

1002233 [2010] RRTA 588 (19 July 2010)

DECISION RECORD

RRT CASE NUMBER: 1002233

DIAC REFERENCE(S): CLF2010/15459

COUNTRY OF REFERENCE: Afghanistan

TRIBUNAL MEMBER: Irene O'Connell

DATE: **19 July 2010**

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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 arrived in Australia [in] January 2010 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] February 2010. The delegate decided to refuse to grant the visa [in] March 2010 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The applicant applied to the Tribunal [in] March 2010 for review of the delegate's decision. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
5. Section 36(2)(a) of the Act 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 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
6. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

7. 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.
8. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.

9. 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.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. 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.
12. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
13. 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.
14. 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 persecution 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.
15. 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.

16. 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.

CLAIMS AND EVIDENCE

17. The Tribunal has before it the Department's file relating to the applicant and the application for review.
18. The applicant was interviewed at the airport by an officer of DIAC. According to the account of this interview by the officer when asked why he had come to Australia the applicant stated that he was not safe in Afghanistan and that his family is not safe either.

Australia accepts migrants. We are Shias and most of our neighbours are Sunis, so there are always fights. The Taliban control the area, they are Sunis. They are against the government and the Shias. Twice I was stopped by the Taliban, when I was driving, but I managed to escape.

Claims as set out in the Protection Visa Application

19. In his application for a protection visa the applicant sets out the following:
- He was born on [date of birth deleted: s.431(2)] and comes from the village of [village deleted: s.431(2)] in Jaghour District, Ghazni Province.
 - He speaks, reads and writes, Dari Hazaragi.
 - His ethnic group is Hazara and his religion is Shia Muslim.
 - His education consisted of private religious tutoring from his father and an apprenticeship as a truck driver.
 - His occupation was that of a truck driver but he has also worked as a labourer and farmer.
 - He resided in Pakistan from 1999 until 2002 where he worked on a chicken farm.
 - He returned to Afghanistan in 2002 and worked as a truck driver until 2008.
 - He left Afghanistan, in December 2009 and travelled to Pakistan and on to Turkey.
 - He travelled to Australia using a false Indonesian passport.
20. The applicant provided a statutory declaration (dated [in] February 2010) providing the following additional information.
- He has never been politically active.
 - He married in 1995 and has three children. His father passed away in 1999. His mother is a housewife.

- His father was a farmer but the Taliban took his farming equipment.
21. He states that in 1999 he went to Pakistan illegally and worked there for three years on a chicken farm but his family remained in Afghanistan. After the end of Taliban rule, he returned to Afghanistan and worked as a truck driver for different employers. He states that his last employer, [name deleted: s.431(2)] had a contract with the government and he started working with him in about 2006. He states that he was driving trailers and commuting between Ghazni, Kabul and then Kandahar.
 22. He became increasingly concerned about his safety as a truck driver and when a person he knew disappeared after his truck was set on fire at the end of 2008 he decided to quit working as a truck driver and returned to his village.
 23. He states that his brother-in-law disappeared when working in Kabul, and that he does not know of his whereabouts. He states that he was not safe in Afghanistan “because if I had to travel and drive I would certainly come to Taleban’s attention.”
 24. He sold his father’s land and with the help of a smuggler went to Pakistan and then to Turkey. He states from Turkey he travelled through three countries and eventually, with the aid of a smuggler, obtained a false passport which enabled him to board a flight to Australia. He states that he last saw the smuggler when he boarded his flight to Australia. He states that when he arrived in Australia at the airport, he declared himself to the authorities.
 25. He states that he has not had any contact with his wife and family in Afghanistan, and he fears harm from the Taliban as a Shia Muslim, and is therefore seeking protection in Australia.
 26. The applicant was interviewed by the Delegate [in] March 2010 and the Tribunal has listened to a recording of this interview.

Delegate’s decision

27. The Delegate was not satisfied that the applicant was an entirely credible and reliable witness in respect to his account of his passage to Australia, his employment history and claim to be a truck driver and, his time residing in Afghanistan. The Delegate accepted that the applicant is an Hazara and Shia but on the basis of the country information did not accept that the applicant faced serious harm by reason of his ethnicity or his religion.

Claims as set out in the Application for Review

28. [In] April 2010, the applicant’s adviser, [details deleted: s.431(2)], provided a submission which included news reports on the situation in Afghanistan and a statement from the applicant. The news reports consist of photographs and news coverage from various news sources including the BBC about the destruction of trucks by the Taliban along the Ghazni - Khandahar highway in Ghazni and information (dated 2007) stating that the general upsurge in violence in Afghanistan has spilled into Jaghour District
29. In his statement to the Tribunal the applicant in response to the Delegate’s decision set out the following.

..I assure that I am a truck driver and I am ready to take the examination to drive the biggest truck and prove that I am an experienced track drive, if I am not a truck drive

then I am ready for all the consequences.

If I am really a truck driver then I had to work and there is no other work for a truck driver other than working with government of Afghanistan, NATO or US Army so any body who worked with them spotted by Taliban and will be killed, I knew one of those people who had been spotted, killed and his truck burned by Taliban; Taliban know I am working for government and foreigners; **I am attached some pictures to prove this statements.**

Taliban distributed letters among our people that we should not work for the government otherwise we will be killed, we are in a small area called [location] that we are sharing that area with Pashton people that all of them are Taliban; that is why the Taliban killed the powerful commander [Person 1] two sons, wife and ten men in our area (please see attached by BBC)...

3 - my case officer stated that I was supporting my family and after selling my father's farm I used that came to Australia by spending that money he thought how my family survive with no money there he did not think that I was working there and had enough money for my family to spend for years, I did not have enough money to save my life that is why I sold my land but I had worked and had enough money for me and my family to spend for several years.

4 - my case officer said that I have gone through south Asia to south America if I was failed to go to my destination then I had lost all my money, you know that had an agreement with smuggler that they had to send me back if I fail to go through for ten times because I left the money with 3rd person Pakistan I did not give money directly to smugglers; for me it was important which way they are sending me from, they told me they will send me to Australia, USA, Canada or Europe any one who was easier for them, for me my arrival was important not the specific country or specific way, I did not wanted to learn which way we transiting ; when my case officer refused my visa then I called to the person whom I had given my money to him and asked him to ask smugglers what exact way I had came from, after calling him again he said I traveled from Pakistan to Turkey then Seopolo Brazil then Ecuador they changed my passport to an Indonesian because my face was like them then they shifted me from Ecuador to Lima then Boenusaires then to Sydney.

5 - my case officer said that my brother in-law has killed while I had mentioned that he had disappeared on the way to Kabul - Ghazni, I still don't know he is still alive or killed; he was a teacher who was teaching English to the girls privately, actually Taliban don't like this kind of the people specially in the area while we living nearby Taliban such a person could be easily spotted and killed.

6 - my case officer said that Hazara is not in such a bad situation, I accept that all the Hazara people is not killed by Taliban but how about those people like me that had been already black listed by Taliban and Taliban where spotting them once somebody's name goes to Taliban list then he has to be killed, I have obvious reason that I am a truck driver and have take part in presidency election and transported lots of governments goods and I am Hazara and Sia Muslim minority and my name is in the list of Taliban as an infidel; my life was really in danger, they could find me everywhere in Afghanistan, refusal of my case by my case officer disappointed me and I am sure he did not go through deep into my case and questionnaire enough that I could answer him everything

Claims as stated at the Hearing

30. The applicant appeared before the Tribunal [in] May 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the

Dari and English languages. The applicant's adviser from [details deleted: s.431(2)] was present at the hearing as was a support person for the applicant.

31. The Tribunal asked the applicant whether he was a citizen of Afghanistan. The applicant stated that he was. Asked if he was a citizen or permanent resident in any other country; he stated that he was not. Asked about his date of birth; the applicant stated that he was born on [date of birth deleted: s.431(2)]. Asked how he knew about his date of birth; the applicant stated that he was not sure that it was his exact date of birth but that it had been written in the back of the family Koran.
32. The Tribunal asked the applicant if he had a *taskera*. The applicant stated that he did not. Asked whether his father did, he stated that he did not think so. He stated that his brother at one point in time had one. Asked if he had any official documentation, the applicant stated that he did have a driver's licence but that he had destroyed it. Asked if he had any official documentation regarding his wedding, the applicant stated that he had photographs and cards of his wedding but no official documentation. Asked if he ever had an Afghan passport, he stated that he did not.
33. The Tribunal asked the applicant about his family. He stated that he has [sibling information deleted: s.431(2)]. He stated that one of his brothers went to Iran to work after the applicant had come to Australia. He stated that [one brother], who is [age deleted: s.431(2)] is at home in the village and does odd jobs. [A] sister is married and lived some 20 minutes away in [village deleted: s.431(2)]. He stated that [another] sister is married and had a small baby and that her husband is a [teacher] and on his way to Kabul had disappeared and has not been seen or heard of since.
34. Asked more about his brother in Iran he said that he does not have contact with him but he knows that his brother left for Iran after he had left for Australia. He stated that his brother had gone to Iran in search of work. He stated that his brother's family remains in Afghanistan. He stated that living at the family home are [details deleted: s.431(2)]. He stated that his father passed away in 1999.
35. Asked whether he himself had travelled to Iran, the applicant stated that he has not. The Tribunal noted that the country information indicated that quite a number of people from his area travel to Iran regularly for work. The applicant stated that this is the case but Afghans are treated harshly in Iran and that to enter Iran you have to do so illegally and if the authorities catch you, then you suffer mistreatment. He stated that there are several people in his area who have returned from Iran and have been subject to arrest and torture in Iran.
36. With regard to his [children details deleted: s.431(2)] he stated that his two older children attend school at [location deleted: s.431(2)]. He stated that this school is close to [location deleted: s.431(2)] in an area close to [location deleted: s.431(2)]. He stated that initially it was a charity school but since the Karzai government has come in to power they now fund the teachers. He stated that he has had contact with his family, he spoke to them about a week ago and that he had not been able to contact them for some time because the telephone lines had been down. He stated that he contacted his family after he arrived in Australia and that they were very happy to hear he had arrived in Australia but were sad when they realised that his application for a protection visa had been rejected.
37. The Tribunal asked the applicant about his education. He stated that he had not attended school because when he was of school age Afghanistan was occupied by Russian forces and

schools were not operating. He stated that his father assisted him to read and write as did the local mullah. He stated that he reads and writes Hazara and Dari. The Tribunal asked if he knows Farsi. The applicant stated that he did know Farsi because it is more or less similar to Dari.

38. The Tribunal noted that in his protection visa application he stated that he is qualified as a truck driver and asked the applicant how he obtained his qualifications. The applicant stated that he was taught to drive a truck by a local person in his area in Jaghouri. He stated that he learnt to drive trucks when he was about 20 years of age. He stated that he had two driver's licences. The first driver's licence he had obtained was under the old regime and that when Karzai came into power he was issued with a new and second driver's licence. He stated that his driver's licence was issued from the Traffic Department in Ghanzi Province. He stated that he could not remember the exact date of when his drivers licence was issued.
39. The Tribunal noted that the applicant appeared to understand English. The applicant stated that since he has been in Australia he has made a big effort to learn English and that he is beginning to become familiar with the English language.
40. The Tribunal noted that people in Afghanistan frequently drive without a licence. The applicant stated that this was the case but that he had acquired a driver's licence but that he destroyed it. Asked if he had any other official documentation he stated that he did not.
41. The applicant stated that he has three witnesses who could vouch for his nationality as they are from his area and are in Australia having recently obtained protection visas. The applicant named [details of three people deleted: s.431(2)]. The applicant stated that he came to know two of these people at the Detention Centre and the third person contacted him by telephone.
42. The Tribunal asked the applicant about his activities in Afghanistan. The applicant stated that after the Taliban took control, he left Afghanistan and went to Quetta. He stated that from 1999 to 2002 he lived in Quetta and worked on a chicken farm. He stated that following the defeat of the Taliban he went back to Afghanistan and he took up truck driving, his original activity. He stated that he would drive trucks between Kabul, Ghanzi and Kandahar.
43. The applicant stated that he has driven trucks since he was 21 years of age except for when he was in Quetta. He stated that he stopped driving trucks in 2008 because he was having trouble and issues. The Tribunal asked the applicant if he could elaborate on the difficulties he was having. The applicant stated that the Taliban had entered their area and that they had difficulties with the Pashtuns in his area. He stated that during the war his father owned a tractor and a plough to do farm work and that the Taliban took this away from him. He stated that there is also ethnic fighting in his area and he could not work. He stated that as a result of the war in 1999 he left and went to Quetta where he worked there until returning to Afghanistan after the end of the war.
44. He stated that after the war and the arrival of the allies, he returned to Afghanistan. He stayed for two to three years, things were very good and that he would drive trucks but gradually after two to three years security started to decline. He stated that things got worse by 2006.

45. He stated that in March 2007 when he was bringing a load from Kabul to Ghanzi he was returning to Kabul, when he encountered a bridge which had been destroyed. He stated that this was a typical Taliban action to destroy a bridge so that drivers had to slow down.
46. The applicant stated that at a time when he was forced to slow down the Taliban entered his truck, forced him off the road and took him away on a motorbike and left his truck behind. He stated that they accused him of taking a government load to Ghanzi, they tied him up and bashed him but he never confessed that he was carrying a government load. He stated that they point the gun at his feet but he did not confess. He stated that he was kept overnight but he was returned to the road the next day and was picked up by a person in a car who took him to Kabul and he then went to the hospital where he received stitches. He stated that he stayed at home for some months before resuming truck driving.
47. He stated that he has provided to the Tribunal a medical certificate from the hospital in Kabul where he was treated. He stated that he did not initially provide this information. The Tribunal asked him how he obtained the medical certificate. The applicant stated that his wife sent him the document and that his wife had travelled to Kabul to obtain it for him. He stated that after his visa was refused by the Department he sought further evidence of his past experiences and asked his wife to go to Kabul to get the medical certificate even though it was dangerous to do. He stated that his wife went to an internet café and sent the certificate to him. He stated that his wife emailed the certificate but that the original is coming in the mail. He stated that his wife sent it to him by email from an internet café He stated that he received it a couple of weeks ago.
48. The Tribunal asked the applicant why he had not raised this earlier either with the delegate or with his legal adviser and that this was the first time he was raising it. The applicant stated that he had made a mistake and he thought it would damage his case to raise it earlier as they would think he was a psycho case or a tortured person or a person with psychiatric problems as he thought this would limit his chances to be accepted. He stated after his rejection by the delegate he rang his wife to get the medical certificate.
49. The applicant stated that after this event [in] 2007 he eventually resumed working in convoys. He stated that because of deteriorating security on the road the lorries would go in convoys, maybe 20 lorries, to protect them but they were still subject to regular rocket attack from the Taliban on route between Kandahar and Kabul. He stated that it was risky business. He stated that he sometimes had to travel on a dirt road where there were Taliban. He stated that on every trip you would lose one or two trucks. He stated the Taliban destroyed all the bridges.
50. The Tribunal asked the applicant why he kept doing this work given that it was clearly very dangerous. The applicant stated that he needed to support his family and that his occupation was that of a truck driver and he did not wish to go to Iran because Hazaras are treated badly in Iran and also in Pakistan and he needed to work. He stated that Hazaras do not have much land, and where he lives is mountainous and not productive and is small.
51. Asked if anything else happened to him. He stated that the Taliban control the roads and the local Taliban leader who controlled the roads also shared the same market with the Hazaras in Jaghori. He stated that the Taliban confiscate the cars of Hazaras on the road as the Taliban control the roads. He stated that the Taliban kill Hazaras on the road. He stated that the Taliban know what people are doing and came to know that he was driving trucks.

52. The applicant stated that there are incidences of these things but that truck drivers who deliver government goods are subjected to particular harm from Taliban. He stated that leaflets are put around warning people about assisting the government forces. He stated that people are killed if they are known to be associated with the Allies. He stated that the Taliban knew that he was carrying the government loads. He stated that the Taliban asked about him from a bus driver. The applicant referred to a local mullah, [name deleted: s.431(2)] and stated that he believed that this person is connected to the Taliban and would seek to harm him if he returned to Afghanistan because he has assisted the government. He stated that his family have told him that they continue to ask after him. In regard to his family, he stated that the Taliban do not kill family members or children. The applicant stated that he has been accused of working for the government and they will attack him from behind if he was to return.
53. The Tribunal asked the applicant when he decided to leave Afghanistan and why he decided to leave when he did. The applicant stated that at the end of 2008 a truck driver was killed and his truck was destroyed he decided that this was enough for him. He stated that he went back to Jaghouri on a motorbike using a back route and spent some time preparing his land to sell it and after he sold it he went to Kabul and made contact with people smugglers who organised for him to leave.
54. The Tribunal put to the applicant that given that he was doing a highly dangerous task, that is driving up and down a notorious highway in Afghanistan where people are threatened and, security poor, why he simply did not abandon this activity and return to his village and work his land as opposed to actually flee the country. The Tribunal noted that Jaghori is an area thought to be relatively safe and is a Hazara enclave and that the applicant could have simply returned to his area.
55. The applicant stated that there is not safety or certainty in Jaghori. He gave as an example a person named [Mr A] who was a very active person in the National Army had returned to Jaghori and the Taliban found him and killed him. He also referred to a person in Ghanzi who was assisting building a girls high schools and was delivering bricks was also killed by the Taliban.
56. The Tribunal asked the applicant whether there were other things that he wished to tell the Tribunal about. The applicant stated that he has nightmares about his experiences in Afghanistan and he cannot return there. The Tribunal asked the applicant about his concern about the safety of his family. He stated that the Taliban do not necessary harm women but only people who have supported the government. The Tribunal asked the applicant about the safety of his younger brother. He stated that his younger brother is not on the list and therefore would not necessarily face harm and he is not important.
57. The Tribunal asked the applicant to elaborate about what he meant by being on a list. The applicant stated that the Taliban are dangerous and the mullah know he has worked for the government and he has supporters in the area, and stated that he has a house near Jaghori but nobody knows about his whereabouts. Asked how long he has been on the list the applicant stated that since 2008 they seem to know he was working for the government. He states that for two years he worked for the government.
58. The Tribunal indicated to the applicant that the Tribunal accepted that he is from Afghanistan and that he was a truck driver. The Tribunal acknowledged that the security situation in Afghanistan is poor and that it is a country at war and there is violence and civilians are

killed. However, the Tribunal noted that the difficulty the Tribunal had was whether or not in fact the applicant was being targeted for harm by the Taliban. The Tribunal noted that his family seems to reside safely in Jaghourai and wondered why the applicant could not live in his area as opposed to driving trucks on a highway known for its danger. The applicant stated that he needed to earn an income that was good and that his brother's income was not good. He stated that with this income he was able to help his family and also to save money. He stated that the Pashtun are in his area nearby, they had a common market with the Pashtun and that he believed that he would be harmed. He stated that he believes he is on the list because he has been told by a bus driver that the Taliban ask after him.

59. The Tribunal put to the applicant that as he is no longer involved in the activity of driving trucks the Tribunal queried whether or not they would keep pursuing the applicant. The applicant referred to evidence he provided of the killing of truck drivers in Afghanistan. The applicant stated that he cannot go back to Afghanistan. He stated that the situation in Afghanistan is poor. He stated that American troops drive their tanks in the streets of Kabul. He stated "can you imagine if you needed to drive a tank to be safe in the Sydney streets". He stated that is what Kabul is like.
60. The Tribunal asked the applicant about the route he took after he left Afghanistan. The applicant stated that he first went to Pakistan, from there he went to Turkey, from Turkey he went to Ecuador, and Lima. He stated that he acquired a false Indonesian passport in South America and transited to Australia where he declared himself to the officials.
61. The applicant provided an undated medical certificate from [hospital deleted: s.431(2)] in Kabul setting out the following:

This is to certify that [the applicant], son of [name], resident of Jughoroi district, Ghazni, visited the hospital on [date]/2007. He is claiming that he was attacked by the Taliban and they were beating him. As a result of the beating he received injury to both feet and especially joint damage in his right knee.

After hospital treatment, the insertion of some stitches in a 2cm cut in his right knee he returned back to normal and left the hospital.

Country Information

62. The *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, July 2009 provides the following background information.

Millions of Afghans have been externally displaced as a result of the decades of conflict which have been waged in the country. The greater part of those refugees fled to and was hosted for years in Iran and Pakistan. While over 5.7 million persons have returned to Afghanistan since 2002, increasing the country's population by 20 percent, over 2.7 million still live outside the country. Despite still representing the largest voluntary return operation globally, the rate of voluntary returns has nonetheless slowed significantly since 2005. In 2007, 7,300 Afghans returned from the Iran and 350,000 from Pakistan. In 2008, over 274,000 more Afghans returned from Pakistan and some 3,600 from the Iran.

Approximately 1.7 million registered Afghans remain in Pakistan and 935,000 in the Iran. Thus, one out of every four refugees in the world is from Afghanistan. While present in 69 countries, the overwhelming majority of Afghan refugees are located in Pakistan and Iran.

According to UNHCR's analysis of the asylum claims lodged by Afghans and information provided by the States concerned, four main trends can be identified. First, a significant number of Afghan nationals are fleeing on account of persecution on grounds of (i) political opinion, either real or imputed. Secondly, Afghans are also seeking asylum due to persecution on the basis of (ii) ethnicity and/or (iii) religion. Finally, there are Afghans fleeing the country on account of (iv) gender-related persecution. These are the main groupings according to which the analysis and guidance in these Guidelines is organized.

With 18,500 asylum applications submitted by Afghans in 2008, in industrialized countries, the number is at its highest since 2002 (29,400 claims) and is almost double the figure of the year before (10,000 claims). This made Afghanistan the fourth most significant source country of asylum-seekers in the industrialized world. The deteriorating security situation in Afghanistan is a significant factor in many cases. ...

In addition to those seeking international protection, there are large numbers of Afghans leaving the country due to socio-economic concerns. Such movements to and through Pakistan and Iran are decades long, and include seasonal migration and in some cases multiple trips in either direction. Currently, an average of 40,000 persons transit daily official crossing points with Pakistan in either direction with minimal if any formal processing. They include Afghans registered as refugees in Pakistan, persons seeking employment, medical care or engaging in family visits as well as those in need of protection. In addition, it is thought that over 4,000 Afghans, without entry visas, cross each day into Iran, often with the assistance of smugglers.

63. The US Department of State report on Human Rights Practices in Afghanistan (dated March 2010) provided the following relevant information on the security situation in Afghanistan.

The security situation in the country deteriorated significantly during the year because of increased insurgent attacks, with civilians continuing to bear the brunt of the violence. Armed conflict spread to almost one-third of the country, including previously unaffected areas in the north and northeast. The marked deterioration in security posed a major challenge for the central government, hindering its ability to govern effectively, extend its influence, and deliver services, especially in rural areas. The security environment also had an extremely negative effect on the ability of humanitarian organizations to operate freely in many parts of the country, particularly in providing life-saving care. Insurgents deliberately targeted government employees and aid workers. Efforts to contain the insurgency by military and non military means continued. Reports of human rights violations were actively exploited and sometimes manufactured by the Taliban and other insurgent groups for propaganda purposes.

According to the Ministry of Interior (MOI), 1,448 Afghan military personnel and 1,954 government employees, primarily police, died as a result of the insurgency, including deaths by suicide attacks, roadside bombs, small-arms attacks, and targeted assassinations.

Killings

Insurgents targeted national and government officials, foreigners, and local NGO employees. Insurgents targeted and killed government officials during the year. The MOI reported 964 police were killed and 1,787 were injured as a result of insurgent attacks...

During the year antigovernment elements continued to attack pro government religious leaders. According to the MOI, the Taliban killed at least 71 clerics and committed at least 17 acts of violence inside mosques and other religious facilities. Tolo TV reported that on September 9, insurgents killed a mullah in a mosque in Ghazni province after he spoke out against insurgent forces.

According to UNICEF, from January to June, there were 470 confirmed targeted attacks on education (schools, teachers, staff, and pupils), resulting in 30 deaths and 186 injuries to schoolchildren, teachers, and other school employees. According to data from the Ministry of Education (MOE) referenced by Human Rights Watch, from April to August, insurgents attacked 102 schools using explosives or arson and killed 105 students and teachers.

The MOI reported 368 abductions during the year, at least one of which resulted in the death of a hostage. The Afghanistan NGO Safety Office (ANSO) reported insurgents and others kidnapped 20 aid workers during the year, a decline from 38 in 2008; all abductees were local staff. ANSO reported that most abductions were temporary and most abductees were released unharmed, usually due to the efforts of community elders. One person was reportedly killed while resisting an abduction attempt. Observers alleged that non insurgency-related kidnapping was a form of dispute resolution.

The greatest restriction to movement in some parts of the country was the lack of security. In many areas insurgent violence, banditry, land mines, and IEDs made travel extremely dangerous, especially at night. The government cooperated with the UNHCR, the IOM, and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, and other persons of concern.

Taxi, truck, and bus drivers reported that security forces and armed insurgents operated illegal checkpoints and extorted money and goods. The number of such checkpoints increased at night, especially in the border provinces. Residents reported having to pay bribes to ANP and border police officials at checkpoints and the Khyber Pass border crossing between Jalalabad and Pakistan. The Taliban imposed nightly curfews on the local populace in regions where it exercised authority, mostly in the southeast

64. The following information on the circumstances of Hazaras in Afghanistan is sourced from a report from DFAT (dated 21 February 2010).

Summary

Afghanistan's Hazaras do not live in fear of violence or systemic persecution as they did under Taliban rule. And the current period is perhaps the best in several hundred years for Hazaras in terms of personal and community freedoms, opportunities and human security. However, they claim to face social, economic and political barriers to upward mobility and community development. The human rights gains Hazaras have experienced in recent years are very real but they wonder if it will continue.

Post has recently spoken to a range of contacts on the human rights and security situation of the Hazara minority in Afghanistan. As requested in reftel this is an unclassified version of the report from these discussions.

Historical context

2. Hazaras constitute approximately 10 percent (although there is debate over the precise number) of the population and live mostly in the central highlands region of the country, particularly Bamiyan, Ghazni and Daykondi provinces as well as in Kabul.

3. As members of an easily identifiable ethnic group, and mostly followers of Shia rather than the more prevalent Sunni Islam, the Hazaras have always been a distinct community in Afghanistan. They claim to be indigenous to large parts of the country but were pushed, including from Oruzgan, in the 17th century, (mostly) into the central highlands - an area often described as "Hazarajat" which encapsulates Afghanistan's Hazara dominated-region - by the Tajiks and Uzbeks from the north and by the Pashtuns from the south. It is estimated that 60 percent of the Hazara population was killed or displaced in the late nineteenth century under the reign of the Emir Abdur Rahman Khan. Mistrust between Hazaras and Pashtuns (and the central government usually associated with them) has been strong ever since. They experienced windows of opportunity during Afghanistan's experiment with constitutional monarchy and under the Communist regime, although higher education, foreign service and army service were all closed to them. During the Mujahedin era the Hazaras experienced attacks from both sides of the conflict. The Taliban regime with its anti-Shia attitudes, severely restricted their movements by keeping them contained in Hazarajat and committed atrocities against them.

UNHCR

3. UNHCR in Afghanistan has developed "eligibility guidelines" in July 2009 for Afghan asylum seekers which will be updated in 2010. The guidelines seek to provide an approach to the assessment of claims that recognises that despite the situation in Afghanistan, not all Afghans abroad were refugees or in need of international protection. Case-by-case analysis was needed. Also at CISLIB#18280 is a presentation given by a UNHCR Senior Protection Officer to EU Missions in Kabul in December 2009. It is noteworthy that the presentation states belonging to a minority ethnicity was "not currently a major cause of flight"). UNHCR believes that countries should not give blanket consideration to claims of particular ethnic groups from Afghanistan. UNHCR has abandoned the practice of designating zones of generalised violence within Afghanistan where the conflict lent itself to refugee claims. Claims should be assessed individually on their merits.

4. UNHCR said there was no evidence of a campaign by the insurgency to target Hazaras. There were anomalous cases, such as in Ghazni (where majority Hazaras had clashed with nomadic Kuchi people over pastoral issues: see para 8) but in general Pashtun communities were suffering more from the insurgency because they were the primary targets for Taliban control. The Hazaras were experiencing a relative "golden age" in light of their tragic past.

5. UNHCR considered that there was a well-organised Hazara people-smuggling operation in existence. UNHCR was witnessing migration patterns that were out of sync with levels of threat and more in keeping with economic imperatives associated with labour migration. The Hazaras seeking protection abroad were a reflection of this. UNCHR thought that the Afghan Government needed to do more to prevent people smuggling.

6. While UNHCR were not convinced that the majority of Hazara protection seekers abroad were genuine, the political and security situation in Afghanistan was fluid and therefore the current situation where Hazaras enjoyed freedom from fear of

persecution might not last indefinitely. Currently, however, Hazaras were not being persecuted on any consistent basis.

United Nations Assistance Mission in Afghanistan (UNAMA)

7. The UNAMA's Human Rights Unit said it was difficult to find data on the socio-economic situation of "minorities" in Afghanistan. Some studies on poverty across the country, however, seemed to indicate that being Pashtun did not automatically correlate with any economic advantage. In some areas, such as in the north, Pashtuns were a minority and faced associated difficulties. UNAMA had not received reporting of Hazaras specifically being targeted or discriminated against in the current environment.

8. The primary incidents of violence in Hazara communities over recent years had been with the Kuchis - a Pashtun nomadic minority - in Hazara-dominated areas, for example in Bamiyan and Wardak provinces in 2008. These sorts of clashes, however, generally related to disputes over land and access to natural resources.

9. Claims that development assistance tended to neglect Hazara-populated provinces were not completely accurate. Daykondi province, for example, had received not inconsiderable donor support. Some areas were also less accessible because of their difficult geography.

US Embassy

10. The US Embassy pointed us to the State Department's 2008 Afghanistan "Country Report on Human Rights Practices", including:

- "Since Shi'a representation has increased in government, there has been a decrease in hostility from Sunnis. However, social discrimination against Shi'a Hazaras continued."

- "Ethnic Hazaras reported occasionally being asked to pay additional bribes at border crossings where Pashtuns were allowed to pass freely."

11. A similar formulation was expected to appear in the 2009 report which should be released in coming weeks. The Embassy considered that while discrimination against Hazaras did occur it was not a major systemic concern.

Afghanistan Independent Human Rights Commission (AIHRC)

12. The AIHRC said Hazaras outside of Hazarajat were more vulnerable to violent attacks and feared travelling beyond their immediate communities, in some cases even to the district centre. Hazara minorities in Oruzgan, Helmand, Kandahar and Herat, for instance, had particular challenges not faced by Hazaras in Hazarajat. In some of these areas pressure was felt from both the government and insurgents.

65. In respect to Jaghori in Ghazni the following information is sourced from the Finnish Immigration Service report titled *The Current Situation in the Jaghori District of Ghazni*, (dated 10 December 2009).

The Inhabitants

There are currently about 250,000 inhabitants in Jaghori. The district is almost entirely inhabited by *Dai Chupan Hazaras* of several subtribes. Only about 10% of the population are estimated to be returnees. However, one fourth of the population

lives abroad and travels regularly, mainly to Iran for work. The money transmissions from abroad are a vital means of survival to an impoverished and rural district.

The district is surrounded by Pashtun areas to the south-east, south and south-west. There are Pashtun enclaves of villages in the border areas.

The main source of income is agriculture. Also various crafts are common, such as carpet weaving: the traditional Jaghorian carpet is called kalim, and it is big enough to cover entire rooms or halls. The men employ themselves by carrying out development projects on their own in the villages, such as building irrigation channels (*karizes*) and other construction work that the government has failed to provide. In Sangi Masha, a community effort has been underway to lay the *Tili Forush* shopping street, which involves moving over 30 shops in the street to accommodate new paving. The main markets after the district center Sangi Masha are Angori and Ghujor.

Roads

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.

Political Environment

The isolated Jaghori district borders a strategically important area in the heart of Afghanistan close to a major highway on the ring road, the Kabul to Kandahar route through Ghazni.

The mountainous and rural Hazarajat has always been militarily difficult to control. To this day, the region remains stateless to a large extent. According to Altai Surveys, 90% in Jaghori report never having seen an ANA or ANP officer. Since the fall of Taliban, Jaghori and neighboring Hazara areas have been controlled by the Nasr (Sazmani Nasr) and Khalili factions of the fragmented umbrella party Wahdat.

The renowned party member from Sangi Masha, governor Khodadad Irfani (an important military commander during the civil war) is aligned with Hamid Karzai and vice-president Khalili. The current police chief, Ishaq Ali, belongs to the faction. There are pictures of the late Wahdat leader Abdul Ali Mazari in almost all community centers. The district shura is described as passive.

The shura is composed of elders and other powerful men. The Justice Department is corrupt. During the Wahdat control of the area, there have been reports of land confiscations, theft, threats, rapes and kidnappings of women by the government-

backed Wahdat forces. Also harassment of wealthy individuals and returnees has taken place.

Despite Wahdat control of the area, the majority of votes (more than 50,000) went to the independent Hazara runner-up, Ramazan Bashardost.² The voting percentage was genuinely high. A rival Wahdat leader Mohammad Mohaqqiq visited Jaghori in November, and Abdullah Abdullah visited the district during his election campaign.²³ The votes gathered by Dr. Bashardost confirmed the powerlessness of the civil war strongmen Mohaqqiq and Khalili in Jaghori.

Security situation

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, 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.

66. The *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, (July 2009) lists as one of the target of the Taliban as Persons associated with or perceived as supporting the Government including Government officials and civil society members.

There is a widespread and systematic campaign by armed anti-Government groups to target civilians associated with or perceived as supporting the Government or the international community.⁷⁴ According to United Nations statistics, 2008 was the most violent year in Afghanistan since 2001, with 31 percent more incidents than 2007. The attacks, which ranged from intimidation, assassinations, abductions and stand-off attacks, to use of improvised explosive devices and suicide attacks, increasingly targeted civilians, including Government officials and civil servants, Government-aligned tribal leaders, Ulema Council members, religious scholars, doctors, teachers, human rights and civil society activists, humanitarian workers, and workers on reconstruction projects. Civilian deaths reportedly caused by anti-Government elements rose from 700 in 2007 to 1160 in 2008, an increase of over 65 percent.

The increased targeting of civilians can be viewed as part of an effort by armed anti-Government groups to gain control over territories and populations. Local inhabitants are coerced into supporting anti-Government groups, through threats of or use of force, which are compounded by the reduced confidence in the capacity of the Afghan Government and the international forces to maintain security and provide basic services.

The intimidation tactics used by armed anti-Government groups against the civilian population include individual or community warnings or threats, often in the form of

“night letters” (shab nameha), to stop working for, or supporting, the Government or international forces, upon pain of death. For example, in Kunar threatening night letters were delivered to female staff of Government and international institutions. Threatening phone calls, verbal harassment as well as physical aggression and even the burning of houses and other properties, such as small shops, have also been reported as different forms of intimidation by armed anti-Government actors.

Other groups at risk are Afghans working or associated with international organizations or security forces, humanitarian workers and civil society activists in areas where there are insurgent activities or infiltration by *Taliban* and/or *Hezb-e-Islami* forces. The increased targeting of such persons is based on their perceived association with the central Government. A number of incidents have been reported between 2006 and 2008 in Kandahar, Helmand and Kunar against Afghans accused of working for international military forces. The main targets of such attacks were civilian workers, **such as truck drivers** or construction workers. Since 2007, kidnappings, including of individuals linked, or perceived to be linked, to the Government or the international community, particularly in the south, south-east, east and west regions, have also been on the rise both for political and criminal objectives.

67. Finland Directorate of Immigration 2007, *Report from a fact-finding mission to Afghanistan 5–19 September 2006*, European Country of Origin Information Network database, May, p.16 states as follows:

Several interviewed Human rights activists stated that they fear local and regional Commanders. The majority had faced some sort of intimidation or had received direct threats. Several stated that additionally to threats by commanders also some local people had threatened them due to their work. Threats from governmental officials were according to these interviews not common. It was stated by one person interviewed, that journalists and human rights activists face similar problems. **However, as a difference to for example truck drivers, who are targeted by the Taliban, journalists and human rights activists are targeted intentionally, while truck drivers are more a “target of opportunity”.**

FINDINGS AND REASONS

68. The applicant claims to be a citizen of Afghanistan and to be Hazara and a Shia. He claims that he was contracted as a truck driver to deliver goods for the Afghan government and that the Taliban have sought to harm him for this reason. He claims that he is on a Taliban black list and, that a local Mullah is seeking to harm him on his return. The Tribunal finds as follows:
69. The applicant entered Australia on a false Indonesian passport having first traveled to South America. He has not provided to the Tribunal any documentation to establish his claim to be a citizen of Afghanistan. He claims to have destroyed his Afghan driver’s license and to have never acquired an Afghan passport. He claims that fellow asylum seekers can verify that he is a citizen of Afghanistan. In the absence of relevant documentary evidence but in light of the totality of the applicant’s evidence the Tribunal accepts that the applicant is a citizen of Afghanistan.
70. In respect to whether the applicant is a citizen of another country or has a right to enter and reside in a third country the Tribunal notes that the applicant did reside for a period of three years in Pakistan and in the absence of documentary evidence to the contrary accepts his claim that he resided there illegally and does not have right to enter and reside in Pakistan.

71. The Tribunal notes that the applicant traveled to a number of South American countries before entering Australia and accepts the applicant's claim that he resided in these countries illegally.
72. The Tribunal accepts that the applicant is Hazara and a Shia and that he comes from Jaghori district in Ghanzi Province. The Tribunal notes and accepts the country information (dated December 2009) from the Finnish Immigration Service which describes Jaghori as a Hazara enclave which is "a somewhat secure area" and largely free of the presence of the Taliban but travelling outside of the area can be unsafe most particularly for Hazaras. The Tribunal notes and accepts the DFAT report (dated February 2010) which indicates that although there is a resurgence of the Taliban, Hazaras are not currently targeted by the Taliban as in the past.
73. The Tribunal notes that the applicant's evidence generally accords with this country information. The applicant at his arrivals interview indicated that he was concerned for his and his family's safety. Before the Tribunal he indicated that his family residing in Jaghori including his younger brother are relatively safe (see paragraph above 56). In his written submission to the Tribunal and in response to the Delegate's decision the applicant indicated he accepted that "all the Hazara people is not killed by the Taliban but how about those people like me that has been already black listed by Taliban..." (see paragraph 30).
74. The Tribunal also notes the applicant's evidence that his wife had traveled to Kabul to obtain the medical certificate provided to the Tribunal but also notes and accepts that his brother-in-law who was a [teacher] went missing when travelling to Kabul. The Tribunal also notes and accepts the applicant's evidence that travel outside of the Jaghori district is precarious as the Taliban disrupt traffic on the roads.
75. In sum when taking into account the totality of the applicant's evidence and the country information the Tribunal does not accept that the applicant faced harm from the Taliban when residing in Jaghori or that he does face harm if he returns there in the reasonably foreseeable future because of either his ethnicity or his religion or a combination of these.
76. The Tribunal accepts that the applicant was a truck driver from the years 2002 to 2008 and that some of his work involved the transporting of goods associated with the government. The Tribunal accepts that the applicant engaged in truck driving without difficulty or threat of harm to himself up to 2006 but thereafter Taliban activity along the main traffic routes made his task difficult and dangerous and that he stopped working as a truck driver in 2008 because he feared for his safety most especially following the burning of a truck driven by a person known to the applicant.
77. The Tribunal makes these findings on the basis of the applicant's oral evidence which was detailed, pertinent and, delivered in an unhesitant and ready manner and on the basis that the applicant's claimed experiences accord with the country information. The country information indicates that the Taliban created road blocks to disrupt the flow of traffic on the Kandahar- Kabul highway, destroyed trucks and killed occupants of these trucks as part of anti-government activity and to disrupt and hinder the redevelopment of Afghanistan under the Karazi government.
78. The Tribunal accepts that in an attempt to bring down the Afghan government the Taliban have disrupted transport routes and attempted to halt development by targeting trucks delivering goods related to redevelopment. The Tribunal accepts that the Taliban have attacked and killed truck drivers and destroyed their trucks.

79. The Tribunal notes that the UNHCR report refers to the Taliban targeting persons perceived to be associated with the Afghan government and that this extended to construction workers and truck drivers. The Tribunal accepts that when truck driving the applicant was at risk for a variety of reasons. These risks included the risk associated with military conflict and the deteriorating security situation as well as the specific targeting of truck drivers by the Taliban for reasons of an imputed political opinion of pro-government.
80. The Tribunal, however, does not accept that the applicant did experience serious harm as a truck driver. In particular the Tribunal does not accept that he was kidnapped by the Taliban. The Tribunal does not accept that the applicant was detained by the Taliban for a brief period in which they beat him before releasing him. The Tribunal does not accept this claim for the following reasons. The applicant raised this claim for the first time at the Tribunal hearing but made no mention of this claim in his protection visa application.
81. The Tribunal was unconvinced by the applicant's explanation at the hearing that the reason that he did not raise his claimed kidnapping by the Taliban in his protection visa application or with his legal representative was because he did not wish to be viewed as a psychiatric case. The Tribunal considers that given the significance of the claim in relation to his claimed need to flee his country and seek protection in Australia the applicant would have raised it at an earlier point in the processing of his application if he had had the experience he so claims.
82. The Tribunal notes that the applicant has provided a medical certificate from [hospital deleted: s.431(2)] in Kabul as corroborative evidence of his claim to have faced passed harm from the Taliban. The Tribunal does not place weight on the document as establishing the applicant's claim to have been detained and beaten by the Taliban. The Tribunal notes that the medical certificate was issued some considerable time after the event and whilst describing the applicant's injuries states that the applicant claims to have sustained these injuries by reason of an encounter with the Taliban. The document is not independent corroborative evidence of the applicant's claim but rather reiterates the applicant's own claim. Accordingly the Tribunal is not satisfied that the applicant was kidnapped by the Taliban in 2007.
83. The Tribunal accepts that after the applicant gave up driving and returned to his district and his farm land in 2008. In respect to future harm the applicant claims that he is on a Taliban list associated with the local Mullah because of his involvement in driving trucks transporting government goods. The Tribunal notes that the country information indicates the tactic of the Taliban of sending so called *night letters* to individuals to warn them to stop working for, or supporting, the government upon pain of death.
84. The Tribunal did not find the applicant to be convincing in his oral evidence that he is of ongoing adverse interest to the Taliban. The applicant asserted that he was on a list and claimed that a third person had told him that the Taliban were asking after him. The applicant did not refer to any threats made to himself or his family after he gave up truck driving and indicated that he remained in his area for a time after he stopped driving trucks arranging to sell his land. For these reasons the Tribunal has reservations about the applicant's claim to be a person of ongoing adverse interest to the Taliban and the local Mullah by reason of an imputed political opinion.
85. However in light of the fact that the country information indicates that the Taliban do target persons who work for the government and in light of the fact that outside of the applicant's district of Jaghori the Taliban are active the Tribunal cannot discount the real possibility that

the local Mullah with ties to the Taliban might seek to seriously harm the applicant by reason of an imputed political opinion on his return to Afghanistan in the reasonably foreseeable future.

86. Accordingly, the Tribunal finds that the applicant has a well founded fear of persecution for a Convention reason on his return to Afghanistan.

CONCLUSION

87. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

88. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.