened by insurgents and their future is uncertain once international forces withdraw".³⁰

Apostasy

53. The Afghan Constitution, ratified by President Hamid Karzai on 26 January 2004, does not explicitly protect the right to freedom of religion or belief for every Afghan. Article 2 states 'the sacred religion of Islam shall be the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals'.³¹ In addition, Article 7 holds that the state 'shall observe' the Universal Declaration of Human Rights, a document which guarantees freedom of religion, including the right to change ones religion.³²

²⁶ Londono, E 2011, 'U.S. ambassador: Kabul attack won't spawn sectarian violence in Afghanistan', *The Washington Post*, 11 December <http://www.washingtonpost.com/world/asia_pacific/us-kabul-attack-wont-spawn-sectarian-violence/2011/12/10/gIQAkilukO_story.html> Accessed 2 August 2012.

²⁷ European Country of Origin Information Network 2012, *General Security Situation in Afghanistan and Events in Kabul*, 18 July <<http://www.ecoi.net/news/188769::afghanistan/101.general-security-situation-in-afghanistan-and-events-in-kabul.htm>> Accessed 2 August 2012.

²⁸ US Department of State 2011, *International Religious Freedom Report – Afghanistan*, 13 September, Section 3 <http://www.state.gov/j/drl/rls/irf/2010_5/168240.htm> Accessed 2 August 2012.

²⁹ United States Commission on International Religious Freedom 2012, *Annual Report 2012*, p.287 <[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 2 August 2012.

³⁰ United States Commission on International Religious Freedom 2012, *Annual Report 2012*, p.287 <[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)> Accessed 2 August 2012.

³¹ *Constitution of Afghanistan* (ratified 26 January 2004) <http://www.embassyofafghanistan.org/constitution.html> - Accessed 29 July 2011.

³² *The Universal Declaration of Human Rights*, Article 18 (Adopted 10 December 1948), United Nations website <http://www.un.org/en/documents/udhr/> - Accessed 29 July 2011.

54. However, certain provisions of the Constitution empower the judiciary to enforce Islamic principles (Article 130), including capital punishment, conditional on the approval of the President (Article 129).³³ Apostasy can therefore be prosecuted on the basis of Islamic law, and is deemed a crime punishable by death.³⁴
55. The 2011 United States Commission on International Religious Freedom (USCIRF) Annual Report states that conditions for religious freedom in Afghanistan remain ‘exceedingly poor for minority religious communities and dissenting members of the majority faith’. The report notes:

The 2004 Afghan constitution has effectively established Islamic law as the law of the land. Afghan jurists and government officials do not view the guarantees to human rights that come later in the document as taking precedence. Individuals lack protection to dissent from state-imposed orthodoxy, debate the role and content of religion in law and society, advocate for the human rights of women and members of religious minorities, or question interpretations of Islamic precepts.³⁵

56. There is some evidence that the government has prosecuted individuals for religious crimes such as apostasy (conversion from Islam).³⁶ While the Afghan state has not executed anyone for apostasy, the 2011 USCIRF Annual Report cites two cases of non-Muslims being prosecuted for this crime and potentially facing the death penalty.³⁷ It was stated:

While the Afghan state has not executed anyone for apostasy, there were two known cases during the reporting period of non-Muslims being prosecuted for apostasy and potentially facing death sentences – Said Musa and Shoaib Assadullah (see below).

The few Afghan Christians, converts from Islam or their children, have long been forced to conceal their faith and are unable to worship openly. The situation for Christians deteriorated further in the past year, after a May 2010 broadcast by Noorin TV showed Afghans being baptized. This broadcast set off a firestorm of criticism from the conservative religious establishment, and President Karzai then stated that his ministries would track down converts. Reportedly, 20 individuals were arrested. All were released soon after, except Said Musa. Musa was detained in a Kabul prison for six months before being quietly released due to U.S. and international pressure. Musa was reported to have fled the country with his family. After the May television broadcast, the Afghan government also suspended the operations of two Christian relief groups on charges of proselytizing. Both groups rejected these assertions and reportedly have been allowed to continue their work in the country. Shoaib Assadullah was arrested in late October 2010 and was been imprisoned in Mazar-i-Sharif for six months, after being accused of giving a Bible to a friend.³⁸

³³ *Constitution of Afghanistan* (ratified 26 January 2004)

<http://www.embassyofafghanistan.org/constitution.html> - Accessed 29 July 2011.

³⁴ US Commission on International Religious Freedom 2011, *Annual Report 2011*, May, p219

<http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> - Accessed 28 July 2011.

³⁵ US Commission on International Religious Freedom 2011, *Annual Report 2011*, May, p215

<http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> - Accessed 28 July 2011.

³⁶ Tarzi, Amin 2006, ‘Afghanistan: Apostasy Case Reveals Constitutional Contradictions’ *Radio Free Europe*, 22 March <http://www.rferl.org/content/article/1066970.html> - Accessed 28 July 2011; US Commission on International Religious Freedom 2011, *Annual Report 2011*, May, p215

<http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> - Accessed 28 July 2011.

³⁷ US Commission on International Religious Freedom 2011, *Annual Report 2011*, May, p219

<http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> - Accessed 28 July 2011.

³⁸ US Commission on International Religious Freedom 2011, *Annual Report 2011*, May, p219

<http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> - Accessed 28 July 2011.

57. It was later reported that Said Musa was released from the Kabul Detention Centre after the judges found there was insufficient material to pursue the charges.³⁹ It has been reported that Shoaib Assadullah was released in May 2011 but his whereabouts were unknown.⁴⁰ The 2012 USCIRF Annual Report states that there were no new major cases known during the reporting period of the state limiting religious freedom.⁴¹
58. The New York Times has quoted both Afghan and American legal cases against Christian converts in Afghanistan as “rare”.⁴²
59. In 2006, a man named Abdul Rahman was tried for converting to Islam but the charges were dropped and he was released and granted refugee status in Italy.⁴³

Relocation and Kabul

60. The Danish Immigration Service in a recent report stated:

Regarding the security situation in Kabul, MoRR said that it is relatively safe compared to the provinces.

IPCB found that there are places in Afghanistan where Afghan National Police (ANP) is functioning well in terms of providing security, especially in Kabul and other big cities like Herat, Mazar-i-Sharif and Faizabad. In this connection, IPCB pointed out that the recent security situation in Kabul (the unrest due to Koran burnings at Bagram at the end of February 2012) had shown that the ANP had been able to secure the central city (within the ring of steel) from demonstrators entering the city.

The challenge for the ANP now is to be more preventive in their work according to IPCB. Regarding the security in Kabul, UNHCR commented that in general Kabul could be an option for safety, but to what extent the city could be a safe place for a person fleeing a conflict depends on the profile of the person and the nature of the conflict the person has fled from. Therefore, an assessment of internal flight alternative (IFA) should be made carefully and on a case by case basis.

Regarding security in Kabul, an international NGO informed the delegation that Kabul is one of few places in Afghanistan where the security situation is relatively good and stable even though incidents are occurring also in Kabul.

Regarding the security situation in Kabul, IOM said that there have been a number of suicide attacks which influences the lives of ordinary people. However, apart from suicide attacks, Kabul is safer than other places in Afghanistan, and the area is more under control. This is, according to IOM, due to the fact that Afghan National Army (ANA) and ANP in general are more trained in security operations in Kabul and other big cities like Herat and Mazar-i-Sharif and the situation is more under control in these cities compared to other parts of the country. In Jalalabad, however, the authorities are not yet that efficient, and the Taliban has a strong influence.

³⁹ ‘Christian in prison for apostasy secretly released in Kabul’, Asia News IT, 25 February 2011 (CX273010).

⁴⁰ US Commission on International Religious Freedom 2012, *Annual Report 2012*, May, p.7
<http://www.uscirf.gov/images/2012ARChapters/afghanistan%202012.pdf> - Accessed 27 August 2012.

⁴¹ US Commission on International Religious Freedom 2012, *Annual Report 2012*, May, p.5
<http://www.uscirf.gov/images/2012ARChapters/afghanistan%202012.pdf> - Accessed 27 August 2012.

⁴² ‘Afghan Rights Fall Short for Christian Converts, The New York Times, 5 February 2011 (CX257766).

⁴³ ‘Afghans accused of Christian conversion’, AFP, 28 November 2010 (CX256876).

Safety is an issue in Kabul because of suicide bombings, according to AIHRC. In December 2011, 80 people were killed and 200 injured in a religious shrine in Kabul. Hospitals, hotels and shopping malls have also been targeted and AIHRC lost one of their commissioners in the bombing of the Finest Supermarket in February 2011. Contributing to the insecurity is also the increasing crime rate, but Kabul is considered safer than other places, according to AIHRC. In addition, there are social problems such as child labour and prostitutions.⁴⁴

61. A Memorandum of Understanding (MOU) exists between the Afghan and Australian governments and the UNHCR that, inter alia, provides that the Australian government will help fund the International Organisation of Migration (IOM) to provide individually tailored reintegration assistance plans for returnees that may include provision for accommodation, skills training, small business creation and/or job placement.⁴⁵
62. DFAT have commented that “We note that Hazara contacts describe Kabul as safe, and have not raised claims of persecution with us, though they point out that discrimination continues to exist.”⁴⁶
63. 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

⁴⁴ Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, <<http://www.nyidanmark.dk/NR/ronlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012.

⁴⁵ ‘Memorandum of Understanding between the Government of Australia, the Government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR) on migration and humanitarian cooperation, DIAC, 17 July 2011 (CX256576).

⁴⁶ CX273295: AFGHANISTAN:RRT Country Information Request AFG39190 - Conditions for Hazaras, Australia: Department of Foreign Affairs and Trade (DFAT), 24 September, 2011.

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.⁴⁷

64. A *New York Times* story from January 2010 stated that there were “more than a million” Hazaras in Kabul, constituting “more than a quarter” of the city’s population.⁴⁸ A 2008 *National Geographic* article said that “some 40 percent” of Kabul’s population is Hazara.⁴⁹
65. A September 2010 report by DFAT, noted the view of a Hazara human rights contact as stating that the Hazara had a cohesive community in Kabul and it would be relatively easy for new arrivals to integrate into the city.⁵⁰
66. A recent report from The Age newspaper referred to the deaths of 24 children in a Kabul refugee camps due to freezing conditions. The report noted the ineffectiveness of government and aid agencies in providing adequate heating and support.⁵¹
67. A 2010 *Los Angeles Times* article on the growing clout of Hazaras in Afghan elections described west Kabul as a “Shiite stronghold”,⁵² and another 2010 news story on Hazara anger about problems at polling stations in west Kabul quoted one person as saying that “This is a Hazara area and they do not want there to be a lot of Hazara MPs”.⁵³ Dr Mousavi has

⁴⁷ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, UNHCR, 17 December 2010, pp. 38-40.

⁴⁸ Opper, R 2010, “Hazaras Hustle to Head of Class in Afghanistan”, *New York Times*, 3 January, <http://www.nytimes.com/2010/01/04/world/asia/04hazaras.html> – Accessed 1 February 2011.

⁴⁹ Zabriskie, P 2008, “The Outsiders”, *National Geographic*, February, <http://ngm.nationalgeographic.com/2008/02/afghanistan-hazara/phil-zabriskie-text/1> - Accessed on 18 June, 2009 – CISNET CX228176.

⁵⁰ CX250180: AFG10736: The Hazara, Australia: Department of Foreign Affairs and Trade (DFAT), 28 September, 2010.

⁵¹ The Age, 2012, “Afghan children escape war but not deadly cold”, 10 February, <http://www.theage.com.au/world/afghan-children-escape-war-but-not-deadly-cold-20120209-1rvwmhtml> - accessed 22 February 2012).

⁵² Daragahi, B 2010, “A formerly persecuted minority gains clout in Afghanistan”, *Los Angeles Times*, 16 December, <http://articles.latimes.com/2010/dec/16/world/la-fg-afghanistan-sects-20101216> – Accessed 6 February 2011.

⁵³ Sands, C 2010, “This is a Hazara area and they do not want there to be a lot of Hazara MPs”, *The National*, 19 September, reproduced online at <http://www.turkicpress.com/2010/09/19/this-is-a-hazara-area-and-they-do-not-want-there-to-be-a-lot-of-hazara-mps/> – Accessed 6 February 2011.

also observed that many Shi'as and Hazaras live in West Kabul,⁵⁴ and a 2008 National Geographic article on Kabul's Hazaras states:

...[T]hat new place is Kabul, where some 40 percent of the population is now Hazara. On neighborhood streets in the western part of the city, you see Hazara children in uniform going to school, Hazara vegetable vendors setting up their carts, and Hazara shop owners and tailors opening stores. Hossein Yasa, the editor of the Daily Outlook newspaper, notes that there are Hazara-owned television stations, Hazara-owned newspapers, and a huge Shiite madrassa and mosque complex under construction. "The middle class of Hazaras is growing very fast," Yasa says: Watching from the sidelines, however, is a huge Hazara underclass made up of manual laborers living in west Kabul neighborhoods—Dasht-e Barchi, Kart-e She, and Chindawul—that have neither electricity nor clean water. "You are talking about ghettos," says Niamatullah Ibrahim, a fellow with the London School of Economics.⁵⁵

State Protection

68. The UNHCR has stated that that State protection is on the whole not available in Afghanistan.⁵⁶

FINDINGS AND REASONS

Country of nationality

69. The applicant has claimed he is a national of Afghanistan. The applicant has provided an untranslated document purporting to be his father's taskera and another which he claims is his marriage certificate. He has not provided any other documents that establish his identity. However, his claims were consistent with having come from Afghanistan and he speaks Hazaragi and there is no evidence to indicate that he is not an Afghan national. I therefore accept that he is a national of Afghanistan.

Third country protection

70. 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.

Hazara Shia claims

71. The overall weight of the country information indicates that there is no evidence of a general campaign by the Taliban insurgency to target Hazara Shias or that Hazaras are being persecuted on a consistent basis. DFAT have recently stated that Hazaras considering emigration were principally influenced by long term economic considerations rather than any immediate risk of persecution. I have taken into account also that the latest UNHCR Eligibility Guidelines set out above do not make mention of Hazaras and Shias as being groups generally subjected to persecution by reasons of their race and religion but that that an assessment of their individual circumstances is required. Nor does the country information indicate that Hazaras are being discriminated against in a manner that would amount to

⁵⁴ Mousavi, S 2003, "The Hazaras in Jaghori and Kabul in 2003" (report commissioned by the Refugee Review Tribunal), 16 June.

⁵⁵ Zabriskie, P 2008, "The Outsiders", *National Geographic*, February, <http://ngm.nationalgeographic.com/2008/02/afghanistan-hazara/phil-zabriskie-text/1> - Accessed on 18 June, 2009 – CISNET CX228176.

⁵⁶ CIS17703: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, UNHCR, 21 July 2009, p53.

serious harm for the purposes of s.91R(1)(b) of the Act; it does not indicate that they are denied employment opportunities or access to essential services or discriminated against in any other way amounting to serious harm. There is also country information that Jaghori (which is almost 100% Hazara) remains out of the reach of Taliban control due to the military and political power of Hezb-e-Wahdat which seems to be robust across the Hazarajat. There have been no reported clashes between the Taliban and Hezb-e-Wahdat as the Taliban has not yet taken steps to challenge groups in control of the Hazarajat region. No recent reports have been found of Taliban incursions into Jaghori. The US State Department has also reported that Shia generally were free to participate fully in public life.

72. Whilst there is some information (such as the papers written by Professor Maley cited above and by Alessandro Monsutti) paint a difficult picture in terms of the safety of Hazara Shias generally and in Jaghori specifically, I have given preference to the weight and authority of sources such as DFAT and the UNHCR in making my assessment. Whilst Professor Maley has noted the limitations that these bodies have in conducting field research of their own, given the tight security constraints under which they operate, it would also have to be said the conditions apply to academics with expertise in the country. I have also given the DFAT report of March 2012 more weight because it is the most recent. I have also taken into account the comments of Professor Amin Saikal that Hazara provinces are amongst the safest in the country and that Hazaras are not at more risk than other groups. I accept that there are areas of Ghazni province which have a high level of Taliban activity but find that this does not apply to the applicant in Jaghori district which is considered relatively secure and in which there is no evidence of recent Taliban activity. I accept that there exists uncertainty as to the political future of Afghanistan and the role of the Taliban within it but in assessing the real chance of applicant being persecuted in the reasonably foreseeable future have given greater weight to the above reports of DFAT, the UNHCR and Professor Saikal as to the situation of the Hazaras Shias that show that they are not being consistently or particularly targeted
73. In making my assessment of whether the applicant's fears as a Hazara Shia are objectively well-founded, I have considered carefully the country information submitted by the applicant and his agents. In particular I have taken into account the reports of the bomb blasts in Kabul and Mazar-e-Sharif where it appears that Shias were deliberately targeted by a Pakistani based extremist group, Lashkar-e-Jhangvi. There is no evidence before me that indicates that the Pakistani extremist group, Lashkar-e-Jhangvi has committed previous terrorist attacks of this nature in Afghanistan or that they have repeated such attacks. I have also taken into account country information that said that these attacks were considered "rare" and unlikely to lead to a sectarian war – see above comments from the US Ambassador and a Hazara MP. Whilst these attacks were horrific and targeted at Shias their unprecedented nature and the lack of Taliban involvement mean they do not alter my assessment that the applicant does not face a real chance of persecution, now or in the reasonably foreseeable future on account of being a Hazara Shia from the Taliban, Lashkar-e-Jhangvi or any other Sunni group.
74. However, as recommended by the UNHCR, it is necessary to consider the individual merits of each case and one of the issues I need to consider is whether the applicant would face a real chance of persecution for a Convention reason on the roads surrounding Jaghori.
75. Country information, including that provided in the quoted DFAT reports indicate that routes to Jaghori such as that through Qarabagh are highly insecure and have high levels of Taliban activity. I accept that the applicant has worked as a shopkeeper and may have to occasionally travel through areas that are dangerous for the purposes of any future business and that he and

his family would need to occasionally travel outside the area for other reasons such as obtaining medical care. Given the country information, I accept that he faces a real chance of persecution in the reasonably foreseeable future on these roads.

76. A key question is whether the applicant would face a real chance of persecution *for a Convention reason* on the roads surrounding Jaghori. I have taken into account information that suggests that he would. For example, the comments of the Hazara MP set out above that it can be more difficult for Hazaras if they are kidnapped by the Taliban due to their lack of family and tribal networks to secure their release. I have had regard to the evidence from Kazem-Stojanovic that Hazaras are treated more violently and are more at risk of death when involved in confrontations with Taliban than other ethnic groups, including at Taliban checkpoints. I also have regard to the similar evidence from Monsutti that Hazaras are currently under threat of being harmed or killed by the Taliban, more so than some other ethnic groups, in part because the Taliban consider the Hazaras to be “against them” or their “potential enemies” However, I have given greater weight to the country information from DFAT that indicates that travel is dangerous for all ethnic groups and that their Afghan and IC contacts had stated that they were not aware of any particular targeting of ethnic groups on the roads. DFAT have also commented recently that they believed the majority of violence was related more to criminality than the insurgency, focusing on bribes and protection. Even more recently, DFAT have commented that travel could be still be dangerous in the context of the broader security situation in Afghanistan but the situation was equally risky for all travellers and there was no clear evidence any ethnic group was a particular target of it. I have given the DFAT information greater weight because it is more recent and DFAT have been specifically charged with giving advice to the Australian government on such matters. Their advice is also consistent with the comments of Professor Saikal and the UNHCR Guidelines that do not indicate that Hazaras have a particular risk profile.
77. The UNHCR has commented that state protection on the whole is not available in Afghanistan and that persons should not be expected to rely on it. Given this persuasive information about the lack of state protection for everyone, I find that state protection would not be discriminatorily withheld from the applicant for a reason under the Convention.
78. Accordingly, I find there is not a real chance that the applicant in his individual circumstances would face serious harm amounting to persecution from the Taliban or anyone else under s.91R(2) of the Act (or more generally) for the essential and significant reasons of his race, religion and imputed political opinion whilst travelling on the roads surrounding Jaghori.

Imputed religion claims

79. The country information supports that those who convert to Christianity from Islam are at considerable risk of harm as apostasy is considered a crime punishable by death and the conditions for religious freedom in Afghanistan is described as “exceedingly poor” Whilst there have been some cases of persons (Abdul Rahman, Sayed Mussah and Shoaib Musawai) being charged with apostasy in recent years the evidence indicates that they were all released (though international pressure seems to have been factor in these cases). Cases against Christian converts are described as “rare” by Afghan and American legal experts. I have not identified any reports of friends of alleged Christian converts and proselytisers being targeted by the authorities due to their association with them. Nor have I identified any reports of a person called [Mr A] being imprisoned or targeted by the authorities for alleged Christian

conversion or activities. Given the public interest that such cases receive it would be expected that such a case would have attracted publicity.

80. At his interview with the delegate, the applicant could not recall when he realised [Mr A] was a Christian. Nor could he confirm that [Mr A] was indeed a Christian saying rather that this is what he heard from other people. The applicant could not give any information about what church or organisations [Mr A] may have been associated with. I do not accept that the applicant would have housed and assisted a person wanted by the authorities and yet know so little about [Mr A]'s activities and indeed whether he was a Christian.
81. Given the country information and the applicant's lack of knowledge of [Mr A], I do not accept that [Mr A] was wanted by the police for proselytising Christianity or for conversion or that he was housed and assisted by the applicant. I do not accept that the police visited his house looking for the applicant. I do not accept that they detained and beat his son. I do not accept that the authorities have continued to visit his house to search for the applicant. I also do not accept that there would be a real chance that he would be reported to the Taliban or has in the past for his claimed assistance of a Christian convert.
82. Accordingly, I find there is not a real chance that the applicant in his individual circumstances would be targeted or face a real chance of serious harm amounting to persecution from the authorities or the Taliban, under s.91R(2) of the Act (or more generally) for reason of imputed religion.

Complimentary protection

83. I have found that the applicant does not face a real chance of persecution for a Convention reason on the roads surrounding Jaghori. However, the country information indicates substantial amount of targeting of persons on the roads of persons of all ethnic groups for reasons associated with criminality by the Taliban and other groups. Given this information, I find that there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to a receiving country that there would be a real risk of the applicant suffering significant harm on the roads surrounding Jaghori. This significant harm could include cruel or inhuman treatment or punishment or degrading treatment or punishment. This harm is however localised.
84. I have considered whether the significant harm the applicant faces a real risk of is one faced by the population of the country generally and is not faced by the applicant personally under s.36(2B)(c). This is a peculiarly worded provision as it is difficult to imagine a harm that is faced by a population of a country generally and not by a person personally. The explanatory memorandum and second reading speech that accompanied the introduction of the complimentary protection provisions provide no assistance in its interpretation and application. In the circumstances of this case, the country information that I have given weight to indicates that persons of all ethnic groups (i.e. the population of the country) face the real risk of harm on the roads but it is also a real risk that faces the applicant personally in his particular circumstances. Accordingly, I find that the applicant is not excluded by the operation of s.36(2B)(c).
85. Section 36(2B)(b) provides that there is not a real risk of suffering significant harm if the person could obtain from an authority of the country, protection such that there would not be a real risk that they would suffer significant harm. Authoritative information from the UNHCR indicates that state protection is on the whole not available in Afghanistan and there

is no evidence to indicate that the applicant would be able to access state protection that would remove the real risk. Accordingly, I find that the applicant is not excluded by the operation of s.36(2B)(b).

86. Section 36(2B)(a) provides that there is not a real risk a person will suffer significant harm if it would be reasonable for the person to relocate to another area of the country where there would not be such a real risk.
87. The harm that the applicant faces is localised to roads surrounding his home in the Hazarajat. Having regard to the country information concerning the treatment of Hazaras and country information that indicates that the security situation is relatively good in Kabul, I do not accept that he faces a real risk of significant harm in Kabul. Given its position as the capital city, I do not accept that the applicant would have a need to travel outside it and expose himself to the dangers of the roads.
88. I have had regard to the fact that Hazaras now constitute between 25%-40% of the population of Kabul and that there is some evidence of a growing middle class there and the views of the human rights contact that Kabul has a cohesive Hazara community and that it would be relatively easy for new arrivals to integrate. I have also had regard to the fact that Australia has funded the IOM to provide individually tailored reintegration assistance plans for Afghan returnees.
89. However, there are a number of factors that in my opinion outweigh this evidence and make it unreasonable for the applicant to relocate to Kabul to avoid the real chance of persecution in his home area. These are:
 - That the applicant has no family links in Kabul. I note that the UNHCR Guidelines stress the importance of the availability of traditional support mechanisms, such as relatives and friends able to host displaced individuals.
 - There is a huge Hazara underclass in Kabul that does not have access to clean water or electricity. It is also reported by the UNHCR that there is widespread unemployment in urban areas that limit the ability of a large number of people to meet their basic needs. There is also evidence of the deaths of children in refugee camps and the inadequate response of government and aid agencies.
 - Notwithstanding, Kabul is safer than other parts of the country there is evidence of a number of insurgent attacks including the Ashura Day attacks. Though this is not sufficient in itself to establish a real risk that the applicant would suffer significant harm, the existence of these attacks and the limited danger they pose to the applicant contributes to the unreasonableness of relocation.
 - That the applicant has a wife, several children and a nephew to support making it more difficult to successfully adapt to and integrate into Kabul.
90. I therefore do not consider it reasonable for the applicant to relocate to Kabul and the above factors (e.g. lack of family links elsewhere, widespread unemployment limiting the ability to meet his basic needs and his family and the general lack of security) would also be applicable to other areas. Accordingly, I find that the applicant is not excluded by the operation of s.36(2B)(a).

91. Accordingly, I find that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country that there would be a real risk of the applicant suffering significant harm.

CONCLUSIONS

92. I am not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
93. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), I have considered the alternative criterion in s.36(2)(aa). I am satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

DECISION

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