

1210726 [2012] RRTA 637 (15 August 2012)

DECISION RECORD

RRT CASE NUMBER: 1210726

DIAC REFERENCE(S): CLF2012/121604

COUNTRY OF REFERENCE: Afghanistan

TRIBUNAL MEMBER: Chris Keher

DATE: 15 August 2012

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.

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) visas 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 to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

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

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

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 to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
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.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the visa 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.
20. The review applicant was represented in relation to the review by his registered migration agent.
21. The applicant is [name deleted: s.431(2)]. He claims he was born in Quetta, Pakistan in [year deleted: s.431(2)]. He claims to be a citizen of Afghanistan. He is single and has never married. He is Hazara and Shia. He has not attended any school and is illiterate. He worked from [a young age] as a shoe maker. His father and mother live in Quetta in [town deleted: s.431(2)]. He has one sister [sister's family composition and age deleted: s.431(2)]. He claims his father has never worked, and he does not know why. He claims that his parents, sister and her children are dependent on him. He also has [another sibling] who resides in Quetta.
22. He initially said (entry interview 17 April 2012) that he departed from Pakistan as he is Hazara and Shia "we cannot move around and work because of the fear of the" Lashkar-e-Jhangvi as "they target killings in Pakistan of Hazara and Shia people". He said he "did not have a place to live in Afghanistan or Pakistan".

23. In his application and supporting documentation (dated 6 June 2012), he said he was a citizen of Afghanistan, though born in Pakistan. He claims his parents left from [Uruzgan] in Afghanistan about 30 years ago, as both his [siblings] were born there. They left due to conflict and his father had no land there. He claims he has never been to, nor does he have close family ties in Afghanistan. He claims that the Taliban are active in [this district]. He claims he cannot relocate anywhere in Afghanistan as he has never lived there and has no family ties. He also claims he left from Pakistan due to a fear of harm from the Lashkar-e-Jhangvi fundamentalist Muslim group. As they target Hazara Shia. He also claims that he had no documents in Pakistan, and this would result in him being harassed and detained on occasion by the police. He was often detained for an hour and had to pay for his release. About a year ago he saw a suicide bombing.
24. In a submission dated [June] 2012 his claims are substantially repeated though it is added he lived illegally in Pakistan. In relation to Afghanistan it is claimed he fears the Taliban and other militia groups. It is submitted he “does not have protection means in Afghanistan including family ties, community support, social welfare and settlement as the applicant has never been in Afghanistan”.
25. At interview with a delegate [in] June 2012 the applicant repeated his claims and relevantly added or clarified the following. He said that his parents had been born in Uruzgan Province of Afghanistan, though he did not know exactly where. He and his family never had any identity documents in Pakistan or from Afghanistan. He said that he had paid for his trip with money he had saved and had kept with another person for many years. The delegate, though having some doubts as to the veracity of the applicant, proceeded to assess him as against his claims and found that he had a well-founded fear of serious harm in his province of Uruzgan. The delegate found however that he could reasonably relocate to Kabul.
26. The country information is as detailed in the Delegate’s assessment and the information provided by the applicant’s advisors. I have considered the following general material. In relation to Pakistan:
 - *The Hazara Community*, Department of Foreign Affairs and Trade (DFAT) 20 May 2010. Reports the vast majority of ethnic Hazaras, both in Pakistan and Afghanistan, are Shia Muslims. DFAT estimates there are up to 600,000 Hazaras living throughout Pakistan. There has been a Hazara community in Baluchistan for over a century. Since 1982, a “Hazara Town” has developed as a suburb of Quetta, with estimates currently putting its Hazara population at 70,000.
 - *Conditions for Asylum Caseloads: Hazaras in Quetta*, DFAT, 30 July 2010 (CX246851) estimates there are at least 350,000 Hazaras in Quetta. In relation to the general security situation it reports in part:
 - The security situation in Baluchistan, particularly Quetta, is generally poor. The Hazaran community is specifically affected by sectarian killings of Shia by armed Sunni groups as well as targeted killings of minorities and 'outsiders' by ethnic Baluchi elements ...
 - There have been no convictions for any of these killings so far. Hazara community leaders have urged their people to refrain from responding violently to these attacks. Hazaras are also affected by kidnappings for ransom, which

have become a lucrative way for armed militant groups in Baluchistan to raise money ...

- The Hazaras themselves do not distinguish between long term residents and new arrivals. The Hazara community in Quetta is described as 'close-knit' and has a number of internal structures. ... The bulk of Hazaras in Quetta are members of the Shia sect, although they were described to post as largely non-practising, with only the older members of the community regularly attending mosques ...
 - The Government of Baluchistan recognised the Hazara tribe as "local" in 1962 and therefore all Hazara residents at that point became citizens on Pakistan. Although this decision did not have an official cut-off point, Hazaras arriving in more recent times have found themselves unable to register legally for National Identity Cards (NICs) or to access other services. The lack of a National Identity Card is a barrier to obtaining legal employment (particularly in the public service or as a professional) and establishing a business. Cards can be obtained illegally. One local contact estimated around half the Hazara population in Quetta had NICs.
 - Hazaras place a high value on education. Almost 90 per cent of children, both boys and girls, receive education and are encouraged to consider further education options, where family circumstances allow. Almost all Hazaras in Quetta can speak Urdu and English, in addition to Hazaragi. However employment opportunities for Hazaras in Quetta were described as 'limited'. In addition to difficulties faced by Hazaras who do not have NICs, Quetta is isolated from the rest of the country, both by distance and poor transport infrastructure. The security situation in the province has discouraged foreign investment and the chronic lack of water, including in Quetta, has hampered development.
 - The combination of the economic and security situations in Quetta has led the Hazara community to seek to migrate, either legally or illegally. Large communities of Hazaras exist in the US (30,000), Canada, Scandinavia, Greece and Australia (20,000). In Australia, most Hazaras had settled in Sydney or Melbourne. One political leader told post he had urged his constituents to stay and invest in the community in Quetta, but the response was that they felt it was not safe to do so, because "one day we will be killed".
- *Country of Origin Information Report: Pakistan*, 29 September 2011 UK Border Agency:
 - 19.177 The United States Commission on International Religious Freedom's *Report 2011* noted that (pp 112 – 113):
 - During the reporting period, Pakistan experienced a qualitative change in religiously-linked violence due to the unprecedented level of targeting of government officials, members of the majority faith whose views contradicted those of extremists, and members of minority faith communities... Violent extremists also targeted Shia processions and mosques during the reporting period. On September 1, 2010, three bombs were detonated during a Shia religious procession in Lahore, killing 29 and wounding more than 200. The procession of about 35,000 marchers was marking the anniversary of the death of Imam Ali, the first Shia imam. Days later, on September 3, a suicide bomber attacked a Shia procession in Quetta, killing 43 people and wounding 78. Tehrik-i-Taliban claimed responsibility for both. On January 25, 2011, a

suicide bomber attacked a Shi'a procession in Lahore. Seven people were reported dead and 25 wounded.

- 19.178 Jane's *Sentinel Security Assessment* for Pakistan noted in its chapter on Security, updated 9 May 2011, that:
 - Pakistan has experienced a persistently high level of sectarian violence throughout much of its history, with the minority Shia Muslim community, which makes up approximately 20 per cent of the population, clashing with the majority Sunni Muslims. Violence intensified in the 1980s, following Sunni concern over the spread of Shia influence after the Iranian revolution and the subsequent funding of Sunni madrassahs and institutions by Saudi Arabia throughout the Middle East. The key anti-Shia extremist group, Lashkar-e-Jhangvi (LeJ), remains a key threat to security, despite being banned in 2002.
- 19.179 The Human Rights Commission of Pakistan Report 2010 recorded a number of attacks that occurred during 2010 (p 125):
 - As many as 418 people were killed in violence against various Muslim sects in the year under review, including 211 in suicide attacks. A total of 963 people were injured in such attacks, including 628 people in suicide attacks. In sectarian attacks in 2010, the terrorists targeted religious processions and mosques of the Shia sect in Rawalpindi, Sargodha and Lahore; processions of Barelvis on Eid Miladun Nabi in Faisalabad and Sargodha; a Sunni Ittehad rally in Pakpattan; shrines and mosques in Lahore, Pakpattan, Mian Channu and Bahawalpur; target killing of activists of the Ahl-e-Hadith sect and banned Sipah-e-Sahaba Pakistan in Lahore and Bahawalpur, respectively ...
- 19.181 The United States Department of State's *International Religious Freedom Report: Pakistan 2010* observed that:
 - The Ministry for Minorities established interfaith committees at the district level to meet monthly to address issues of religious tolerance and interfaith dialogue. Committees were established in 30 districts in Balochistan, nine districts in Sindh, and 13 districts in Khyber Pakhtunkhwa. According to the Ministry, consultations to establish committees in other provinces are ongoing. During 2009-10 the Ministry approved 70 development projects for minorities worth 68.4 million rupees (\$804,706), with a special fund worth 16.1 million rupees (\$189,411) distributed among minority students for scholarships from 2008-2010.
- 19.182 The *International Religious Freedom Report* cited:
 - Sectarian violence continued in different parts of the country during the reporting period, with attacks on the Shia minority, particularly in Dera Ismail Khan, Quetta, Hangu, Kohat, Tank, DG Khan, Gilgit, and Kurram and Orakzai Agencies. Throughout the reporting period, attacks, threats, and violence by religious extremists occurred across the country, especially in Khyber Pakhtunkhwa.
 - Attacks on houses of worship, religious gatherings, and religious leaders linked to sectarian, religious extremist, and terrorist groups resulted in

hundreds of deaths during the reporting period. Sectarian violence between Sunni and Shia extremists continued during the reporting period, and several religious minority individuals and communities were the targets of religious violence across the country.

- 19.183 BBC News, in an article entitled ‘Pakistan’s evolving sectarian schism’ dated 25 January 2011, provided a list of major attacks on Shias in 2009/10 and into 2011. The article noted:
 - The list of recent sectarian attacks makes for grim reading:
 - January 2011: At least 10 people killed after twin blasts targeted Shia Muslim processions in Lahore and Karachi
 - September 2010: At least 50 people killed in a suicide bombing at a Shia rally in Quetta, south-western Pakistan
 - July 2010: Sixteen Shias killed in an attack on Shias in north-western tribal areas
 - February 2010: Two bombs in Karachi kill at least 25 Shias and injure more than 50
 - December 2009: At least 30 people killed and dozens injured in a suicide bombing on a Shia procession in Karachi
 - Feb 2009: Bomb attack on a Shia procession in Punjab leaves 35 dead.
- 19.184 The South Asia Terrorism Portal (SATP) provided statistics on sectarian violence in Pakistan for 2010 (based on news reports), stating that there were 509 deaths and 1170 people injured. From January to August 2011, SATP recorded 16 sectarian incidents, 135 deaths and 248 people injured (‘Sectarian Violence in Pakistan: 1989-2011’ <http://www.satp.org/satporgtp/countries/pakistan/database/sect-killing.htm>).
- 19.185 In correspondence from the Foreign and Commonwealth Office (FCO) to the UK Border Agency, dated 9 January 2009, an FCO official stated that:
 - ...there are incidents of sectarian violence – mainly Sunnis against Shias – in the parts of Pakistan where the Shia minority are most prevalent. For example, in January 2007, during the Shia festival of Ashura, at least two suicide bombers attacked Shia gatherings and two rockets were launched at a Shia mosque in Bannu. Authorities respond to these attacks, although in Pakistan police investigation etc does not equate to protection or necessarily to justice through legal proceedings.
- 20.07 The Human Rights Commission of Pakistan noted in its annual report, *State of Human Rights in 2009* (HRCP Report 2009), published February 2010, violence against the Hazara-Shia community in Balochistan. The report stated:
 - “More than 260 people belonging to Hazara community in Quetta had been killed in target shooting and more than 1000 people suffered injuries since 2003. The Hazara community believed that security agencies and the government were protecting and patronising the

perpetrators of crimes against the Shia community. As an example, they presented the case of two convicted criminals, Usman Saifullah Kurd and Shafeeq Rind, belonging to the anti-Shia organization, Lashkar-i-Jhangvi, who had mysteriously escaped from a well-guarded jail of Anti-Terrorist Force (ATF) in Quetta Cantonment where no one could enter without a pass, implying they were helped by some elements within the security agency.

- “A number of lawyers belonging to Shia Hazara community were killed in targeted shootings during the year 2009. Sectarian hit men were said to be responsible; they had declared in courts that on release they would again kill Shias. The Shia-Hazara community seemed to have lost trust in the provincial government’s capability of bringing perpetrators of the crime to justice.”
- 20.07 *The Daily Times* reported on 6 February 2009 that:
 - “Hazara tribesmen in Balochistan, numbering around 300,000, are currently living under unprecedented terror, uncertainty and insecurity.
 - “The tribe, residing in Balochistan for more than a century, have been subject of discrimination by the majority Balochs and Pashtuns due to their ethnic background and religious affiliations. While a majority of Hazaras is Shia, local Baloch and Pashtun are Sunnis. The Hazaras in Quetta have been targeted by some religious quarters for some time now, with more than two dozen men from the minority tribe having been killed in the last two months. Lashkar-e-Jhangavi (LJ), a banned Sunni organisation, has accepted responsibility for most of the killings.
 - “The common notion that the LJ was solely targeting Shia scholars was negated when it claimed responsibility for the January 26 murder of Hussain Ali Yousafi, chairman of the Hazara Democratic Party (HDP) - an accepted and acclaimed secular and democratic leader.”
- ‘*Balochistan Shias to hold rally on May 23rd in Quetta against the genocide of Shia in Balochistan*’, 19 May 2010, www.shiitenews.com.
- ‘*Terrorist attacked Shia in A Pakistani Hospital*’ Ahlut Bayt News Agency, undated, <http://www.abna.ir/print.asp?lang=3&id=184486> [accessed 3 August 2012].
- *Pakistan Assessment 2010*. South Asia Terrorism Portal (website www.satp.org) details attacks in the Federally Administered Tribal Areas (FATA) and the province formerly known as the North West Frontier Province (NWFP). In September 2010 it reports attacks on Shia followers in Quetta and in Lahore in which around 100 people were killed. Other attacks are reported in the Punjab and other areas.
- ‘The Anarchic Republic of Pakistan’ Ahmed Rashid. *The National Interest* September – October 2010) reports in part ‘prominent Shia technocrats – politicians, doctors, architects, bureaucrats and judges – have been singled out for assassination’.
- ‘Pakistan: 2009: Year of Terrorism’ 2009, Daily The Pak Banker, 25 December. Reports on attacks in Quetta including of three Shia Hazara policemen killed on Siryab Road in September 2009.

- *Mastermind of sectarian killings held in Quetta*, Daily Times, Akbar, M.S. 13 November 2009, reports on the killing of Hussain Ali Yousafi, chairman of the Hazara Democratic Party and that police arrested Lashkar-e-Jhangvi (LeJ) member Hafiz Muhammad Usman Muhammad Shahi, aka Abbas, in relation to 16 cases of terrorism, resulting in the death of at least 28 members of the Shia-Hazara community. Abbas reportedly confessed to being involved in the murder of Hussain Ali Yousafi.
- *'Retired SP among three shot dead in Quetta'*, Dawn, 18 March 2009 reports on three Hazara construction workers shot dead in Quetta. Shahid, S. 2010.
- *Pakistan: The Militant Jihadi Challenge*, International Crisis Group, Asia Report no.164, 13 March 2009, p.16. Reported that the "Pakistani Taliban and other Sunni radical groups including Lashkar-e-Jhangvi and [Sipah-e-Sahaba Pakistan] SSP" were responsible for recent attacks.
- *Pushed to the wall*: Report of the Human Rights Commission of Pakistan fact-finding mission to Balochistan in 2009. Reports in part on Lashkar-e-Jangvi members captured in Quetta, including Usman Saifullah Kurd and Shafeeq Rind. Both men managed to escape from Quetta's "very well-guarded" Anti-Terrorist Force (ATF) gaol. This has fuelled a common belief among Hazaras that "security agencies and the government are protecting and patronising the perpetrators of the crimes against the Shia group"; many Hazaras believe that the escape of these men from such a facility must have been "facilitated by the security agencies." One of the two escapees, Shafeeq Rind, has since been recaptured. The report also details in part:
 - The relative prosperity of Hazara community, with handsome amounts of remittances coming home from a large number of expatriates, is cited as another reason behind increasing crimes against the community members. It seems a campaign has been launched to terrorise the Hazara community so that they leave Quetta by selling their businesses and property at throwaway prices. Pamphlets have been left at their homes telling them to sell their houses and leave. Incidents of abduction for ransom are common in Quetta and the members of Hazara community are abducted on sectarian basis. The ransom amount ranges between one and four million rupees...
 - more than 260 people belonging to the Hazara community in Quetta have been killed in target shooting and more than 1,000 people injured ...not a single person has been convicted for carrying out these killings so far".
- *Country Reports on Human Rights Practices 2010 – Pakistan*. US Department of State 8 April 2011, Section 1.d. Reports the degree to which state protection is available and is effective varies from province to province and from agency to agency. In 2010 police effectiveness in providing state protection ranged "from reasonably good to ineffective ... "police often failed to protect members of religious minorities, including Christians, Ahmadis, and Shia Muslims, from attacks".
- *Reforming Pakistan's police*, International Crisis Group, Asia Report No. 157, 14 July 2008, p.1, p.14. Reports on the Pakistan police force: "after decades of misuse and neglect, Pakistan's police force is incapable of combating crime, upholding the law or protecting citizens and the state against militant violence ... it is hardly surprising that this under-staffed, ill-equipped, deeply politicised, and pervasively corrupt force has

failed to counter the growing extremist menace that is undermining the stability of the Pakistani state, claiming hundreds of lives in terror attacks”.

- *Media In Balochistan: Blighted But A Brave New World Beckons*. A. Khan. 2010. Intermedia, p.77. Quetta is described by a recent source as a “garrison city” due to its large army presence. State protection of Hazaras in the city appears highly inadequate given the ongoing campaign of attacks on the community and the failure of state authorities to prosecute the vast majority of perpetrators. Moreover, Hazara members of the police force have been victims of targeted killings by Sunni extremists.
- *Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*. UNHCR May 2012. Reported in part “Shias, are the target of violent attacks by Sunni fundamentalist groups throughout the country ... In the last year sectarian violence targeting the Shia minority, including through attacks on Shia processions and religious gatherings and sites, reportedly continued. ... Sectarian violence has resulted in hundreds of deaths and large scale displacements from Kurram ... Law enforcement agencies are reportedly unable or unwilling to protect religious minorities including Shia. Sunni militant groups ... reportedly operated with impunity, including in areas where State authority is well-established, such as Punjab province and Karachi”.

27. In relation to Afghanistan I have considered the following general material.

- *The Taliban*, Program for Culture and Conflict Studies, US Navy Postgraduate School. undated. (and various other articles from the Post Graduate School and on their website).
- *Historical Dictionary of Afghanistan*, Adamed, Ludwig. 2003. The Scarecrow Press Inc, 3rd Edition, Lanham.
- *Afghanistan: Massacres of Hazaras in Afghanistan*, UNHCR Refworld, 1 February 2001, C1301.
- *Hazara People*, Wikipedia, The Free Encyclopaedia.
- *Situation of the Hazara Minority*, 21 February 2010 DFAT advice. CX240092
- *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, UNHCR, July 2009. Refworld.
- *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, UNHCR, December 2010. Refworld
- *Afghanistan, Country Reports of Human Rights Practices 2009*, US Department of State, 11 March 2010.
- *Afghanistan – The UK Home Office Border Agency COI Report 16 November 2009*.
- “A Campaign of Murder and Intimidation: Insurgent Abuses against Afghan Civilians”, Independent Human Rights Commission December 2008 (CIS 16874).
- *Afghanistan: The Taliban Book of Rules*, Newsweek, 12 December 2006, Dickey C.
- *Current Trends in Ghazni Province: An interview with Shah Gul Rizaie*, Kabul Centre for Strategic Studies, 1 July 2008, CX241963.
- *The Current Situation in the Jaghori District of Ghazni*, Finnish Immigration Service. 10 December 2009. CIS 18219.
- *Situation for Hazaras in Ghazni, Uruzgan and Dai Kundi Provinces*, DFAT Advice, Country Information Report No 09/14; 3 February 2009. CX219955.
- *Conflict Analysis: Jaghori and Malistan Districts, Ghazni Province*, Cooperation for Peace and Unity, April 12, 2009.

- *On the Position of the Hazara Minority in Afghanistan*, Professor W. Maley, 20 May 2010; and further report of 28 June 2010.
- *Afghanistan: Violence between Kuchi-Taliban and Hazara a new cause for concern*, Atlantic Community, Sharan, T. 3 June 2010. CX 244594.
- *The Battle for Pakistan: Militancy and Conflict in Kurram*. New America Foundation. Mansur Khan Mahsud. April 2010.
- *Ministerial Statement on Afghanistan*, Senator John Faulkner, Minister of Defence, 23 June 2010 (ref 100623).
- *Return to Afghanistan*, Patrick Coburn. London Review of Books, Vol 31 No 11, 11 June 2009.
- *Jaghori to Ghazni way is Closed*, blog <http://www.jaghori.blogfa.com>
- *Police find 11 beheaded bodies in Afghan South*, Reuters, 25 June 2010.
- *Reports throw doubt on tough refugee stance*, The Age, Tom Hyland 18 April 2010.
- *Hazaras Hustle to Head of Class in Afghanistan*. The New York Times, 1 April 2010.
- *The Hazara Carnage in Afghanistan*, Press TV, by Tahereh Ghanaati, 27 June 2010.
- *Sending Hazaras back Extremely Dangerous*, Sydney Morning Herald. Kirsty Needham, 6 July 2010.
- *Overture to Taliban Jolts Afghan Minorities*, by Dexter Filkins, New York Times, 26 June 2010.
- *The Northern Front: The Afghan Insurgency Spreading Beyond the Pashtuns*. Afghanistan Analysts Network, 24 June 2010.
- *The Taliban in Central Afghanistan, A New Taliban Front?* Thomas Ruttig, Afghanistan Analysts Network, website 21 June 2010.
- *AKE security briefing*, International News Safety Institute, 20 November 2009. CX 236716.
- *"Hazaras – Afghanistan's Outsides"*, Phil Zabriskie, National Geographic Magazine, February 2008.
- *"Base Strike Shows Taliban Rising Resolve"*, News Asia 24 May 2010, also reported in The Guardian, article dated 19 May 2010.
- *"Afghan leader warns US effort against Taliban is failing"*, Washington Examiner, National Security Correspondent, 20 May 2010.
- *Afghan Government Curtails Reporting on Insurgent Attacks* – Committee to Protect Journalists, 2 March 2010. Refworld.
- *"Afghanistan: Possibility of Relocation within Afghanistan to those who fear the Taliban ... organised criminal gangs and Mafia ... the Government"*. Ireland: Refugee Documentation Centre. 4 March 2010, Q11779. UNHCR, Refworld.
- *Behind the Taliban's resurgence in Afghanistan*, Time, 16 September 2009 www.time.com
- *"Counter insurgency"*, David Kilcullen 730 Report describing the Taliban shadow government in Afghanistan, 730 Report interview on 1 July 2010.
- *Amnesty International website*- various articles and reports
- *No Sign until the Burst of Fire: Understanding the Pakistan-Afghanistan Frontier*, Thomas H. Johnson and M. Chris Mason, International Security Journal, Vol 32, Issue 4, pages 41-77, Spring 2008. The Belfer Centre of Science and International Affairs, John F Kennedy School of Government, HARVARD.
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- *Taliban Kill 9 Members of Minority in Ambush*, Alissa J. Rubin, The New York Times, 25 June 2010.
- *Fighting for land and water: Tribal Conflict in Afghanistan*, 26 July 2007, the Economist. 9558303.
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- *Blast Kills 15 civilians in Afghan bazaar – Police – Uruzgan Province*, Reuters UK, 14 January 2010.
- *Afghanistan: UN Pulls Workers*, Alissa J. Rubin, The New York Times. 27 April 2010.
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- *AFGHANISTAN: Situation in Ghazni Province - views of Member of Parliament*, Australia: Department of Foreign Affairs and Trade (DFAT), 15 July, 2010, CX246263.
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- *The Situation of Hazaras in Afghanistan*, Associate Professor Alessandro Monsutti 19 August 2010.
- *Taliban make gains in Afghanistan's forgotten north – working with criminal gangs, Taliban are planting bombs and extorting money in Afghanistan's northern provinces*. Hal Burmton, The Christian Science Monitor, 15 November 2009. <http://www.csmonitor.com>
- *Taliban*, The World Almanac of Islam The American Foreign Policy Council. 14 July 2011 <http://almanac.afpc.org/taliban>
- *Defining Success in Afghanistan Frederick W Kagan and Kimberly Kagan*. A Report of the American Enterprise Institute and the Institute for the Study of War. 2011.

The overall situation in Afghanistan:

The above information indicates the situation in Afghanistan is complex with varying views on some issues. There is common ground amongst all the reports and experts. That commonality is that the war in Afghanistan is continuing with the statistics on deaths and attacks caused by the Taliban being the worst in 2010 and 2011 since the resurgence of the Taliban - and over the last 10 years. Further, all indications are that 2012 will be statistically worse for the US led coalition and civilian casualties than 2010 and 2011 (which were worse than 2009). The Taliban (with the assistance of Al-Qaeda and other insurgent groups) are increasing their control over provinces including current offensives in the South (around Kandahar and Kunduz), and North (Baghlan and Badakhshan), and clear indications of current presence in nearly all provinces including Ghazni. They are present in all Pashtun areas, have set up quasi-government institutions and have reintroduced or enforced Sharia law in areas of their control (particularly in Helmand, Kandahar, Zabol, Oruzghan, Paktia, Paktika).

The insurgency is not limited to Afghanistan and is a regional issue affecting Pakistan's Northwest Frontier Province (NWFP), and the FATA areas. In those areas the Pakistan government has initiated a news blackout. Reporting however, indicates that the Pakistan government is on the one hand battling the Taliban in some areas, and in others (such as Waziristan) has reached a political accord with the Taliban. Fighting in the Kurram Agency region (a strategic entry point into Afghanistan for Taliban fighters) is current between the Taliban supported by Sunni Pashtun tribe militias, against Shia militias mainly of the Turi tribe (a Pashtun Shia tribe).

The position of Hazaras is historically not disputed. They have been a target of societal discrimination for at least the past 100 plus years and have been subject to several notable massacres, the most recent being in the late 1990s and early 2000s at the hands of the Taliban who were able to kill them with impunity. That societal discrimination continues today and is deeply embedded in Afghan society. The Hazaras are concentrated in the Hazarajat region, an area surrounded by Pashtun tribes, and over the years subject to ongoing neglect from all governments. The area is mountainous, accessible by few roads and at times effectively cut off from the rest of the country. At the current time the roads connecting the Hazarajat region with other parts of the country are being cut by the Taliban on a daily basis, with reports of decrees curtailing movement and the Taliban intercepting mobile phone records. The insecurity around the Hazarajat is increasing and there are credible reports that the Taliban, if they chose to, could overrun the Hazarajat in a matter of hours. There are also reports of access into Kabul being effectively cut by the Taliban with the exception of the road north through the Panjshir Valley, Salang and Mazar.

Whilst some commentators discuss the origins of the Taliban, and how they operate, one aspect of their history is clear - the Taliban are in essence a Pashtun dominated religious Sunni militia of significant resources. Those resources include political and financial backing - most probably from Saudi Arabia and Pakistan, and they enjoy support from many Pashtuns in both Afghanistan and Pakistan. The rise of the Taliban came in a complex historical context following from the Paktunistan political movement; this was a Pashtun unification movement. They also arose from the proliferation of Sunni madrassas in Pakistan.

While the Taliban did suffer a military defeat, and were ousted from Kabul in 2001/2002 they were able to leave with virtually all of their manpower and leadership intact and set

up in Pakistan. They have since then viewed the US backed Afghan governments as usurpers and of no legitimacy. Since then they have gained military momentum and are operating on several insurgent fronts in the NWFP, and FATA of Pakistan, and in most areas of Afghanistan (about 75%). It is estimated their numbers are stable at around 25,000 fighters. The US led invasion of Afghanistan in 2001 seems to have only dispersed the Taliban, and though they have attempted to rid the country and region of the Taliban for the past 10 years they have been unable to do so. There are current indications of the Afghan government considering a political solution to the insurgency, this includes conciliatory discussion at the May 29, 2010 Peace Jirga; and a recent enactment of a law to pardon war crimes committed prior to 2001.

The Taliban are blindly religious and follow a strict interpretation of their Sunni version of Islam. Part of that interpretation is intolerance of others in particular Shia Muslims – of whom the Hazaras are an easily recognisable group. They consider Hazaras as infidel and several of their leaders over the years including Mullah Manon Niazi (Taliban commander during the attack on Mazar-e Sharif in 1998) have said they are not Muslims, and if they do not convert to being Sunni should be killed. Further they state that “*anyone who kills a Hazara will go to Paradise*”. Mullah Omar has recently attempted to move from that previously stated position, though that seems nothing more than a politically motivated statement. Their actual position clearly remains to subjugate all opposition. The Taliban include sophisticated soldiers who are able to intercept telephone calls and they are able to direct mobile telephone blackouts in areas.

Professor William Maley in his June 2010 paper *On the Position of the Hazara Minority in Afghanistan* has indicated that he has profound reservations for any view that would indicate that it is safe to return Hazaras to Afghanistan. He has commented not only is the general situation in the country “profoundly threatening” (a view supported by all major and international reputable reporting agencies), but has also bleakly forecast “there is little reason to be confident that the general situation ... will take a turn for the better in the foreseeable future” On the position of Hazaras at the current time he emphasises longstanding discrimination and persecution; and current atrocities including deaths. He notes the difficulty in obtaining reliable information and a tendency of underreporting. He reports on current activity by the Taliban in Ghazni, indications of a push into the Hazara dominated areas and a blockade of Jaghori. On reconciliation with the Taliban he records the concern that any such accord would have on minority groups such as Hazaras and if any such concession on a local level were to be given to the Taliban “the situation for Hazaras in such provinces could easily be dire, and certainly a fear of being persecuted would not be ill-founded” He has repeated these views in his December 2010 paper. Those views are also supported by other international experts including Associate Professor Monsutti, who notes in part “*The Taliban are following a systematic strategy now including the use of random violence, particularly against Hazaras, to maintain fear and instability. If the Taliban regain sufficient power in Afghanistan the Hazaras are right to fear they will be systematically targeted again, and with renewed vengeance by the Taliban*”.

Many reports detail the increasing violence in the form of killings, kidnapping, robbery by both criminal and Taliban groups in a security heightened and violent state. The linkages between the Taliban, government and criminal groups in control of various parts of the country and in cooperation at times in criminal and drug matters is complex, and it is often the case that it is difficult to tell one from the other. There are credible reports of

government workers and MPs working for the government during the day and the Taliban at night. Similarly, the many reports of “*Kuchi*” nomads heightened recent activity is linked with Taliban involvement and probable orchestration. The “*Kuchi*” are reported to have destroyed 300 villages in the Hazarajat in during 2010 and displaced 1000s of Hazaras. The government has not acted to protect the Hazara.

While every Afghan is at risk in Afghanistan, the Hazara are in a heightened risk situation due to their being readily identifiable through their look, language, names and religion. The latest UNHCR guidelines note as a group currently with potential risk profiles “members of minority religious groups and persons perceived as contravening Shari’a Law”. The guidelines specifically note that members of the Baha’i faith as having been declared blasphemous in 2007 and converts as apostate. The Guidelines also note as a group with a potential risk profile “Members of (Minority) Ethnic Groups” and notes that since the fall of the Taliban “*ethnically motivated tension and violence has diminished*”. The report notes that “*Afghanistan is a complex mix of ethnic groups*” and circumstances over the years has resulted in movement of peoples to areas where they are no longer a majority and may hence be at risk. The types of issues cited as potentially resulting in increased risk include land disputes, illegal occupation, and pursuit of restitution. The report notes ongoing ethnic based discrimination in areas of access to services, education and employment. The Hazaras are given as an example and it is noted they continue to face “*some degree of discrimination*” and that in the Hazarajat the security situation has worsened in the Ghazni District with Taliban attacks in Jaghori which is “*increasingly isolated*”, and security on access routes “*worsening*”. There are “*regular*” reports of Taliban and “*criminal groups*” conducting “*ambushes, robberies, kidnappings and killings*”. 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*”.

Returnees from either the West (i.e. Australia) or from Pakistan are at risk. This is not only due to Hazaras being identifiable, as mentioned above, but also because the fact of someone from an area having fled the country, and been to a country such as Australia, will be widely known in the rural communities. The Taliban would be aware of this through informers, and it is known they keep lists of those of adverse interest. It is possible they would be considered as government or western spies. Many of those asylum seekers forcibly returned from Nauru were found by Amnesty International to have been killed by the Taliban. The situation for people who have lived for many years away from Afghanistan – or never have been there and lived their lives in Iran or Pakistan is also one of heightened risk. This is because they are identifiable in their dress and accent. It is probable they would not know the current situation and have knowledge to allow them to integrate back into their rural communities and would also be informed on to the Taliban.

In relation to state protection in Afghanistan such is virtually unavailable throughout the country with the exception of parts of Kabul. In the areas of Hazarajat there is little government presence.

Kabul has been cited in some reports as a place of possible relocation; however this is prefaced with reports of any relocation in Afghanistan to any place being difficult and often associated with undue hardship in the absence of effective links and familial associations. The reality is that for most people relocation in this heightened state of

conflict is not a realistic opportunity. The current UNHCR Guidelines note relocation should be considered on a case by case basis and taking account of the overall “security, human rights and humanitarian environment” and considers various factors as relevant to such a consideration: traditional support mechanisms, basic infrastructure and services, livelihood opportunities, criminality rate particularly in urban centres, and the scale of displacement.

28. In relation to Uruzgan Province I have also considered:

- *The Dutch Engagement in Uruzgan 2006 to 2010*. A TLO socio-political assessment. August 2010.
- *Uruzgan: World Food Programme*.
<http://foodsecurityatlas.org/afg/country/provincial-Profile/Uruzgan>

Uruzgan province is located in the Southern region of the country having borders with Zabul and Kandahar in the South, Helmand in the East, Daikundy in the North and Ghazni in the West. The province covers an area of 12640 km². Around three quarters of the province (72%) is mountainous or semi mountainous terrain while a little more than one-fifth (21%) of the area is made up of flat land. Almost all (97%) of the population of Uruzgan lives in rural districts while 3% lives in urban areas. Around 52% of the population is male and 48% is female. Pashtu is spoken by 90% of the population and 90% of the villages. The second most frequent language is Dari, spoken by the majorities in 46 villages and approximately 19,000 people.

- *Uruzgan Attack Kills 17 on Afghan Government Compound*, by D Riechmann and M Khan, Associated Press as featured in World, Huff Post. Posted 28 July 2011. Reports on suicide bombers and militants armed with heavy weapons launched twin attacks targeting the Afghan government and its allies killing at least 19 people. “Insurgents have been assassinating Afghan officials and attacking government installations to demonstrate they remain a potent force despite pressure from the U.S.-led military coalition. They are also out to show Afghan President Hamid Karzai's administration is too weak to provide security as foreign troops begin to withdraw from the war”. The attack was in Tarin Kot, the capital of Uruzgan province.
- *Oruzgan Province*, Nautilus Institute for Security and Sustainability.
<http://nautilus.org/publications/books/australian-forces-abroad/afghanistan/oruzgan-province-also-uruzgan/>
- *Understanding the Taliban and Insurgency in Afghanistan*. Thomas H. Johnson and M. Chris Mason. Foreign Policy research Institute. Winter 2007. Pages 71 to 76. This details that Ghilzai Pashtuns are concentrated in the southeast including in Dai Kundi, Oruzgan, Zabol, and Gardez and the Katawaz region of Paktika. Their importance in the insurgency is said to be as where they predominate the insurgency is at its strongest.
- An “*Interview with the Islamic Emirate of Afghanistan military official for Oruzgan province*” dated 9 September 2009 from at Al Samode, a jihadist outlet. appears at on several internet site (eg <http://www.alqimmah.net/showthread.php?t=9847>, <http://ansarnet.info/showthread.php?t=12376> and http://www.defensieforum.nl/Forum/taliban_benoemen_nieuwe_commandant_uruzgan-t17125.0.html;wap2=) claims that:

All of the districts of the province are in the hands of the Mujahideen with the exception of some urban centers, and the enemy is living in a state of strict siege. Movements and supplies to his fixed centers are through aircraft and helicopters. The Mujahideen can shut all of the enemy's supply and logistics routes at any time they wish. The main route for supplying his forces concentrated there is by the Qandahar-Oruzgan road and that road today is under constant observation by the Mujahideen and is for many and consecutive days closed to his military and supply convoys. Now it has been shut down for more than a week”.

FINDINGS AND REASONS

29. I have taken account of the Tribunal's guidelines 'Guidelines on the assessment of Credibility'. Credibility is difficult to assess and in my view should not be made on demeanour or reaction at interview. However, where there are clear inconsistencies or where some claimed history is far-fetched or unrealistic it may be that those claims, after careful consideration, cannot be accepted as being true.
30. The applicant is illiterate and uneducated. His claims have been generally consistent, and his fears are consistent with country information as to the situation of Hazaras and Shia in Pakistan where he has lived all of his life, and also in Afghanistan where he has never lived. I am satisfied he has been able to fully explain his concerns and fears in his application and to the delegate. Overall, I accept the applicant's recounting of his claims as true and find that he is a credible witness.

Assessment of claims:

31. A consideration of whether a person falls within the Convention definition of a refugee requires a reasoned consideration of the evidence and a reasoned appraisal of the reasonably foreseeable future.
32. I accept as true that the applicant is a citizen of Afghanistan. He is undocumented and explained to the delegate that he has never had any and was illegal in Pakistan. His parents had been born in Uruzgan, as were his [siblings]. None had any documents and were never registered with the Pakistan authorities. He speaks Hazaragi. There is no evidence of weight that would cause me to not accept that the applicant is other than who he claims. The Delegate had some reservations though accepted the applicant was a citizen of Afghanistan. I have considered those matters and do not consider they are of any concern. I accept as true that the applicant lived in Pakistan illegally and without documentation. His claims accord with what is known of the large undocumented Hazara population in Pakistan. I accept he does not have a presently existing right to enter and reside in another country as meant by section 36(3), I also accept that he does not have rights and obligations attached to the possession of nationality in any other country as meant by Article 1E of the Convention.
33. The applicant has a general fear of harm in Afghanistan from the Taliban and from Pashtuns in Uruzgan Province. He fears harm as he is Hazara and Shia and also as he has never lived in Afghanistan and had been residing in Pakistan.
34. I have carefully considered his claims and history and accept as reasonable to believe that if he were to return to Afghanistan in the reasonably foreseeable future he would be seriously harmed and possibly killed in Uruzgan Province. As noted by the delegate "the province has been subject to a high level of insurgency activity for many years. Uruzgan is

predominately populated by Pashtuns and all areas of Uruzgan have been assessed to have high levels of insecurity with the Taliban controlling up to 60% of the province ... There is little doubt that the situation for civilians in Uruzgan is severe. Hazaras, being a minority in the area may be particularly at risk". The delegate further accepted that the applicant would be at further risk as "Hazaras are a small minority in an overwhelmingly Pashtun area, and there have been and there continue to be animosities between Pashtuns and Hazaras in the Ghazni/Uruzgan border area. The applicant has little knowledge of the area and would not know which areas to avoid or how to negotiate himself out of trouble if anything happened. The applicant has no support network in Uruzgan who could assist him if he ran foul of either the Pashtun or the Taliban". I agree with the reasoning of the delegate.

35. The situation in Afghanistan is complex and over the past several years there has been a well-documented history of serious harm for particular groups in Afghanistan at the hands of the insurgent Taliban and local Pashtuns (including Kuchis). One of the most notable groups to fear harm and be harmed has been the Hazaras. Other groups specifically targeted have included political opponents of the Taliban and supporters of the Afghan government; and supporters of and workers for any international group such as aid agencies, the UN and the foreign military forces present. The Taliban are still present in Afghanistan, are militarily competent and any military solution seems at the current time unlikely. Whilst I understand there have been improvements for Hazaras on a number of levels – academically and politically – these aspects of life need to be realistically assessed in light of the historical evidence. They point more to a lessening in official discrimination rather than to a lasting improvement, or a lessening in possible persecution at the hands of the Taliban. In Afghanistan at the current time there is a war, the situation is volatile and in such a situation the possibility of harm for those who are considered as socially marginal – such as Hazaras - would be one of increased vulnerability and risk of harm. This is made even worse given recent history of targeted massacres and killings of Hazara by Taliban and their supporters. Given these circumstance, the ongoing conflict and the current limited capacity of the Afghan government, it is apparent that they are unable to provide State protection other than in limited parts of the country and even then in a restricted capacity.
36. As set out under Relevant Law above, one or a combination of the Convention grounds must be the essential and significant motivation for the persecution. In the applicant's situation I accept that the motivation to harm the applicant is *for reasons of* his being Hazara and Shia and in combination with his being a returnee from Pakistan. I accept that the essential and significant reason, as meant by section 91R(1)(a), is as he is Hazara and Shia. I accept that being killed is serious harm amounting to persecution as meant by section 91R(1)(b) of the Act. I accept that this harm is systematic and discriminatory conduct as meant by section 91R(1)(c).
37. The delegate found that the applicant could in the circumstances reasonably relocate to Kabul. It is submitted by the applicant's advisor that it is not reasonable for him to relocate as he "does not have protection means in Afghanistan including family ties, community support, social welfare and settlement as the applicant has never been in Afghanistan".
38. In the applicant's particular circumstances he has never lived in Afghanistan or Kabul, he is uneducated and illiterate, and he does not know how to operate and behave in Afghanistan. The delegate notes that the applicant is single and with no dependants. He claims, and I accept as true, that his parents, his sister and her children were dependent on him in Pakistan. If he is returned to Afghanistan and to Kabul it is reasonable to conclude

that he would be responsible for them there and they would be there with him. Reports relating to the reasonableness of relocation are prefaced with relocation in Afghanistan to any place being difficult and often associated with undue hardship. As to whether a person can reasonably do so is dependent upon their circumstances including effective links and familial associations. The UNHCR Guidelines note relocation should take account of the overall “security, human rights and humanitarian environment” and considers various factors as relevant to such a consideration: traditional support mechanisms, basic infrastructure and services, livelihood opportunities, criminality rate particularly in urban centres, and the scale of displacement.

39. I have carefully considered relocation in the circumstances of the applicant and find that it is not reasonable for him to relocate to Kabul, or any other major centre in Afghanistan. This is particularly so as he is illiterate, has never lived there, has no support networks or relatives there, and there is an ongoing conflict which would put him at significant risk of harm.
40. Overall, I am satisfied that the claimant has a well-founded fear of persecution as meant by section 91R(1) *for reasons of* a combination of race and religion and as detailed above.

CONCLUSIONS

41. 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).

DECISION

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