

**1212078 [2012] RRTA 954 (23 October 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1212078

**DIAC REFERENCE(S):** CLF2012/121807

**COUNTRY OF REFERENCE:** Afghanistan

**TRIBUNAL MEMBER:** David Corrigan

**DATE:** 23 October 2012

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## 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] July 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 in respect of 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 in respect of 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 in respect of 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 in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
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 in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Credibility**

19. The Tribunal accepts the difficulties of proof faced by applicants for refugee status and complementary protection. In particular there may be statements that are not susceptible of proof. It is rarely appropriate to speak in terms of onus of proof in relation to administrative decision making: see *Nagalingam v MILGEA & Anor* (1992) 38 FCR 191 and *McDonald v Director-General of Social Security* (1984) 1 FCR 354 at 357; 6 ALD 6 at 10. The United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, 1992, at paragraph 196 197 and 203 204 recognises the particular problems of proof faced by an applicant for refugee status and states that applicants who are otherwise credible and plausible should, unless there are good reasons otherwise, be given the benefit of the doubt. Given the particular problems of proof faced by applicants a liberal attitude on the part of the decision maker is called for in assessing refugee status and complementary protection obligations.
20. However, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. Moreover, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. In addition, the Tribunal is not obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

## 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:
- Record of entry interview dated [April] 2012;
  - Protection visa application with statutory declaration dated [June] 2012;
  - Untranslated documents (ff.18-21 D) including copies of his passport, taskera and university card;
  - Undated agent's submission;
  - Internet page from [the website of an educational institution].
22. The applicant's claims can be summarised as follows. He is a Hazara Shia who was born in [Locality 1], Jaghori, Ghazni, Afghanistan in [year deleted: s.431(2)]. In [year deleted: s.431(2)] he lived in [Iran]. There he obtained a [university degree]. His father is deceased and his mother and [siblings] reside in [Iran]. In 2008 he went and resided in Kabul where he first worked [in the tertiary education sector].
23. When the applicant was working at the university he travelled to Jaghori during his holiday. His friends told him not to go there direct but to change cars several times. They said that the Taliban in Kabul communicate directly with the Taliban in Jaghori on the movement of certain people moving between the two areas. The Taliban are particularly interested in university staff and it is dangerous for them on the roads. In 2011 the university sent some books from Kabul University to Bamyan University. The Taliban stopped the car out of the city and killed the university employee (a Hazara Shia) and burnt the books.
24. In November 2011 there was a religious celebration called Eid-qorbant. The applicant had a one week break from university and travelled to Jaghori to visit [a relative]. He went from Kabul to Ghazni in one car and then from Ghazni to Jaghori in a different car. When he arrived at Jaghori he went to [a Bazaar] and went to a café. He noticed that a car had stopped near his. This was the car that he had left behind in Ghazni and the people in the car were the other passengers he had left in the car in Ghazni. The people from this car came to the café and they asked who [name the same as the applicant] was. They had come to warn him that after he had changed cars that later on the Taliban down the road stopped their car and were looking for him specifically. They told the Taliban that none of them were him. The Taliban did not believe them and did body searches and then beat them.
25. After the applicant went to Jaghori he stayed for a week and then returned to Kabul and did not return to Jaghori again. He kept a low profile when he went back to Kabul. A few months later he went to Wazir Akbar Khan [on university business]. A few hours later the Taliban blew up the premises using a suicide bomber. The Taliban are known to be against higher education and such attacks are not uncommon. It was submitted that the applicant would be at risk of harm from the Taliban for imputed political opinion as supporter of the West (as a clean shaven man with Western appearance) and as an educated Hazara university worker.

26. Prior to his departure to Australia, the applicant visited his family for a week in Iran and then returned to Kabul despite having a four week visa.
27. An additional submission was made to the Tribunal dated [September] 2012. It was submitted that in reference to the bombings and attacks in Wazir Akbar Khan that this was designed to draw attention to his need to travel to these dangerous areas as part of his employment as a university [worker] rather than asserting that the attacks were against education institutions. He was compelled to travel frequently to [a company] which provides [services] to the university. A company brochure was attached indicating that the company is [located in] Wazir Akbar Khan and that it was plausible that he could come to the attention of the Taliban through his visits there. It was submitted that he was expected to go to other dangerous parts of the city in order to carry out his work. It was submitted that he would also be at risk because of his membership of a particular social group of “education personnel” and because of his employment with a prominent Shia religious institution. The submission included references to country information on the security situation in Kabul, Taliban targeting of those involved in education, sectarian attacks in Kabul and the level of state protection for Hazaras in Kabul. It was also submitted that violence from Kuchis in Kabul constituted a considerable risk for the applicant especially given his home was near to clashes in 2010. Also included with this submission were:
- An additional statement of the applicant dated [September] 2012. In this statement, inter alia, the applicant claimed that he did know one man in the first car ([Mr A]) and that at the [bazaar] this man warned him that men in the first car had been beaten and asked if they were [a name the same as the applicant]. The other men then came over and talked to him as well;
  - A UNESCO article dated 10 February 2010, “Education under Attack 2010 – Afghanistan”;
  - A letter and translation of a letter from a Commander of Lashkar-e-Jhangvi threatening Shias.

### **Hearing**

28. The applicant appeared before the Tribunal [in] September 2012 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 was represented in relation to the review by his registered migration agent.
29. The applicant confirmed that he was born in [Locality 1], Jaghori and spent two years there before moving with his family to [Iran]. His immediate family still live there though he has [relatives] who still live in [Locality 1]. He was [educated and obtained a qualification]. His Afghan student passport expired after five years and he went to Afghanistan for work. He first worked [employment details deleted: s.431(2)].
30. I asked the applicant a number of questions about his claims regarding the death of a university employee. He said that the person was a Hazara from Bamyan University who was delivering books from Kabul to Bamyan. He was stopped by the Taliban and the books were burnt and he was killed. The applicant did not know him personally and he could not recall his name. The incident happened a year ago. I put to him that there was country information from DFAT that indicated that all ethnic groups were at risk on the roads in

Afghanistan and that might make me think that such a person may not have been targeted for reasons of his race. The applicant commented that it was because he was carrying books and the Taliban were opposed to this. I put to him that he had not claimed to have travelled outside of Kabul for work and that given this I may not think he would be at risk in the same way if he returned. He agreed that there was no need for him to do so.

31. I asked the claimant a series of questions about the claimed incident in Jaghori. He said he travelled there because it was the Eid festival. He said that he went by car to Ghazni and then took another car to [a] bazaar. He sat in a restaurant and ½ hour later the other car arrived. The passengers got out and one passenger ([Mr A]) knew him. He knew [Mr A] as he had seen him before in Kabul and Jaghori. He said he had been to Jaghori 6-7 times before that but that nothing had happened on these occasions. He was told that the Taliban had stopped the vehicle and searched for him by name. As to whether it was a coincidence that the second car would pull up there, he said there were only two restaurants there and that it was a stopover for rest. He stated that after he was told he went to the bazaar to do some shopping. I said this appeared inconsistent with what he had told the delegate that he spent 40 minutes shopping before going into the café. He said it was not inconsistent as he went to the restaurant and then went shopping afterwards. I said that it seemed strange to me that if he'd just heard that the Taliban were looking for him that he would go into a public place to do shopping. He said because he was attending a wedding he had to go buy something as a gift. He said [Mr A] told him that when the Taliban stopped the car, everyone got out and they were looking at taskeras for his name. They had photos of him and they beat the passengers with their hands. As to why the Taliban waited so long to target him he said he did not know the reason why they looked for him at that particular spot.
32. I put to the applicant for comment that he only seemed to have a very low profile [in his occupation] and it would seem to me that the Taliban would not have much interest in him. He said he was working for a university under the supervision of a Shia Ayatollah and the Taliban was very opposed to this university as they did not like Shias studying as they were "infidels".
33. I asked the applicant a number of questions as what happened when he returned to Kabul. He said he went and worked at the university for three months and then came to Australia. He did not want to wait that long and his agent told him that it would take 20 days but it took three months to arrange his journey to Australia. I commented that the fact that he was there for three months and nothing happened to him might make me think that he was not of any interest to the Taliban. He said during the three months he limited his travel inside Kabul and only did it for work. He did not change his address as it was not in a dangerous place. I asked the applicant why he did not have the [information about] him taken down from the university website if he thought he was in danger and he said it was only when he arrived in Australia that he realised he should have taken it down. He said he kept it up there to prove who he worked for when he came to Australia. I commented that [information deleted: s.431(2)] if he had wanted as evidence he could scan and save it to Hotmail or another account. He replied that was possible but it did not come to mind.
34. I asked the applicant a series of questions about his claim to have been involved in an incident in Wazir Akbar Khan. He said at the end of each month he had to a visit [a company which provided services to the university]. It was near [an] embassy and there was an exchange of fire with the Taliban shooting at the police. He was very scared as the Taliban had photos of him and his name on a blacklist. The incident happened one year ago. I asked whether there were any bombs and he said they used RPGs but he could not

remember any explosion. I asked him what happened to the place [he had attended] and he said he did not know specifically. I noted that this was inconsistent with what he had said in his June statement that a few hours after he left the place, the Taliban blew up the premises using a suicide bomber. He said he meant firing and shooting and I said that was still inconsistent. He said that when he came out of the office there was firing and shooting and he managed to escape.

35. I asked the applicant about his trip to Iran before he came to Australia. He said he went there to meet his family for a short time. He travelled there and back by plane. He had a visa for one month. As to why he did not stay there for the full period of his visa if he had a fear in Afghanistan he said if he had stayed longer than one month he would have been sent back and that he went back to organise to leave Afghanistan. His agent had emphasised that he needed to come back to obtain an Indian visa and that he needed to attend the office personally.
36. I put to the claimant for comment the substance of country information set out above that indicated that he may not face a real chance of persecution or a real risk of significant harm on account of being a Hazara in Kabul. He said the reality was different and that the authorities could not protect him. His [relative] had told him that Afghanistan was not safe for him. I put to the claimant for comment the substance of country information set out above that indicated that he may not face a real chance of persecution or a real risk of significant harm on account of being a Shia in Kabul. He said that his was a personal issue that meant he was in danger. I also put to him that there was also information contained in a Danish Immigration Service report of March this year described the security situation in Kabul as relatively good or safe and that it was unlikely that the Taliban would make it a priority or have the capacity to track down low profile persons in the city. I said he seemed to have a very low profile so that may make me doubt that they would have been interested in him. He said they were looking for him because he was not an ordinary person and that he would not have left Kabul as he had a good salary if his life was not in danger.
37. I also put to the applicant for comment that the UNHCR Eligibility Guidelines do not mention university workers as having a particular risk profile in Afghanistan and that I had not identified any reports of attacks in Kabul itself targeted at those in education. I stated that this may suggest that he did not have a well-founded fear of persecution for being an “educated Hazara university worker” or “education personnel” or face a real risk of significant harm for that reason. He said there were many cases where students were stopped and beaten and that people did not carry laptops for that reason. It was clear that the Taliban were opposed to education. I stated that he did not seem to have a need to travel outside Kabul as he did not have any immediate family in the rest of Afghanistan and he stated that he had to travel to Jaghori as he had family there. He said the Taliban could carry out attacks in Kabul.
38. I asked the applicant whether he had a fear of the Kuchis and he said that Kuchis came into Hazara areas and in 2010 or 2011 there had been fighting. I stated that I had not come across any reports of violence between Kuchis and Hazaras in Kabul since 2010. I commented that though he had claimed to live near where this occurred he had not made any claims of being directly affected. He said the government forces were trying to stop the violence but he would be affected if there was such fighting.
39. I stated to the applicant that he had claimed that he would be at risk of harm because he would be imputed with a political opinion as a supporter of the West (as a clean shaven man



with Western appearance). I put that there was country information that suggested that he would not be at risk for that reason. I noted that for example, in March 2012, the Department of Foreign Affairs and Trade stated in relation to Hazara returnees to Afghanistan that '[l]imited employment and advancement opportunities also inhibited returning refugees' but added that 'there were no significant protection issues for returnees'. I noted that DFAT had earlier reported that their contacts did not believe that Hazaras would be targeted because they had sought asylum in the West. I stated that given he had recently lived in Kabul for several years without being harmed this may also make me think that. He said that finding a job would not be a problem but that his life would not be safe due to the Taliban looking for him.

40. I gave the agent 14 days to make a written submission but she made an oral submission that, inter alia, made the following points:

- She would provide a translation of a clash reported on BBC Persia on a murder between Kabul and Bamyan that was not reported in English; this illustrated that there was a limitation on the reporting of incidents that were in English and also which also reported on ethnicity as a factor.
- There was intensifying conflict between Kuchis and Hazaras in Wardak province.
- It was not that coincidental that the second vehicle would pull up where the applicant was and the passengers find him. The [bazaar] was small and on the road into Jaghori. It was also inside Jaghori so the applicant would have felt safe to wander around and shop.
- The applicant's failure to have [information about himself] removed from the university website was not indicative of a lack of a credibility given it would not be imagined that the Taliban would identify people from websites as they identified persons along the roadside.
- The inconsistency regarding the claimed Wazir Akbar Khan incident was due to interpreting difficulties.
- The applicant would have to visit Wazir Akbar Khan other dangerous parts of Kabul as part of his duties and he may be recognised there.
- DFAT were limited in where they could go to and they did not mention their contacts.
- Whilst the Danish Immigration Service noted that Kabul was relatively secure or safe this was not the appropriate test.
- The AAN 2011 report notes a recent shift in relation to the Taliban and that it was trying to gain control of schools.

41. The agent provided a written submission dated [in] October 2012. Inter alia, a number of references were made to information concerning the security situation in Kabul (including an attack in the Kabul suburb of Kargha in June 2012 and the Ashura Day attack in December 2011. It was argued with reference to the Danish Immigration Service report of March 2012 that the Taliban had targeted low profile people in the past. It was argued that the Taliban could easily stumble across the applicant given their presence in the city and that they have his photograph and given the looming withdrawal of foreign forces. Information concerning the killing of Hazara Shias along the Maidan Wardak route to Bamiyan, Kuchi-

Hazara clashes in Maidan Wardak and the difficulties on the roads from Kabul to Jaghori and Bamiyan.

### **Independent Country Information**

42. 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.

43. 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. 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.

44. 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.

45. A March 2012 Department of Foreign Affairs and Trade (DFAT) update on the Hazara community in Afghanistan 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. The same report also noted that ‘the Hazara community did not face systemic violence or an existential threat’.<sup>1</sup> 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.<sup>2</sup>

46. 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.<sup>3</sup>

#### *Shias*

47. 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.<sup>4</sup>

48. 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:

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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup>

49. 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.<sup>6</sup> 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.<sup>7</sup>

50. 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.<sup>8</sup>

#### *Returnees*

51. In March 2012, the Department of Foreign Affairs and Trade stated in relation to Hazara returnees to Afghanistan that '[I]imited employment and advancement opportunities also inhibited returning refugees' but added that 'there were no significant protection issues for returnees'.<sup>9</sup>

52. The *2011 US Department of State Report on Human Rights Practices for Afghanistan*, published in May 2012, provides the following general information on returnees and relocation within Afghanistan:

Unverified populations, including IDPs and refugees who returned, were also known to reside alongside urban slum dwellers in unauthorized informal settlements in the larger urban areas of Kabul, Jalalabad, Mazar-e-Sharif, and Herat. These settlements were prone to serious deficiencies in several areas, including health, education, security of tenure, and absence of registration of child births and identity cards.

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<sup>5</sup> 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/gIQAkikukO\\_story.html](http://www.washingtonpost.com/world/asia_pacific/us-kabul-attack-wont-spawn-sectarian-violence/2011/12/10/gIQAkikukO_story.html)> Accessed 2 August 2012.

<sup>6</sup> 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.

<sup>7</sup> 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](http://www.state.gov/j/drl/rls/irf/2010_5/168240.htm)> Accessed 2 August 2012.

<sup>8</sup> 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.

<sup>9</sup> DIAC Country Information Service 2012, *Hazara Community Update*, (sourced from DFAT advice of 12 March 2012), 19 March.

...The government's capacity to absorb returned refugees remained low.<sup>10</sup>

53. In January 2012, the United Kingdom Border Agency's Appeals and Litigation Section advised the Department of Immigration and Citizenship (DIAC) that "[i]n relation to reports of failed asylum seekers being targeted on their return and individuals being identified in the media ahead of return, there is no specific information on this".<sup>11</sup>
54. *The Monthly* in June 2011 quoted the Edmund Rice Centre, a Catholic advocacy group, as reporting on the case of "Mohammed Hussain, a Hazara and former mujahideen fighter in the anti-Soviet jihad in the 1980s, who fled Afghanistan under Taliban rule" The article reported that "[a]fter being refused refugee status in Australia, Hussain went back to his village in Ghazni" and "in late 2008, Hussain was cornered by a Taliban gang and thrown down a well in front of 35 members of his family" and then "a grenade was thrown down after him, decapitating him".<sup>12</sup>
55. An article from *The Australian*, published on 30 March 2011, made reference to research undertaken by the Edmund Rice Centre, in which it had followed the fate of 270 failed asylum seekers who had been returned to Afghanistan from Australia. The research indicated that nine of these Afghans had been killed following their return. One of these Afghans, who had reportedly been "an anti-Taliban fighter" in the past, had been in Kabul but was then kidnapped by the Taliban and taken back to his home village in Ghazni province, where he was killed.<sup>13</sup> In February 2011, *ABC News* reported that the Afghan government had "conceded it cannot guarantee the safety of any failed asylum seekers deported from Australia to Afghanistan".<sup>14</sup>
56. It should also be noted that significant numbers of Afghan refugees have returned to Afghanistan. The UNHCR has reported that 50,000 Afghan refugees had voluntarily returned to Afghanistan in the first eight months of 2012 and that 4.6m have returned home since 2002.<sup>15</sup>
57. An *Outlook Afghanistan* report, published on 1 November 2011, referred to a UNHCR report of 29 October 2011 which stated that about 60,000 refugees had returned to Afghanistan voluntarily during the year up to that point. Of these, 43,000 were from Pakistan, with 17,000 from Iran,<sup>16</sup> and less than 100 from other countries.<sup>17</sup> *Outlook Afghanistan*

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<sup>10</sup> US Department of State 2012, *2011 Country Reports on Human Rights Practices*, 24 May, Sec 2.d <[www.state.gov/j/drl/rls/hrrpt/2011/index.htm](http://www.state.gov/j/drl/rls/hrrpt/2011/index.htm)> Accessed 13 August 2012.

<sup>11</sup> DIAC Country Information Service 2012, *Targeting of failed asylum seekers upon return to Afghanistan*, (sourced from United Kingdom Border Agency advice of 16 January 2012), 19 January.

<sup>12</sup> Neighbour, S. 2011, 'Hazara Asylum Seekers', *The Monthly*, 1 June <<http://www.themonthly.com.au/hazara-asylum-seekers-comment-sally-neighbour-3370>> – Accessed 2 July 2012.

<sup>13</sup> 'Stop deporting Afghans to be killed' 2011, *The Australian*, 30 March <<http://www.theaustralian.com.au/national-affairs/stop-deporting-afghans/story-fn59niix-1226030327677>> Accessed 6 August 2012.

<sup>14</sup> 'No safety guarantee for returned Afghans' 2011, *ABC News*, 8 February <<http://www.abc.net.au/news/2011-02-07/no-safety-guarantee-for-returned-afghans/1932096>> Accessed 6 August 2012.

<sup>15</sup> CX294078: PAKISTAN/AFGHANISTAN/IRAN:50,000 Afghan refugees voluntarily return to Afghanistan this year, United Nations High Commission for Refugees (UNHCR), 28 August, 2012, , <http://reliefweb.int/report/afghanistan/50000-afghan-refugees-voluntarily-return-afghanistan-year>

<sup>16</sup> Sharzai, D. 2011, 'Dubious future of Afghan refugees', *Outlook Afghanistan*, 1 November <[http://outlookafghanistan.net/topics?post\\_id=2397](http://outlookafghanistan.net/topics?post_id=2397)> Accessed 6 August 2012.

<sup>17</sup> 'Number of UN-assisted returns to Afghanistan drops in 2011' 2011, *United Nations News Centre*, 28 October <<http://www.un.org/apps/news/story.asp?NewsID=40238&Cr=afghan&Cr1>> Accessed 6 August 2012.

provided a breakdown of the locations in Afghanistan to which the refugees had been returning, which included Kabul and Paktia province. The relevant information reads:

The refugees who have been returning in the ongoing year, have mostly moved to Kabul (26%), Nangarhar (14%), Herat (8%), Kunduz (8%), while the rest have opted for Kandahar, Laghman, Balkh, Baghlan and Paktia (4% each).<sup>18</sup>

### *Kabul*

58. 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.

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.

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## **1.2. Presence and activities of the Taliban in Kabul**

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<sup>18</sup> Sharzai, D. 2011, 'Dubious future of Afghan refugees', *Outlook Afghanistan*, 1 November <[http://outlookafghanistan.net/topics?post\\_id=2397](http://outlookafghanistan.net/topics?post_id=2397)> Accessed 6 August 2012.

### *1.2.1. Profile of the targeted*

UNAMA did not rule out the possibility that the Taliban would target high profile persons in Kabul, but it did not find it likely that the Taliban would make it a priority or have the capacity to track down low profile persons in the city. This is, according to UNAMA, the main reason why UNAMA sometimes brings its staff who faces security risks from the provinces to work and live in Kabul. UNAMA informed the delegation that the greatest security risk in Kabul is posed by criminal groups.

UNHCR said that if a low profile person flees a conflict with the Taliban in the area of origin, it would be possible for him to seek protection within his community in Kabul. UNHCR stated that most probably the Taliban would not make it a priority to track down low profile people in Kabul. However, a thorough assessment of the claim and the IFA should be made on a case by case basis.

Regarding the Taliban activities in Kabul, AIHRC informed the delegation that the Taliban certainly has the means to act and kill in Kabul, and that the Taliban can harm high-profile people anywhere. As examples, AIHRC referred to the murder of Rabbani (in September 2011) and the recent murder (February 2012) of two American advisers inside the Ministry of Interior. When it comes to low profile people, it has however not been a priority for the Taliban to trace them down. Previously (in 2007, 2008 and 2009) the Taliban also targeted low profile people, but in 2011 and 2012 it has been a priority for the Taliban to go after high targets in Kabul. AIHRC also pointed out that if killings have taken place in Kabul it is not always clear who is behind these killings as it might also be a criminal act.

According to AIHRC, a low profile person who has fled a conflict with a Taliban commander in his place of origin would in most cases not be tracked down by the Taliban in Kabul as it is not a priority for the Taliban to go after low profile people.

Asked about the Taliban activities in Kabul and other major cities, IOM explained that the Taliban cells are certainly operating in Kabul and that their networks seem to be getting stronger and stronger. However, if a low profile person has had a conflict with the Taliban in his place of origin, the Taliban would most probably not make it a priority to track him down in Kabul, according to IOM, as the Taliban's activities will mainly focus on targeting high profile persons. IOM added that the security situation in Mazar-e-Sharif and Herat with regard to the Taliban's presence is similar to that of Kabul. An independent policy research organization in Kabul found it unlikely that the Taliban would chase down low profile persons who have fled a conflict with the Taliban in their place of origin and have come to Kabul. According to the same source, in the few cases where low profile people have been killed in Kabul, it is not certain whether or not it is the Taliban who is behind the killing.

The independent policy research organization added that the Taliban certainly are present in Kabul, but their actions are merely focused on high profile persons like for instance high level government employees, high level politicians or high level employees of the Defence Ministry.

Concerning presence of the Taliban in Kabul, DRC stated that the Taliban certainly is present in some settlements in Kabul, but DRC had no knowledge of the extent of their presence.

When asked whether low profile IDPs are a target for the Taliban or other insurgent groups, DRC replied that it had never heard IDPs in the settlements complain about their security situation, and it had never heard of any low profile person fleeing to

Kabul and then being targeted by the Taliban. According to DRC, security is exactly the main reason why many IDPs are in Kabul, and they would not have come to Kabul if they felt that their security was in danger there.

CPAU had never come across cases where the Taliban had gone after low profile persons in Kabul.<sup>19</sup>

59. 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.”<sup>20</sup>

60. 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.<sup>21</sup> A 2008 *National Geographic* article said that “some 40 percent” of Kabul’s population is Hazara.<sup>22</sup>

#### *Kuchi attacks in Kabul*

61. Although there were clashes between Hazaras and Kuchis in Kabul in August 2010<sup>23</sup>, in reaction to earlier clashes in Behsud, no reports were found of such clashes in or near Kabul since that time.

62. In March 2012, the Danish Immigration Service’s report of their fact finding mission to Kabul, Afghanistan commented on conflict between the two communities and cited advice from the Afghan Independent Human Rights Commission that conflict has taken place in Wardak and Ghazni and that “[t]he conflict erupted each year from 2007 up to 2010, but in 2011 there have been fewer disputes”.<sup>24</sup> In the same report the Civil Society and Human Rights Organisation (CSHRO) also highlighted conflict between the two communities in the provinces of Wardak and Ghazni and claimed that “while there were violent clashes between Hazaras and Kuchis in 2010, no major clashes took place in 2011”.<sup>25</sup> The report went onto state that in the view of the UNHCR:

...the conflict between Kuchis and Hazaras is in principle a geographically isolated conflict between two communities over local resources. The last incidents were in 2010, and in 2011 there were no violent attacks reported. However, the conflict remains unresolved. UNHCR emphasized that it is a conflict between communities in a local area which should not lead to

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<sup>19</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012.

<sup>20</sup> CX273295: AFGHANISTAN: RRT Country Information Request AFG39190 - Conditions for Hazaras, Australia: Department of Foreign Affairs and Trade (DFAT), 24 September, 2011.

<sup>21</sup> Opiel, 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.

<sup>22</sup> 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.

<sup>23</sup> see Q5 of *Country Advice AFG37234* of 19 August 2010.

<sup>24</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, p.46 <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012.

<sup>25</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, p.46 <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012.



personal persecution of individuals outside the geographical boundaries of the involved districts in Wardak and Ghazni province.<sup>26</sup>

63. This report also offered the following opinions from various Kabul-based commentators:

According to CSHRO, if a Hazara has a conflict with a Kuchi in his area of origin, and he flees his area and moves to big cities like Kabul, Herat or Mazar-e-Sharif, he will not face any security problem although he will still face the challenge of finding a job. Many Hazaras from the affected districts have moved either to other districts in Bamyan or to Kabul where they stay with their family and relatives and they do not go back to their place of origin. Only old Hazara people are left in the affected districts.<sup>27</sup>

...An independent policy research organization in Kabul ... found it unlikely that Kuchis would threaten or persecute Hazaras in Kabul because of a fight in Wardak or Ghazni.<sup>28</sup>

...AAWU [All Afghan Women's Union] stated that if the Hazaras who have left the area due to the clashes come back again and claim their land back, clashes will very likely arise again. On the other hand, AAWU found it unlikely that the Hazaras would face any danger from Kuchis if they moved to other areas.<sup>29</sup>

## FINDINGS AND REASONS

### Country of reference

64. The applicant has claimed that Afghanistan is his country of nationality and his evidence was consistent with coming from that country. I therefore accept that it is his country of nationality and also his receiving country as defined by s.36(2)(aa) and s.5 of the Act.

### Assessment of claims

#### *Hazara Shia and imputed political opinion claims*

65. 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 an

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<sup>26</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, p.46 <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012.>

<sup>27</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, p.46 <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012 .>

<sup>28</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, p.47 <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012 .>

<sup>29</sup> Danish Immigration Service 2012, *Country of Origin Information for Use in the Asylum Determination Process*, March, p.48 <<http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>> Accessed 15 June 2012.

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 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. The US State Department has also reported that Shia generally were free to participate fully in public life.

66. Whilst there is some information (such as the papers written by Professor Maley cited above and the information submitted by the agent including the letter from the commander of Lashkar-e-Jhangvi) which paint a difficult picture in terms of the safety of Hazara Shias generally, 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 exists uncertainty as to the political future of Afghanistan and the role of the Taliban within it but in assessing the real chance of the 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. I have also come to the same assessment in considering whether there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan that there is a real risk that he will suffer significant harm.
67. 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. I have not come across information 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 Hazara Shias, *per se*, face a real chance of persecution, now or in the reasonably foreseeable future. For the same reasons, I have come to the conclusion that Hazara Shias *per se*, as a necessary and foreseeable consequence of being removed from Australia to Afghanistan do not face a real risk of suffering significant harm.
68. However, as recommended by the UNHCR, it is necessary to consider the individual merits of each case. I accept that the applicant was [an employee] in [the tertiary sector in Kabul]. The applicant has been consistent in his account of this and has provided documentary evidence supporting his employment and qualifications. I accept that as part of his duties he has travelled around to different parts of Kabul and that on a number of occasions he has travelled to Jaghori to visit family members. However, I do not accept his central claim that he was targeted by the Taliban on a visit to Jaghori and that the Taliban

have a continuing interest in him. I do not find him credible on these matters for the following reasons:

- The applicant's account is inconsistent with the weight of the country information concerning the Taliban's interest in low-profile persons. The applicant's profile is very limited. Whilst I accept that he worked at a Shia university his employment consisted merely of being [an employee] who would travel around different parts of Kabul in the course of his duties. I note as submitted by the agent that the country information contained in the DIS report does at one point refer to an AIHRC report that states that the Taliban had previously targeted low profile people in Kabul in 2007-09. However, I have taken into account that the applicant's claim arises from a claimed incident in November 2011 so this information is of little weight. Furthermore other authorities cited by the Danish such as the UNAMA do not support that low profile persons are targeted. The UNAMA stated that "it did not find it likely that the Taliban would make it a priority or have the capacity to track down low profile person in the city". The CPAU are reported to have stated that they "had never come across any cases where the Taliban had gone after low profile persons in the city." Furthermore, I have not come across any independent country information showing that the Taliban have targeted those involved in education in Kabul and the UNHCR guidelines do not mention university workers as having a particular risk profile in Afghanistan. Whilst the applicant in the hearing referred to the death of a university employee who he said was a Hazara employee from Bamiyan university who was killed delivering books from Kabul to Bamiyan a year ago, he was unable to recall the name of this person and there is no indication from the applicant's claims that his circumstances were similar given that he had not claimed to have been carrying educational materials. I do not accept that if such an incident occurred that it demonstrates that he faces a real chance of persecution or that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to Afghanistan that he faces a real risk of significant harm or that it supports his claims to have been targeted.
- On the applicant's own evidence he stayed in Afghanistan for a further three months (other than a short period when he travelled to Iran) and yet he was not subjected to any adverse attention from the Taliban. I note that the applicant says that he did not go out much during this period but he would have travelled to and from work. That nothing at all happened to him during this period further supports that he was of no interest to them and was not targeted as claimed during his visit to Jaghori.
- Despite his [employment], the applicant did not request his employer to take down a photo of him showing him as being employed at the university which is inconsistent with him being concerned for his safety on in the manner that he has claimed. When this was put to him for comment at the hearing he said that it was only when he arrived in Australia that he realised it should have been taken down and that he kept it there to prove that he worked at the university. However, as put to the applicant at the hearing [he] could have saved such evidence electronically to an email account and I do not accept his explanation. I accept that the Taliban may not be particularly IT savvy, however the applicant's failure to request the removal of his picture given the grave danger he claimed he was in is a further reason to reject his claims.

69. Accordingly, I do not accept that the applicant whilst travelling to Jaghori from Kabul was the subject of any interest from the Taliban. I do not accept that a car he had been

travelling in was stopped by the Taliban who had a photograph of him and that they asked for his whereabouts. I do not accept the passengers in the car were searched and beaten. I do not accept that the applicant whilst at bazaar was told this by the passengers in the car.

*Kuchis*

70. Whilst it was submitted that the applicant would be in danger as a result of conflict between Kuchis and Hazaras, I have taken into account that the applicant has not claimed to have ever been harmed or targeted as a result of this. Whilst I accept that there has been recent conflict between Hazaras and Kuchis outside Kabul (in Maidan Wardak) I have not identified any evidence of any recent conflict between the two groups in Kabul since the middle of 2010. I have taken into account that the applicant lived near where these clashes occurred in 2010, but given these matters, I do not accept that the applicant, now or in the reasonably foreseeable future faces a real chance of persecution from the Kuchis. I further find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Afghanistan that there is a real risk of the applicant suffering significant harm from the Kuchis for these same reasons.

*Imputed political opinion/particular social groups*

71. It was claimed that the applicant would be at risk because he would be imputed as a supporter of the West as he was a clean shaven man with a Western appearance. However, the applicant lived in Kabul for several years and was not subjected to any adverse attention by anyone whilst he was there. Based on this information, I therefore find that the applicant does not face a real chance of persecution, now or in the reasonably foreseeable future on account of being a clean shaven man with a Western appearance which I accept may constitute a particular social group and of which the applicant would be a member of. I further find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Afghanistan that there is a real risk of the applicant suffering significant harm on this basis for these same reasons.
72. I have also considered whether the applicant would be at risk on account of account of being a returnee or a failed asylum seeker from Australia or a Western country. I have considered the reports such as those of the Edmund Rice Centre set out above. However in making my assessment, I have given greater weight to the report of DFAT in March 2012 that stated there were no significant protection issues for returnees and to country information that there have been a large number of returnees to Afghanistan in the last decade. I have given preference to the DFAT reports because they are specially charged with giving advice to the Australian government on such matters and the latest report is more recent. Based on this information, I therefore find that the applicant does not face a real chance of persecution, now or in the reasonably foreseeable future on account of being a returnee or a failed asylum seeker from Australia or a Western country both of which I accept are particular social groups and of which the applicant would be members of. I further find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Afghanistan that there is a real risk of the applicant suffering significant harm on these bases for these same reasons.

*Educational workers*

73. I accept that the applicant has worked for two universities in the past, one of which was a prominent Shia institution. Whilst there is evidence of the Taliban targeting education

workers outside Kabul (the UNHCR article of 10 February 2010 submitted by the agent supports this), there is no evidence in this report and I have not come across any information that indicates that university workers are being targeted in Kabul by the Taliban or anyone else. I accept as part of his duties the applicant has travelled to different areas of Kabul (and will in the future) but as he indicated at the hearing he did not have to travel outside Kabul. I do not accept that he has been targeted in the past by the Taliban or is of any interest to them individually as he has claimed. If he returns to Kabul given his high level of education and employment experience, I find that he would be able to obtain similar work in a fairly rapid fashion and that any discrimination he may face will not amount to serious harm or significant harm.

74. For these reasons, whilst, I accept that “education personnel” and “educated Hazara university workers” are particular social groups and the applicant is a member of these groups, I find that he does not face a real chance of persecution now or in the reasonably foreseeable future on account of his membership of these groups. I further find, for the same reasons, that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Afghanistan that there is a real risk of the applicant suffering significant harm on these bases.

#### *Kabul*

75. I do not accept that the applicant was caught up in an incident in Wazir Akbar Khan as claimed. In his statement the applicant stated that the place he had visited there was blown up by a Taliban security a few hours after he left. However, at the hearing when asked if there were any bombs he said they used RPGs but he could not remember any explosion. When asked what happened at the place he [attended] he said he could not remember specifically. When it was put to him that his account was inconsistent he said that he meant there was firing and shooting but this still was inconsistent with his account in his statement and inconsistent with not recalling what had happened to the place. Due to such a fundamental inconsistency, I do not accept that the office he visited was blown up by a suicide bomber or that whilst he there that there was a gun fight involving the insurgents which he managed to escape.
76. In making my findings, I have taken into account that the applicant is from Kabul having spent several years there and that there is evidence of insurgency attacks there. Whilst I accept that “relatively good or safe” is not the correct test as submitted by the agent, the information contained in the DIS report is of relevance in assessing the applicant’s circumstances and I have taken this report into account in terms of assessing the security situation. I have also taken into account that Kabul is a large city and that Hazara Shias are at least 25% of the population there. I have also taken into account that DFAT have noted (in September 2011) that their Hazara contacts have described Kabul as safe and had not raised claims of persecution although there was discrimination. I accept that the applicant may as part of his duties need to travel to all parts of the cities but find that the chance that he will suffer persecution in so doing is remote. In doing so I have taken into account that he has not previously been involved in any security incident in the several years he was in the city. Whilst he may have family located in Jaghori these are not immediate family members and I do not accept that being restricted from travelling there because of the dangers of the Taliban or other groups operating in the roads leading there, in his individual circumstances, is serious harm or significant harm especially as he has no economic reason to do so. I further find that there are not substantial grounds for believing that as a necessary and foreseeable

consequence of him being removed from Australia to Afghanistan that there is a real risk of the applicant suffering significant harm for these same reasons.

*Cumulative assessment*

77. Even when considering the applicant's claims cumulatively, I find that he does not face a real chance of persecution, now or in the reasonably foreseeable future on account of his race, religion, imputed political opinion or membership of any particular social group from the Taliban, Lashkar-i-Jhangvi, Pashtuns, Kuchis or any other group. His fear is not well-founded. Even when considered cumulatively, I find that there are not substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Afghanistan that there is a real risk of the applicant suffering significant harm.

**CONCLUSIONS**

78. I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
79. 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 not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
80. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

**DECISION**

81. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.