

1214851 [2013] RRTA 1 (25 February 2013)

DECISION RECORD

RRT CASE NUMBER: 1214851

DIAC REFERENCE(S): CLF2012/147387

COUNTRY OF REFERENCE: Afghanistan

TRIBUNAL MEMBER: Shahyar Roushan

DATE: 25 February 2013

PLACE OF DECISION: Sydney

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] July 2012.
3. The delegate refused to grant the visa [in] September 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.

CLAIMS AND EVIDENCE

19. 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.

Application for a Protection Visa

The Form

20. According to the information provided in the applicant's protection visa application, he was born in [Village 1], Sang-e Masha, Jaghori District, Ghazni Province, Afghanistan. He resided in [Village 1 until] 2000 when he departed for Quetta, Pakistan. He departed Quetta for Australia in January 2012, transiting through Thailand, Malaysia and Indonesia. He arrived in Australia by boat [in] February 2012.

Statutory Declaration

21. In a statutory declaration attached to his application for a protection visa, the applicant makes the claims set out below.
22. He is a [age deleted: s.431(2)] Shi'a Muslim of Hazara ethnicity. He is a national of Afghanistan.

23. He and his family fled from Afghanistan during the Taliban regime. The Taliban wanted to purge Afghanistan of all Hazaras and Shi'as and this is why he could not remain there safely.
24. His village, [Village 1], Sang-e-Masha, was close to the Taliban's frontier and in about 2000 the Taliban came to his village with the aim of killing Shi'a Hazaras. Upon hearing this news, the applicant and his family fled to the Jaghori mountains and hid there for about one month.
25. They later learnt that about one fourth of the Shi'a Hazara population in their village had been killed by the Taliban. After about a month, they decided to flee to Pakistan
26. He has heard that the Taliban continue to kill many Shi'a Hazaras across Afghanistan, including in Jaghori. Recently, during the 2011 Ashura Day festivals, the Taliban killed several innocent Shi'as who were celebrating.
27. If he were to return to Afghanistan, the Taliban would be able to find and seriously harm or kill him. Although he no longer has any family in Jaghori, he lived there for several years and the Taliban and their associated insurgent groups would be able to locate him owing to his family lineage and distinctive Hazara facial features.
28. He is unable to return to or relocate within Afghanistan. He does not have the educational or employment background to be able to subsist or support his [family]. His family does not have any land or property in Jaghori. Further, he does not have any friends or family in Afghanistan who would be able to support him.
29. If he were to return to Afghanistan, he would be forced to travel to Pakistan to visit his family. As he is unable to enter Pakistan legally, he would be forced to travel there on the Afghanistan-Pakistan highways, which are extremely dangerous, especially for Shi'a Hazaras, and are heavily patrolled by the Taliban and their associated insurgent groups.
30. He has no right to enter and reside in Pakistan, where he faced constant discrimination and is at risk of serious harm from the Baluchis, Pashtuns, Taliban and their associated insurgent groups. He believes that the insurgent groups in Pakistan operate with the insurgent groups in Afghanistan and therefore he fear harm from all of them
31. The applicant also fears harm owing to his status as a failed asylum seeker.
32. The Afghani authorities often condone the violence instigated by the Taliban and their associated insurgent groups against Shi'a Hazaras and therefore he also fear harm from the Afghan authorities. He does not believe that the Afghan authorities will be able to protect him because he also fear harm from them.
33. In support of his application for a protection visa, the applicant submitted an untranslated copy of an Afghan *taskera*

Departmental Interview

34. The applicant was interviewed by a delegate of the Minister [in] July 2012. The Tribunal has listened to the audio recording of the interview.

35. At the interview the applicant stated that the *taskera* he had submitted to the department is a copy of his original *taskera*, which is still in Afghanistan. The copy was sent to him by his relatives.
36. He stated that his father died a long time ago when the applicant was a child. He stated that he has not been known by any other name.
37. He stated that he is fearful of the Taliban because he had fought against them before leaving Afghanistan some 12 years ago. He stated that they live close to his area and if he were to return, someone could notify them that he has returned. He stated that he did not support any particular party or faction, but a [commander] was based in his area and all the residents in the area were being targeted. He was asked if he had received any threats in Pakistan from his enemies in Afghanistan. He said before he came to Australia the Taliban were still active in Afghanistan and they were targeting Hazaras.
38. The applicant also claimed that if he were to travel on the Afghan-Pakistan highways he would face danger for the reason of his race and ethnicity. He also fears returning to Afghanistan as a returnee who has spent considerable time outside of Afghanistan.
39. The applicant's representative submitted that that applicant fears the Taliban and other insurgent groups in Afghanistan for the reason of his race and religion. Due to his long absence from Afghanistan he would be viewed as an infidel and imputed with an adverse political opinion. He is also a member of the particular social group of elderly Shi'a Hazaras with limited financial capacity, as well as the particular social group of Shi'a Hazaras who have spent time outside of Afghanistan. It was submitted that as an elderly man the applicant has limited ability to support himself and [his family]. He has only worked as a farmer before and in the event that he returns to Jaghori he has no land or means of supporting himself. In addition the applicant's stay and application for asylum in Australia would impute the applicant with an adverse political opinion. She referred to a report by the Edmund Rice centre to the effect that many Afghan returnees from Australia have been subjected to significant harm. She also referred to an ABC report from 2011 suggesting that Afghan authorities have confirmed that they would be unable to guarantee the safety of returning failed asylum seekers.
40. Finally, it was submitted that internal relocation should not arise in the applicant's case because the threat he faces from the Taliban is present throughout Afghanistan. If he were forced to relocate, the applicant would be unable to support himself elsewhere in Afghanistan.

The Delegate's Decision

41. On the basis of the country information before him, the delegate found that the applicant's chance of facing serious harm in Jaghori for the reason of his race and/or religion is remote. He did not consider the applicant's age to heighten his risk of encountering 'significant harm' should he return to Jaghori. The delegate accepted that 'Shi'a Hazaras who have spent a considerable time outside Afghanistan' constitute a particular social group. The delegate noted that it is well documented that many Afghans travel into and around surrounding countries and while the applicant may be identifiable because of his Quetta Hazragi accent, there is no evidence to suggest that he will be at real chance of serious harm for this reason. Or on account of his being in Pakistan for 12 years. The delegate also found that that the applicant does not face a real chance of serious harm on account of an imputed

political opinion as a failed asylum seeker. The delegate was not satisfied that the applicant has a well-founded fear of persecution for a Convention reason. The delegate also found that there are no 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 the applicant will suffer significant harm.

Application for Review

42. The applicant was represented in relation to the review by his registered migration agent.

Pre-Hearing Submissions

43. On 26 November 2012, the Tribunal received a detailed submission from the applicant's representative. The following information was provided to the Tribunal, containing significant charges in the applicant's claims relating to dates.
44. The applicant, a married Afghan citizen, was born in [year deleted: s.431(2)] in Sang-e Masha, Jaghori district, Ghazni province, Afghanistan. The applicant's family in Pakistan assisted him in obtaining 'a newly issued' copy of his Afghan *taskera*, which erroneously indicated that he was born in [a different year], because they were unable to locate his original *taskera*. However, following the applicant's release from [the] Immigration Detention Centre, his family located and sent the applicant his original *taskera* which correctly noted his year of birth as [year deleted: s.431(2)]
45. In about [year deleted: s.431(2)], the applicant commenced one year of informal religious education at the [Village 1] Mosque in [Village 1], Sang-e-Masha. By this time the applicant's family also consisted of [another sibling].
46. In about 1961 (not 1977), the applicant commenced work as a [farm assistant] in [Village 1].
47. In about 1966 (not 1952), the applicant married [name deleted: s.431(2)], a Shi'a Hazara from the Jaghori district, Ghazni province, Afghanistan who was born in about [year deleted: s.431(2)]. In the same year the applicant's father passed away due to natural causes
48. In about [year deleted: s.431(2)], the applicant ceased his work as a farm assistant and commenced a term of compulsory military service, as a soldier, with the Afghan military. In about [year deleted: s.431(2)], the applicant completed his military service and returned to his [Village 1] address. Immediately upon his return, the applicant recommenced his farm assistant work.
49. In about [year deleted: s.431(2)], the applicant's mother passed away due to natural causes (not due to childbirth). By this time the applicant's family also consisted of [family details deleted: s.431(2)]. The applicant's son, [Mr A], was born in about [year deleted: s.431(2)].
50. In about the summer of 2000, the Taliban violence in Afghanistan had reached its peak. There were mass arrests and executions of Shi'a Hazaras. Around this time the Taliban attacked the applicant's village, [Village 1]. The applicant and other Shi'a Hazara men from the village -- led by their warlord [Mr B] - fought against the Taliban. During the fighting the applicant was [hit with a bullet]. The Taliban forces were too strong for the [Village 1]

villagers to resist and they were defeated (about four days after the Taliban's initial attack). The applicant survived the battle and realising that he and his families' lives were in danger - fled with them to the mountain ranges near the [Village 1] village and went into hiding.

51. In about summer of 2000, about one month after they went into hiding, the applicant and his family (his wife, children and siblings) along with other Shi'a, Hazara families - fled from Afghanistan with the assistance of a smuggler. They travelled by night and entered Pakistan unlawfully at [a certain] border crossing.
52. [Specific family details deleted: s.431(2)].
53. It was submitted that the deteriorating security, situation in Afghanistan - especially in the last two years, has left Shi'as and Hazaras, who have a traditional enmity with Pashtuns and specifically with the Taliban, especially vulnerable to being deliberately targeted by Taliban insurgency. The planned withdrawal of US troops and the dramatic cuts US aid have served -to create a situation where the Taliban insurgency is able to target Hazaras with impunity. It was submitted that the weight of country information concerning the persecution of Hazaras supports the view that there is a real chance: the applicant would be subjected to serious harm if returned to Afghanistan. The submission referred news reports and an October 2011 Tribunal decision, differently constituted, discussing the situation of Hazaras in Afghanistan.
54. The submission referred to country information, including the US Department of State's Background Note on Afghanistan and the 2011 Annual report of the United States Commission on International Religious Freedom to argue that the applicant has a well-founded fear of persecution for the reason of his religion.
55. It was submitted that on return to Afghanistan the applicant would take steps to reclaim his family's property in [Village 1]. The submission referred to information relation to land disputes between Hazaras and Kuchis to conclude that the applicant would face harm if he were to do so.
56. The submission also referred to country information in relation to road security in Afghanistan, arguing that 'the applicant would risk serious harm if he attempted to return to his home village, if the applicant was stopped by the Taliban, there is a real chance that he would be identified as a Hazara (due to his facial features) and that enquiries could uncover his flight to Pakistan and the West. This may lead to him being perceived as a spy and bring him to the adverse attention of the Afghan authorities and insurgent groups'.
57. It was submitted that the applicant would be unable to avail himself of State protection and that relocation within Afghanistan is not reasonable in the applicant's personal circumstances. In relation to the latter it was submitted that Shi'a Hazaras are at risk throughout Afghanistan and that they are unable to access effective state protection. The applicant has no family - whom he can rely upon to obtain support or assistance from. The only family the applicant has in Afghanistan is his [relative], [Mr C], who currently resides in the Jaghori. In addition, the applicant is 'an elderly illiterate man' with a [family] to support. He has only worked as a farm assistant in Afghanistan such that he would likely experience severe economic hardship if returned to Afghanistan. Finally, the applicant has spent considerable time outside Afghanistan. As a result, he has adopted a distinctly foreign set of mannerisms and customs, which may cause him significant difficulties in reintegrating into the Afghanistan community.

58. It was submitted that the applicant is a member of the particular social groups of 'Shi'a Hazaras who have departed Afghanistan illegally, fled to Pakistan and/or the West and lodged an application for asylum; and 'elderly impoverished Hazaras without any family or tribal connection'.
59. It was submitted that according to the Edmund Rice Centre the returnees are being actively targeted for having left the country, because they are seen as being favourable to the West, and many are falsely held to have converted to Christianity. The submission also referred to a February 2011 ABC news report stating that the Afghan government has conceded it cannot guarantee the safety of any failed asylum seekers deported from Australia to Afghanistan.
60. In relation to the second claimed particular social group, it was submitted that the applicant has no reliable family or tribal connections in Afghanistan upon whom he can rely and no obvious source of income. He is illiterate and is without any land or property. If returned to Afghanistan, the applicant would likely experience severe economic hardship and discrimination. Further, the applicant has not returned to Afghanistan since he fled in 2000 such that it is likely his accent and mannerisms would be foreign and he would likely be unable to adapt to an Afghan lifestyle.
61. It was submitted that the following factors place him at risk of persecution on return to Afghanistan:
- a. his Shi'a Muslim faith;
 - b. his Hazara ethnicity;
 - c. his illegal departure from Afghanistan;
 - d. that he has not been in Afghanistan since 2000;
 - e. that he spent a significant period of his life in Pakistan;
 - f. that he fled to the West;
 - g. that he sought asylum;
 - h. that he has no travel document, and thus cannot be returned without being brought to the attention of the Afghan authorities;
 - i. that he is elderly and illiterate; and
 - j. that he has no reliable family or tribal connections in Afghanistan.
62. Finally it was submitted that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country there is a real risk the applicant will suffer significant harm.

The Hearing

63. The applicant appeared before the Tribunal on 27 November 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hazaragi and English languages.
64. The applicant was asked about the preparation of his application for a protection visa. He stated that he is illiterate and was assisted by his representative in completing his protection visa and the accompanying statement.
65. The applicant stated that he came to Australia from Pakistan towards the end of last year. Before coming to Australia he had been living in near Hazara Town in Quetta, Pakistan for 12 years. Before that he lived in [Village 1], Jaghori district, Ghazni province. Other than

serving [years] of his compulsory military service in [another location], he did not live anywhere else in Afghanistan.

66. The applicant was asked how long ago he was born or how old he was. He stated that he is [Age 1]. He stated that he did not know when exactly he was born. It was put to him that he did not look like [an Age 1] man. He stated that he has in fact a white beard and his age is recorded in his *taskera*.
67. [Details about marriage and age deleted: s.431(2)]. He was asked why throughout the process he had maintained that he was [a certain age] and he had never mentioned that he was [an older age] or older. He stated that when his case manager asked him for identification documents, his family sent him a *taskera*. That *taskera* was not obtained fraudulently, but his age was not recorded accurately on that *taskera*, because they were unaware of his exact age. When he got out of the detention centre, his family found his old *taskera* and it was sent to the department.
68. The applicant was asked about his parents, he said both his parents are deceased. His father passed away a long time ago and his mother passed away [a number of years] after his father passed away. When asked when his mother had passed away, he said he did not know. When pressed, he said [a number of years] before he went to Pakistan.
69. He was asked about his siblings. [Specific details of siblings deleted: s.431(2)].
70. He was asked about his children. [Specific details of children deleted: s.431(2)].
71. The applicant was asked approximately how long after he was married. [Specific details of wife deleted: s.431(2)].
72. He was asked whether he was ever a member of or associated with any political party, movement or organisation. He said 'no'.
73. He was asked why he had left Afghanistan for Pakistan. He stated that at that time the Taliban was trying to take over the village. He fought for 4 or 5 days with a commander from his village to defend the area. The name of the commander was [Mr B]. He was later killed. He fought with 20 people from his village and 40 or 50 other people from surrounding villages. After the Taliban took over, he fled to the mountains and after that he went to Pakistan. Others fled too.
74. It was put to the applicant that he had said at the interview that the name of the commander was [part of name of Mr B] and that he had fled to Pakistan. He said his name was [Mr B] and he was killed.
75. The applicant was asked why he did not want to return to Afghanistan. He stated that those who he fought against even came and looked for him in Pakistan. He was asked when they came after him in Pakistan. He said once they came to attack him with guns in the area he was selling vegetables, but he ran away. This incident occurred about a month before he came to Australia. He was asked how he knew that these people were the same people he had fought against in Afghanistan 12 years earlier. He said they fought against each other for a few days and they had seen each other. The Tribunal put to him that at the interview he had stated that the people he had fought against in Afghanistan did not threaten him in Pakistan and had never put these claims forward before. He stated that he had mentioned these before.

76. The applicant was asked if there were any other reasons why he did not wish to return to Afghanistan. He said because he had fought against the Taliban closely, they will recognise and find him. It was put to the applicant that the Tribunal had difficulty believing his claims in this regard. In relation to his involvement in fighting the Taliban before 2000, it was put to him that the incident happened a long time ago and lasted for a short period of time. It did not appear that he has a profile or other history to suggest that he would continue to be of interest to the Taliban. He stated that that many of the people who had fought against the Taliban have fled to Pakistan and they won't forget.
77. It was put to the applicant that the Hazara districts of Ghazni Province remained largely protected from violence. Jaghori, Malistan, Nawur and to a lesser extent Ajiristan districts continued to enjoy relatively good security. UN and its agencies in Afghanistan continue to classify Jaghori as a "low-risk" area and its officials were undertaking travel to the district as of September 2012. He stated that the Taliban are all over Afghanistan and even if they are not in his village they are present in the surrounding area. Even if the area is low risk now, it was no before.
78. The comparatively good security environment in Ghazni's Hazara districts has continued to result in relative freedom of movement in these areas for Afghan government officials and the international community. These districts therefore enjoy relatively good access to services and a permanent presence of government officials - including from the Departments of Rural Rehabilitation and Development, and Education. As of September 2012, UN agencies - including international staff - were able to visit these districts. He stated that if they have come for him in Afghanistan, he cannot regard Ghazni as a safe province.
79. It was put to him that according to the information before to the Tribunal roads in Afghanistan are dangerous for everyone regardless of ethnicity and religion. He stated that he cannot return because it's dangerous. He stated that they have occupied his house and they will find him. When asked who exactly has occupied his house, he said the Taliban have occupied his house. It was put to him that the entire population of Jaghori are Hazaras. He said the people who have occupied his house work for the Taliban. He was asked again who has occupied his house. He said his village is on the border between Jaghori and Pashtun areas and Pashtuns have occupied his house. It was put to him that he had never mentioned this claim before. He said he had said these things happened in the past and they might not have been written or he might have forgotten.
80. It was put to him that the Tribunal has found no information in the sources consulted to suggest that Shi'as in Afghanistan face a real chance of persecution by the Taliban. He stated that people who have fought against them are at risk of harm.
81. It was put to the applicant that the 2011 Ashura bombing in Kabul was an atypical occurrence. The Taliban denounced the attack and public comments by Shia leaders and others make clear that an attack of this kind on Shi'as was exceptional and not part of an ongoing systematic campaign. He stated that Taliban are enemies of Shi'as and they do kill.
82. With regard to the economic situation in Jaghori and the applicant's circumstances, it was put to the applicant that the Tribunal appreciated that he has lived away from Jaghori for many years and might face some adjustment difficulties. However, any difficulties he might face would be for a Convention reason. He would have to compete for resources like many others in a similar situation. He stated that his life is in danger and that is more important.

83. The Tribunal noted that he has claimed that is illiterate and has no reliable family or tribal connections in Afghanistan. It was put to him that it was difficult for the Tribunal to accept that these factors will cause the applicant to suffer serious harm for a Convention reason. He stated that he will face serious harm because the Taliban will look for and find him in Afghanistan.
84. In relation to the applicant's claim that he belongs to the particular social group of Shi'a Hazaras who have departed Afghanistan illegally, fled to Pakistan and / or the West and lodged an application for asylum, it was put to the applicant that sources the Tribunal has consulted, including DFAT, suggest that Hazaras would not be targeted because they had sought asylum in the west if they returned to Afghanistan. He stated that if he could go back to Afghanistan and live there he would not have risked his life to come here. He would be in extreme danger in Afghanistan.
85. It was put to him that since 2002, over 4 million Afghans have returned to Afghanistan from Pakistan have returned to Afghanistan. While these returnees may face discrimination, there was no persuasive evidence that they are subjected to serious harm for the reason of having lived in Pakistan over a long period. He stated that those people have no enemies and no one is looking for them. In contrast he has been fighting against Taliban.
86. The Tribunal put to the applicant that there is no persuasive evidence before the Tribunal to indicate that the applicant would be at risk of harm by Afghan authorities, whether or not he has or has not any documents. He stated that that if he were to return the government would ask him why he has fled to Pakistan and or Australia. It was put to him that the Tribunal has no information to suggest that the authorities in Afghanistan are interested in those who have fled Afghanistan illegally, as they know that millions have done so over the past many years.
87. He was asked why he would be unable to relocate to Kabul if he is fearful of the Taliban in his village. He said if the Taliban could find him in Pakistan, they can find him in Kabul and he would be unable to live there. It was put to him that he had shown initiative in Pakistan by arranging a cart and selling vegetables to support his family. This suggests that he would be able to do the same in Kabul. He said the Taliban would find him in Kabul.
88. The Tribunal referred to the translated *taskera* he had submitted to the department and noted that according to that document which was issued in 1388 (Persian calendar) he was [Age 2]. He had maintained throughout the process that he was about [Age 2] and that he had never mentioned that he might be [Age 1] or older. He said his age in that document was not recorded correctly and that his family had subsequently found his old *taskera*.
89. The applicant noted that according to the same document his name his [Name D]. He stated that [Name D] was his grandfather's surname and his own surname has always been [Name D]. He changed his surname to [his present name] after he arrived in Australia.
90. The applicant was asked about the *taskera* he had recently provided. He said that his niece recently found the *taskera* in Afghanistan and sent it to him. It was put to him that according to the certified translation of the *taskera* he had recently provided his surname appears as [his present name] and not [Name D]. He said he had chosen [his present name].
91. It was put to the applicant that the Tribunal had great difficulty believing that the *taskera* recently provided was an authentic document and that he was in fact [Age 1]. The

Tribunal also noted that his claimed age of [Age 1] rendered many of the other dates relating to the death of his mother, the birth of his [siblings], his marriage and birth of his children illogical. He stated that he has told the truth.

92. The Tribunal put to the applicant that it has difficulty believing many aspects of his evidence, including his claims relating to his age, his encounters with the Taliban, occupation of his house by Pashtun, and other claims flowing from these claims. He said he has told the truth.

93. The applicant's representative made an oral submission, stating that the dates in the applicant's evidence were obtained from the applicant after a great deal of going back and forth. These dates were then calculated approximately by reference to his date of birth. The applicant should be given the benefit of the doubt and his ability to provide a direct response to questions relating to dates should not be taken to reflect on the applicant's credibility. It was submitted that the applicant would gain nothing by representing himself as being older. The Tribunal explained that the applicant has been persistently referred to as an 'elderly' person and that if in fact he is [Age 2], the Tribunal is not prepared to regard him as 'elderly'. This is relevant to the characterisation of one of the particular social groups the applicant is claimed to be a member of.

94. The applicant's representative also made submissions in relation to relevant country information. The Tribunal asked the applicant's to provide the country information she wished to refer to in writing, clearly identifying the sources. She agreed to do so.

95. The Tribunal informed the applicant that it would send him a letter to give him a further opportunity to respond to certain adverse information before the Tribunal.

Notice under s.424A of the Act

96. On 28 November 2012, the Tribunal wrote to the applicant and invited him to comment on/respond to information that the Tribunal considered would, subject to any comments/response he made, be the reason, or a part of the reason, for affirming the decision under review. The information put to the applicant essentially related to the information he had provided to the department in relation to his age, new claims he had put forward at the review stage and other inconsistencies in his evidence throughout the process. The Tribunal also invited the applicant to provide the following documents:

- Certified translation of the *taskera* submitted by the applicant to the department; and
- Copy of the original *taskera*, the translation of which was submitted to the Tribunal on 26 November 2012.

97. On 12 December 2012, the applicant's representative responded to the Tribunal's letter on the applicant's behalf. It was submitted that the applicant is an illiterate elderly man and that in assessing his credibility the Tribunal's Credibility Guidelines should be taken into consideration. The submission also provided further information in support of the applicant's claim that relocation is not reasonable in his circumstances. The documents requested by the Tribunal in its letter of 28 November 2012 were attached to the applicant's response.

Evidence from other Sources

The Security Situation and Hazaras

98. Afghanistan's security situation has gradually worsened over the past few years. Attacks by the Taliban and other insurgent groups have intensified, and so have Afghan and NATO counter-attacks, producing a mounting civilian and combatant death-toll. The Taliban and insurgent groups target government officials, civil servants, teachers, journalists and anyone who is seen to be supporting the government and foreign forces.¹ In the first six months of 2012, the armed conflict in Afghanistan continued to take a devastating toll on civilians. According to United Nations Assistance Mission in Afghanistan, between 1 January and 30 June 2012, conflict-related violence resulted in 3,099 civilian casualties or 1,145 civilians killed and 1,954 others injured.² The Taliban and other insurgents continued to kill record numbers of civilians, using improvised explosive devices, car bombs, and suicide attacks. The Taliban increasingly used children as suicide bombers. Antigovernment elements also threatened, robbed, and attacked villagers, foreigners, civil servants, and medical and nongovernmental organization (NGO) workers.³
99. Ghazni Province remains an area of notable concern and the Taliban appear to have a presence in the area. The June 2012 Afghan NGO Safety Organisation (ANSO) province by province security report provides information relating to security in the Hazarajat provinces. In relation to Ghazni, it is stated that the 'province has witnessed another period of high insecurity, contributing to the overall increase in security incidents in the South Region'⁴ According to Professor William Maley, Director of the Asia-Pacific College of Diplomacy at the Australian National University, the Taliban have shown heightened insurgent activity in parts of Ghazni.⁵
100. On ethnic groups, the 2010 UNHCR Eligibility Guidelines noted:
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.⁶

¹ Abdul Karim Hekmat, *Unsafe Haven: Hazaras in Afghanistan and Pakistan*, Cosmopolitan Civil Societies Research Centre, UTS, October 2011.

² UNAMA, *Midyear report on the Protection of Civilians in Armed Conflict in Afghanistan*, July 2012.

³ US Department of State, *Human Rights Report: Afghanistan*, Bureau of Democracy, Human Rights, and Labor, 2011 Country Reports on Human Rights Practices, 24 May 2012

⁴ Afghanistan NGO Safety Office, 'ANSO Report – Issue 99', 1-15 June 2012, p. 22.

⁵ Cited in Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Afghanistan: Afghan Hazaras from Ghazni Province (1) Nexus between general security situation and Hazara minority in Ghazni province, particularly in Jaghuri district; 2) Clashes between Hazaras and Kuchi nomads in Ghazni; 3) General information on the situation of the Hazaras*, 6 September 2010, a-7367, available at: <http://www.unhcr.org/refworld/docid/4ca33e962.html>; see also, Taliban fighters briefly overrun Afghan district, abduct 16 police officers, LA Times, 2 Nov 2010

⁶ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December 2010, HCR/EG/AFG/10/04, UNHCR Refworld, p 32, <http://www.unhcr.org/refworld/docid/4d0b55c92.html>.

101. In March 2012 Professor Amin Saikal of ANU wrote:
- 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.⁷
102. In relation to Hazaras, 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.⁸ Other commentators and reports do not echo Professor Maley's concerns.
103. Regarding security for Hazaras in Ghazni specifically, Professor Maley writes that 'no part of Ghazni can realistically be considered safe for Hazaras, even in districts where they might seem numerically predominant'⁹ However, numerous other reports indicate that the level of threat to Hazaras in Ghazni varies between districts, with the threat greatest in the Pashtun dominated districts of Muqur and Qarabagh along the Kabul-Kandahar Highway.¹⁰
104. In a more recent advice, dated 1 November 2012, DFAT reported:
- Security in Ghazni province deteriorated during the first half of 2012, in the context of a broader deterioration of security across the south and east of Afghanistan. Targeting of government officials - both Hazara and Pashtun - continued. Increased ISAF troop deployments in the region resulted in increased engagements with the insurgency, but in Ghazni this tended to be confined to the (Pashtun/mixed) eastern districts of Ghazni, Andar, Qarabagh and Ab Band. Local (Pashtun) uprisings against the Taliban, and Taliban efforts to repress these, saw a series of violent incidents in Andar district since approximately July. Periodic uprisings continue in Andar, but the worst of the fighting appears to have passed. In all areas, violence will decrease further as winter brings an end to the fighting season.
- We have no information to suggest increased violence in Ghazni Province has resulted in a particular deterioration of security conditions for Hazaras (as compared to other people living in affected areas). The Hazara districts of Ghazni Province remained largely protected from violence. Jaghori, Malistan, Nawur and to a lesser extent Ajiristan districts continued to enjoy relatively good security. Security continued to be provided by the Afghan National Police (ANP), without any Afghan National Army (ANA) deployments to these districts. Post understands the UN and

⁷ 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

⁸ Maley, W 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>>

⁹ Maley, W 2011, *ibid*

¹⁰ Zaher, H 2011, 'Why would a Hazara quit Pakistan?', *New Matilda*, 27 September <<http://newmatilda.com/2011/09/27/why-would-hazara-quit-pakistan>>; 'Six Hazara civilians killed by Taliban land mines in Ghazni Province' 2011, *Hazara People*, 2 May <<http://www.hazarapeople.com/2011/05/02/six-hazara-civilians-killed-by-taliban-land-mines-in-ghazni-province/>>

its agencies in Afghanistan continue to classify Jaghori as a “low-risk” area and its officials were undertaking travel to the district as of September 2012.¹¹

105. On 21 June 2012, the Afghan Islamic Press News Agency, quoting a provincial official, reported that except Jaghori, Malistan, Nahoor, Khawaja Umri and Jaghatu districts, all the parts of the province, including the Ghazni City, have been facing hurdles in the education process since the Taliban have threatened the schools.¹²

106. In January 2012, Professor Alessandro Monsutti provided advice to the Independent Assessment Protection Office (IPAO) on security in Ghazni province. Monsutti described Jaghori district within Ghazni as “quite fine for Hazaras” and the adjacent district of Qarabagh as unsafe.¹³ In June 2012, DFAT adopted a positive view on the extent of government control in Ghazni province when it stated that “the Afghan Government had asserted effective control in the districts in Ghazni of (Malistan, Jaghori and Nawur) in recent years” The same advice noted that in these districts the government was able to “prevent the dissemination of weapons, confiscate weapons it found, and detain individuals responsible for violent crime” while “[i]ncreased activity by the media and the National Directorate of Security (NDS) also helped deter violent acts”.¹⁴ DFAT’s advice was broadly consistent with an earlier update it provided in March 2012 on the Hazara community in which it stated that “[v]iolence was not noticeably worse in the predominantly Hazara districts (Jaghatu, Nawr, Jaghori, Malistan)” and that “the Hazara community did not face systemic violence or an existential threat”.¹⁵

107. Abdul Karim Hekmat has made the following observations in relation to Jaghori following his relatively recent travel to the area:

In the post-Taliban period, Jaghori and Malistan are relatively safe but the general upsurge of violence and insecurity in Ghazni has spilled over into these areas. In an attempt to penetrate Jaghori, the Taliban staged attacks from neighbouring districts. In July, 2010, the Taliban attacked Tamki, killing one person and wounding another. In another incident, in June 2007, the Taliban attacked the Bashi Habib family, the district commander, killing five of his family member, on the Jaghori border with Rasna, a Taliban dominated area. Jaghori is also known to have a high literacy rate both among men and women due to the high numbers of schools. There are over 51 high schools in Jaghorim some of which were running for many years before the current administration. Most of them are self-funded with minimal support from the government. However, schools in Jaghori, like in any other area of Afghanistan, have been subject to attacks by the Taliban in recent years. In July, 2010, for instance, the Taliban rampaged and burned a girls school in Tamki, Jaghori district and another two schools in Qarbagh district.¹⁶

108. A December 2009 Finnish Immigration Service Report on the situation in Jaghori district states the following regarding security:

¹¹ Department of Foreign Affairs and Trade 2012, *CIS Request AFG13987: Security Situation for Hazaras in Afghanistan*, 31 October,

¹² Finnish Immigration Service 2009, ‘*Situation Report: The Current Situation in the Jaghori District of Ghazni*’, 10 December, p.1 (CISNET [CIS18216](#)).

¹³ Monsutti, A 2012, *Comments by Professor Alessandro Monsutti on Hazaras in Afghanistan Provided to the Independent Protection Assessment Office on January 2012*, January

¹⁴ Department of Foreign Affairs and Trade 2012, *CIS Request AFG13440: Characteristics of Hazara militias and targeted attacks on Hazaras by Hazara militias*, 28 June

¹⁵ Department of Foreign Affairs and Trade 2012, *Afghanistan – Hazara Community Update*, 12 March

¹⁶ Abdul Karim Hekmat, *ibid.*

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

People of Jaghori see Taliban as a serious threat: 95% of the population fear them according to Altai Surveys. Although not able to act effectively in Jaghori, Taliban has showed interest in disrupting the area. Members of the former police chief Bashi Habibullah's family were killed in a Taliban raid to Angori in 2007.

Since 2007, the general escalation of violence in Ghazni has affected Jaghori, mainly by further isolating the area from the outside world. Taliban militiamen from neighbouring districts have staged attacks against bordering police posts in Hutqul. Taliban has also issued warning night-letters to villagers in the district.¹⁷

109. A 2009 Cooperation for Peace and Unity (CPAU) report on Jaghori and Malistan districts highlighted that 'despite the risk for future ethnic conflict between the Taliban and Hazara, the risk of this is likely to be lower in Jaghori than elsewhere in the Hazarajat', owing to the fact that 'in the past the people and elders of this district demonstrated unique negotiation and proactive peace building strategies towards the Taliban in the 1990's'.¹⁸ The same report cited a 2008 National Prescribing Service of Australia (NPS) survey on the security situation across Ghazni province noting that 'villages of Jaghori district fear the Taliban the most out of all districts in Ghazni, an indication both of the concern that the return of the Taliban might put them at risk, but also that the Pashtun dominated Taliban are currently seen as a threat'.¹⁹ The CPAU report, referring to an article which appeared in Daily Afghanistan in June 2007, also noted 'reported attacks on parts of Jaghori which have included killing 'key community figures' family members, kidnappings, and killing Hazara labourers from Jaghori working in nearby Pashtun areas'.²⁰ The Tribunal, however, has found no recent reports of attacks in Jaghori itself.

Travel to and from Jaghori

110. Reports indicate that travel along key roads, particularly those from Kabul to the Hazarajat, is dangerous.²¹
111. The 2010 UNHCR Guidelines note that 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

¹⁷ Finnish Immigration Service 2009, *ibid*, P3.

¹⁸ Bergh, Gina and Denny, Christian 2009, *Conflict analysis: Jaghori and Malistan districts, Ghazni Province, Cooperation for Peace and Unity*, 27 April, pp.9-10
<http://humansecuritygateway.com/documents/CPAU_JaghoriMalistanDistricts_GhazniProvince_ConflictAnalysis.pdf>

¹⁹ *Ibid*

²⁰ *Ibid*.

²¹ Korosh, M, 'Coefficient of Insecurity for Hazara Community', *Hazara People*, 29 July 2012, <http://www.hazarapeople.com/2012/07/29/coefficient-of-insecurity-for-hazara-community/>

these districts, has been worsening. 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.²²

112. According to the UK Home Office,

Apart from the main city roads, many smaller roads in the capital are in extremely poor conditions [sic] and need repair. While the country has no extensive highway system, three main asphalted roads/highways connect the capital with the rest of the country. The Salang road links Kabul with the northern provinces, while the Kabul-Kandahar highway is the main artery between the capital and the southern provinces, as well as the most important road in the country.²³

113. In his paper, Abdul Karim Hekmat noted:

The two commonly used routes between Jaghori and Kabul, one from Qarbagh and another Muqur, are very insecure. From Qarbagh-Jaghori route, passengers are searched by the Taliban almost daily... Because of the insecurity along this road, families are separated between Kabul and Jaghori and do not travel for the fear of being caught by the Taliban²⁴

114. In March 2012 DFAT reported that '[t]ravel into and out of most districts, and all three provinces [Bamiyan, Daykundi and Ghazni], could still be dangerous in the context of broader security in Afghanistan' but that 'there was no clear evidence any ethnic group was a particular target'. The advice noted that Hazaras outside of the Hazarajat were more vulnerable and tended to avoid travel outside of their immediate community.²⁵

115. In a November 2012 update, DFAT provided the following additional information:

The poor condition of Afghanistan's limited road network is added to by insecurity. Taliban and criminal elements target the national highway, setting up arbitrary armed checkpoints. Official ANP and ANA checkpoints designed to secure the road are sometimes operated by poorly-trained officers who are known to use violence to extort bribes. Vehicles are routinely stopped and harassed, and occupants occasionally abducted or killed. Speeding and unsafe driving further aggravate the problem - locals will routinely drive between 100 km/h and 200 km/h in zones with 60 km/h speed limits, in unroadworthy vehicles on winding roads. While it is difficult to source statistics, all our contacts agreed the vast majority of deaths on Afghan roads were caused by traffic accidents rather than targeting by the insurgency.

There are two established routes from Kabul to Ghazni's Hazara districts. The first takes Highway 1 via Wardak Province. It is the most direct road, but undeniably insecure, crossing the most violent districts of Ghazni province as described above. Locals with ties to the province and knowledge of the area - including Hazaras - were generally able to travel between Ghazni City and Hazara districts without incident and thousands of vehicles use the road daily.

But there are recognised dangers: the route forms the key Taliban access route linking Pakistan (through Southern provinces, into the south of Ghazni (Nawah) and then

²² UNHCR 2010, *ibid*

²³ UK Home Office, Country of Origin Information (COI) Report – Afghanistan, COI Service, 11 October 2011.

²⁴ Abdul Karim Hekmat, *ibid*

²⁵ Department of Foreign Affairs and Trade 2012, 'Afghanistan: Hazara Community Update', 12 March.

through Ghazni province) to Kabul. From Ghazni City, one would need to drive along the Highway through Andar and Qarabagh districts before turning off towards Jaghori and Malistan. After leaving Highway 1 towards Jaghori/Malistan, a long paved road to Jaghori and Malistan passes through Qarabagh district. There are ANP checkpoints on the route, but the Taliban and criminals are also active. Insurgent targeting in the district, as on roads nation-wide, is focused on road-side Improvised Explosive Devices (IEDs). The Taliban has previously blocked this road several times for extended periods - including, we understand, for a number of months in the first half of 2012 - effectively cutting off access to the highway.

The alternate route from Kabul to Jaghori/Malistan takes the Parwan Road to Bamiyan then enters Ghazni province through Nawur district. The condition of the roads is extremely poor - only secondary unsealed roads which are no better than tracks in sections. The volume of local traffic is low: in isolated Nawur district, one might pass only a handful of vehicles in an hour's driving. Even in a decent off-road vehicle, one might take four hours to drive 60km. Contacts estimated it takes around 15 hours to drive from Bamiyan to Jaghori, with traffic slowed further by snowfalls in winter. Such a detour is not inconsistent with the travelling reality in other rural areas across Afghanistan. Overall, interlocutors agreed road travel within the broad Hazara 'belt' in the central highlands region (taking in Nawur, Malistan and Jaghori) was very safe.²⁶

116. In response to a question as to whether Hazaras are targeted on roads to and from Jaghori District, based on their ethnicity and/or their status as Shi'a Muslims, DFAT advised:

Contacts unanimously agreed the main targets on the roads in Ghazni, and nationally, were people employed by or with direct links to the Afghan Government or international community - regardless of ethnicity. Carrying documentation which pointed to a connection with the government remained dangerous. Nobody we spoke to was aware of targeting of any particular ethnic group on the roads. Several interlocutors pointed out the most significant threats to life safety on these routes were traffic accidents and IEDs - neither of which discriminated according to ethnicity.²⁷

FINDINGS AND REASONS

117. The applicant's claims are based on the Convention grounds of race, religion, imputed political opinion and membership of a particular social group. The applicant claims to be a citizen of Afghanistan and of Hazara ethnicity and Shi'a faith. He claims to fear the Taliban and Pashtun community on the grounds of his ethnicity, religion and imputed political opinion. The applicant claims that he had fought against the Taliban for four or five days against the Taliban before leaving Afghanistan in around 2000. He claims that those who he fought against even came looking for him in Pakistan and he fears being harmed by them. He also claimed that the Taliban have occupied his house in his village and if he were to return they will find him.

Nationality

118. The applicant travelled to Australia by boat. In support of his protection visa application he provided a copy of a *taskera* (new *taskera*). The document was not translated. The Tribunal, however, was able to discern that the document was issued [in June 2009]. The

²⁶ DFAT, November 2012, *ibid*

²⁷ *Ibid.*

document states that at the time of issue he was [Age 2] and appeared to suggest that the applicant's surname was [Name D] (not [his current surname]).

119. On 26 November 2012, he submitted a certified translation of another *taskera* (old *taskera*). This *taskera* was located by the applicant's family following his release from detention. His name in the *taskera* is stated to be [his current name] and his date of birth is listed as [date deleted: s.431(2)]. In an accompanying submission, he stated that he was born in [an earlier year] and not [the year stated in the new *taskera*]. It was stated that the *taskera* submitted to the department was 'a newly issued' copy of his Afghan *taskera*, which erroneously indicated that he was born in [year deleted: s.431(2)].
120. The inconsistent information contained in the two documents raised doubts in the Tribunal's mind in relation to the genuineness of these documents. In response to the Tribunal's s.424A letter, the applicant's representative submitted that the details on the new *taskera*, notwithstanding the applicant's date of birth, are consistent with the applicant's claims put forward throughout the process. The submission also stated that in 2009, the applicant's [relative] in Afghanistan, [Mr C], assisted him in obtaining the new *taskera*, as he left his old *taskera* in Afghanistan when he fled in or around 2000. [Mr C] was unsure as to the applicant's age and therefore provided his age as [Age 2] when applying for the new *taskera*. The Tribunal is prepared to accept this account.
121. With regard to the applicant's surname, the certified translation of the applicant's old *taskera*, provided to the Tribunal on 12 December 2012, indicates that the reference to [Name D] is a reference to the applicant's grandfather's name and not his last name). This information resolves the Tribunal's doubts in relation to the inconsistencies in the applicant's name as stated in the two *taskeras*.
122. The applicant has submitted no other documents to conclusively establish his nationality. However, he has consistently claimed to be a national of Afghanistan. In the absence of any other evidence, the Tribunal accepts that the applicant is a citizen of Afghanistan and that Afghanistan is a receiving country for the applicant. The Tribunal also accepts that the applicant is a Shi'a Hazara.
123. The applicant has previously resided in Pakistan in the years immediately preceding his travel to Australia. However, the Tribunal accepts that the applicant had resided in Pakistan without any legal basis. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of nationality, Afghanistan. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

Credibility

124. The Tribunal found aspects of the applicant's claims troubling. The Tribunal concerns essentially related to inconsistencies and gradual shifts and changes in the applicant's evidence relating to his age, his encounters with the Taliban and the occupation of his land.
125. In relation to the applicant's age, while the Tribunal remains concerned about the inconsistencies in the evidence in that regard, as already noted, it is prepared to accept that the date of birth listed in the applicant's old *taskera* is a more accurate reflection of his age.

In reaching this conclusion, the Tribunal has also taken into account the matters referred to in the applicant's response to the Tribunal's s.424A letter, including the applicant's illiteracy; fact that the applicant's Care Plan, prepared by a Red Cross caseworker, refers to the applicant being in [around a similar age]; and he has consistently maintained to be either unsure about his age or being [Age 1]. The Tribunal accepts that the applicant is at least [Age 1], as claimed at the hearing.

126. The Tribunal has more serious concerns in relation to the applicant's evidence regarding his encounters with the Taliban and the occupation of his land.
127. The applicant's evidence throughout the process points to inconsistencies and shifts in his evidence regarding his encounters with the Taliban.
128. In his application for a protection visa he claimed that about 2000 the Taliban came to his village with the aim of killing Shi'a Hazaras. Upon hearing this news, he and his family fled to the Jaghori mountains before going to Pakistan. At the departmental interview the applicant provided a different version of these events by claiming for the first time that before leaving Afghanistan, he was engaged in a battle to defend his village against the Taliban. The battle lasted a few days. He stated that he fought under a commander named [Mr B]. He claimed that the commander subsequently fled to Pakistan.
129. In his submission of 26 November 2012 and at the hearing, he claimed that he and other Shi'a Hazara men, led by a warlord named [Mr B], fought against the Taliban in 2000 and after being defeated he fled his village. At the hearing he claimed that [Mr B] was killed by the Taliban. He also claimed for the first time that the Taliban targeted him in Pakistan and a month before his departure he was attacked by two armed men. He managed to escape but he was able to recognise his attackers as Taliban men he had fought against in 2000. He stated that the Taliban are looking for him and will find him in Afghanistan.
130. The applicant's evidence at the hearing was in sharp contrast to his evidence at his entry interview, in which he claimed that in Pakistan he was attacked by Baluchis on two occasions. He was unable to see who had attacked him because his attackers had covered their faces. He stated that he was attacked because he is a Shi'a Hazara. In response to a question as to whether he was involved in 'any armed conflict or fighting', he responded 'no'.
131. These inconsistencies were put to the applicant in the Tribunal's s.424A letter. In his response, the applicant stated that his evidence to the Tribunal was not inconsistent with his oral evidence to the delegate. The applicant provided no explanation as to why he had made no mention of being involved in any battles with the Taliban in his application for a protection visa. In the Tribunal's view, if the applicant had fought against the Taliban some 12 or 13 years ago and harboured fears as a result, he would not have neglected to mention this at his entry interview or in his application for a protection visa. Indeed, in his entry interview the applicant had expressly stated that he was not involved in 'any armed conflict or fighting'.
132. Further, the Tribunal finds the applicant's evidence regarding [Mr B] unreliable and unpersuasive. In his response to the Tribunal's s.424A letter, the applicant stated that he was unsure whether [Mr B] was killed by the Taliban or fled to Afghanistan. It is difficult to understand why, if the applicant had been unsure of the commander's fate, he would profess knowledge of his fate at the interview, only to contradict it at the hearing.

133. Finally, the Tribunal is unable to reconcile the shifts and changes in the applicant's evidence in relation to the attacks he claimed to have been subjected to in Pakistan. In the response to the Tribunal's s.424A letter, it was submitted that given that the Baluchis in Pakistan are well known for collaborating and being affiliated with the Taliban, the applicant's statements in this regard are not unreasonable. The Tribunal finds this explanation completely unsatisfactory. The applicant failed to provide any explanation for why he had claimed at the hearing that he was able to recognise his attackers in Pakistan as Taliban men he had fought against in 2000, when at the entry interview he had claimed that he had neither seen the faces of was unable to see who had attacked him because his attackers had covered their faces. The Tribunal does not accept the applicant had fought the Taliban in 2000 or that he was attacked by the Taliban in Pakistan before his departure.
134. Similarly, the Tribunal is not prepared to accept that the applicant's land or house has been occupied by Pashtuns. This claim was raised for the first time at the Tribunal hearing. The applicant had made no mention of this claim in his entry interview, application for a protection visa and departmental interview. In the response to the Tribunal's s.424A letter, it was stated that the applicant was unable to ascertain this information until after his release from the [Immigration Detention Centre] on or around [August] 2012 when his [relative], [Mr C] contacted his family in Pakistan regarding his *taskera*. It was at this time that [Mr C] advised the applicant's family that Pashtuns had occupied their property in [Village 1]. This explanation is inconsistent with the applicant's explanations at the hearing and the Tribunal considers it unsatisfactory. When it was put to him that he had never mentioned this claim before, he stated these things happened in the past and they might not have been written or he might have forgotten.
135. In the Tribunal's view, if the applicant's land or house had been occupied by Pashtuns or the Taliban in the past he would not have failed to mention this claim at some point prior to the hearing. In reaching this view, the Tribunal has taken into account the country information before it which indicates that Jaghori district is populated solely by Hazaras with the exception of enclaves in the districts border regions which are inhabited by Pashtun and other ethnic groups.²⁸ At the hearing, the applicant stated that his village is on the border between Jaghori and Pashtun areas and Pashtuns have occupied his house. However, the applicant's village or area, [Village 1], is located in the centre of Jaghori [in a certain direction] of Sang-e Masha.²⁹ The area is well clear of Jaghori's border with other districts or provinces with Pashtun populations. The Tribunal does not accept that the applicant's land or house has been occupied by the Taliban, Pashtuns or people working for the Taliban.
136. For all the above reasons, the Tribunal does not find the applicant to be entirely credible and is of the view that he has changed aspects of his evidence and introduced new claims throughout the process to strengthen his case. In arriving at this conclusion, the Tribunal has factored in the applicant's age and level of education. The Tribunal, however, is not satisfied that these factors explain the breadth of the problems the Tribunal has identified in relation to the credibility of the applicant's claims.

²⁸ UNHCR Sub-Office Central Region 2002, 'District Profile: Jaghori', Afghanistan Information Management Services website, 30 July

http://www.aims.org.af/afg/dist_profiles/unhcr_district_profiles/centra/ghazni/jaghori.pdf; DIAC Country Information Service 2009, *Country Information Report No. 09/14 – CIS Request No. AFG 9509; Situation for Hazaras in Ghazni, Uruzgan and Dai Kundi Provinces* (Sourced from DFAT advice of 3 February 2009), 5 February; Bergh, Gina and Denny, Christian 2009, *ibid*; Finnish Immigration Service 2009, *ibid*.

²⁹ [Citation deleted: s.431(2)]

137. The Tribunal, therefore, does not accept that the applicant had fought against the Taliban in his village or to defend his village in 2000 or thereabouts. The Tribunal does not accept that the applicant is of any interest to the Taliban in Afghanistan or elsewhere. The Tribunal does not accept that the applicant was attacked in Pakistan by Baluchis, Taliban or anyone else. The Tribunal does not accept that that the applicant's land or house has been occupied by the Taliban, Pashtuns or people working for the Taliban.

Ethnicity and Religion

The Tribunal has accepted that the applicant is Shi'a Hazara from Jaghori. The Tribunal appreciates that Afghanistan's security situation has gradually worsened over the past few years and that Ghazni province remains an area of notable concern and the Taliban appear to have a presence in the area. As noted above, while Professor Maley considers no part of Ghazni safe for Hazaras, numerous other reports indicate that the level of threat to Hazaras in Ghazni varies between districts. Jaghori is almost entirely inhabited by Hazaras and most sources, including Professor Alessandro Monsutti, DFAT, the Finnish Immigration Service and the CPAU, have consistently reported that Jaghori district is relatively stable and secure and the risk of future conflict between the Taliban and Hazaras is likely to be lower in Jaghori than elsewhere in the Hazarajat. The Tribunal prefers this evidence to Professor Maley's general comments in relation to the safety of Hazaras in Ghazni and the applicant's anecdotal evidence or what he claims to have seen on TV or heard over the radio regarding the situation in his home district.

138. The Tribunal has found no persuasive evidence or arguments in the submissions to counter the country information before the Tribunal regarding Jaghori. It is the Tribunal's view that, whilst the Pashtun or mixed eastern districts of Ghazni have witnessed greater insecurity and a strengthening of the Taliban, the situation in Jaghori where the Hazaras are in the majority remains stable. The submission referred to 'some reports of Taliban attacks in Jaghori district...' The CPAU report, cited above, referred to an article which appeared in Daily Afghanistan in June 2007,³⁰ noting 'reported attacks on parts of Jaghori which have included killing 'key community figures' family members, kidnappings, and killing Hazara labourers from Jaghori working in nearby Pashtun areas' The Tribunal, however, has found no recent reports of attacks in Jaghori itself. The report also mentions the Taliban's use of 'night letters' throughout Ghazni province. While the report also appears to suggest that the Taliban distribute such threats in Jaghori district in connection with schools, it cites only one press report³¹ as a reference. Upon scrutiny, the press report, however, does not mention such threats in the Jaghori district.

139. The Tribunal accepts that Shi'a Hazaras are subjected to varying levels of discrimination in Afghanistan. However, as already noted, Jaghori is almost entirely populated by Shi'a Hazaras. As noted above, the Jaghori district of Ghazni province is almost entirely inhabited by Hazaras. There was no persuasive evidence before the Tribunal to indicate that Shi'a Hazaras in Jaghori are denied the freedom to or face restriction in practising their religion in the district. The Tribunal finds that there is no real chance that the applicant will be denied the freedom to practise his religion in his home district.

³⁰ 'The series of national discord is taking shape', *Daily Afghanistan*, 13 June 2007.

³¹ Declan Walsh, 'Better paid, better armed, better connected - Taliban rise again', *The Guardian*, 16 September 2006, CX161803

140. On the basis of the evidence before it, the Tribunal finds that the applicant's chance of facing serious harm by the Taliban, Pashtuns, Kuchis, the Afghan authorities or anyone else for the reason of his race and/or religion in Jaghori is remote.
141. The information before the Tribunal indicates that the Hazara community in Jaghori enjoys better educational and health services than in neighbouring provinces.³² As it was put to the applicant at the hearing, travel within the Hazara districts of Ghazni province was very safe. In addition, Jaghori has a district hospital which is equipped with an operating theatre, delivery room, X-ray, emergency room, diagnostic laboratory, dressing room, ultrasound, vaccination and nurse training facilities.³³ The Tribunal appreciates that the applicant is illiterate man in his 60s without land in Jaghori and that he will face adjustment difficulties and discrimination in Jaghori. It also appreciates that, like many other Shi'a Hazaras in his district, he may face serious challenges in securing ongoing employment. However, the Tribunal is not satisfied that any difficulties faced by the applicant in this regard would be essentially and significantly for a Convention reason. The Tribunal finds that the applicant would not be subjected to 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, for the reasons of his race, religion, nationality, imputed political opinion or membership of a particular social group, including 'elderly Hazaras', 'elderly impoverished Hazaras without any family or tribal connections' or any other particular social group apparent on the face of the evidence.
142. The Tribunal has found no information to support the applicant's representative's contention that the planned withdrawal of US troops and the dramatic cuts US aid have served -to create a situation where the Taliban insurgency is able to target Hazaras with impunity in Jaghori. Tribunal appreciates that Shi'a Hazaras are apprehensive as to what may occur following the withdrawal of ISF in 2014. However, at this point, any assessment of what may happen at that time and how the applicant and his district may be affected appear to be speculative. The Tribunal is not satisfied on the information available that the applicant faces a real chance of persecution after the ISF withdrawal.
143. The country information before the Tribunal suggests that since 2002, over 4 million Afghans have returned to Afghanistan from Pakistan and over 2 million from Iran. According to a study of returnees by Saito, returnees who have lived abroad for an extended time often face discrimination based on their 'non-Afghan-ness' However, the Tribunal has found no information in the sources consulted to suggest that returnees to Jaghori have been targeted, attacked or mistreated for that reason. The Tribunal finds that the applicant does not face a real chance of facing serious harm for the reason of having resided in Pakistan or being an Afghan returnee from Pakistan.
144. The submission of 26 November 2012 refers to a report by the Edmund Rice Centre expressing concern about the safety of persons returned to Afghanistan following a failed asylum bid. It was stressed that returnees are being targeted for having left the country because they are seen as being favourable to the West and many are falsely held to have converted to Christianity. The report refers to its author's visit to Kabul and one incident in Kabul where a rocket was shot through a man's house, resulting in him living in hiding in Kabul. No further details were provided about the circumstances of these returnees. The

³² Finnish Immigration Service 2009, *ibid*, pp 3-4; DFAT September 2010, *ibid*; and DFAT Country Information Report No. 11/57, dated 24 September 2011, CX273295.

³³ Shuhada Organization Annual Report 2011", *Shuhada Organization*, Undated, CIS24016, p.8

Tribunal has found no information to suggest that returnees to Jaghori are being targeted for having left the country, because they are seen as being favourable to the West or because they are falsely accused of having converted to Christianity.

145. Other reports by government agencies suggest that there is little risk of returnees or failed asylum seekers being targeted on their return.³⁴ More than five million refugees had returned to Afghanistan since 2002.³⁵ In relation to Hazara returnees to Afghanistan from Australia, DFAT consulted the UNHCR in Kabul, the Afghanistan International Human Rights Commission, the Provincial Reconstruction Team in Ghazni province, the diplomatic community in Kabul, international immigration consultants operating in Afghanistan and a Hazara MP, and advised that ‘none of our contacts considered there were significant protection issues for returnees’.³⁶ Other DFAT advice from 2010 stated that ‘interlocutors did not believe Hazaras would be targeted because they had sought asylum in the west.’³⁷
146. The Tribunal is prepared to accept that there have been incidents in which those who have returned to Afghanistan from other countries have suffered harm in terrorist attacks in certain areas. However it is not clear whether these attacks were motivated by any knowledge that the victims had returned to Afghanistan from abroad, whether other factors were involved specific to the victims themselves or whether they were simply caught up in random violence.³⁸ The information before the Tribunal does not indicate that failed asylum seekers are targeted by terrorist groups or other actors because they had sought asylum in the West. On the evidence, the Tribunal does not accept that there is a real chance of the applicant suffering serious harm because of his membership of a particular social group, including returnees, failed asylum seekers, or Shi’a Hazaras who have spent time outside of Afghanistan. As it was put to the applicant at the hearing, the Tribunal has found no persuasive evidence to indicate that he would be at risk of harm by Afghan authorities, whether or not he has or has not any documents. The Tribunal finds that the applicant does not face a real chance of facing serious harm for the reason of having resided in Pakistan for a prolonged period of time or being an Afghan returnee from Pakistan.
147. The Tribunal does not accept that the applicant will face a real chance of persecution for the reason of his imputed political opinion, race, religion, nationality or membership of a particular social group if he were to return to Afghanistan.
148. In her submission of 26 November 2012, the applicant’s representative referred to country information in relation to road security in Afghanistan, arguing that ‘the applicant would risk serious harm if he attempted to return to his home village. However, as noted at the hearing, other sources indicate that there are alternatives routes from Kabul to Ghazni that are considered to be safe.

³⁴ 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.

³⁵ UK Home Office, *Afghanistan - Country of Origin Information (COI) Report*, 11 October 2011, paragraph 34.07.

³⁶ Department of Foreign Affairs and Trade 2012, *ibid.*

³⁷ DIAC Country Information Service 2010, *Country Information Report No. 10/60 – The Hazara*, (sourced from DFAT advice of 28 September 2010), 29 September.

³⁸ See DIAC Country Information Service 2012, *ibid.* See also Macdonald, I. 2011, ‘Landlessness and Insecurity: Obstacles to Reintegration in Afghanistan’, *Middle East Institute & Foundation pour la Recherche Strategique*, 9 February, Refugee Cooperation website, http://www.refugeecooperation.org/publications/afghanistan/pdf/04_macdonald.pdf.

149. The most direct route to Ghazni is taking Highway 1 via Wardak Province. While this route is the most direct road, it is considered insecure, crossing the most violent districts of Ghazni province.³⁹ DFAT has advised that locals with ties to the province and knowledge of the area - including Hazaras - were generally able to travel between Ghazni City and Hazara districts without incident and thousands of vehicles use the road daily. The alternative route, which takes the Parwan Road to Bamiyan, entering Ghazni province through Nawur district, is considered to be a safe route. While the condition of the roads on this route is extremely poor and the volume of local traffic is low, such a detour is not inconsistent with the travelling reality in other rural areas across Afghanistan. According to DFAT 'overall, interlocutors agreed road travel within the broad Hazara 'belt' in the central highlands region (taking in Nawur, Malistan and Jaghori) was very safe'.⁴⁰
150. In response to a question as to whether Hazaras are targeted on roads to and from Jaghori District, based on their ethnicity and/or their status as Shi'a Muslims, DFAT advised:
- Contacts unanimously agreed the main targets on the roads in Ghazni, and nationally, were people employed by or with direct links to the Afghan Government or international community - regardless of ethnicity. Carrying documentation which pointed to a connection with the government remained dangerous. Nobody we spoke to was aware of targeting of any particular ethnic group on the roads. Several interlocutors pointed out the most significant threats to life safety on these routes were traffic accidents and IEDs - neither of which discriminated according to ethnicity.⁴¹
151. The Tribunal prefers DFAT's detailed and more recent advice to the sources referred to by the applicant's representative in her submission. There was no evidence before the Tribunal to suggest that the applicant has direct links to the Afghan Government or international community or that he is likely to carry documentation that would link him to the government. The Tribunal finds that the applicant does not face a real chance of persecution for a Convention reason if he were to travel from Kabul to Jaghori upon his arrival in Afghanistan. The Tribunal has considered the argument that the applicant may have to travel outside of Jaghori in search of employment or for other reasons. As it was put to the applicant at the hearing, travel within the Hazara districts of Ghazni province was very safe.⁴² Jaghori has schools and a district hospital. The applicant did not claim that he would be compelled to work in a profession that would require him to use the roads on a regular and continuous basis. In searching for employment in and around Jaghori the applicant would be in a similar position to all other Hazaras in the area who are or will be looking for employment or means of supporting themselves. The Tribunal finds that the applicant does not face a real chance of persecution for a Convention reason on the roads in or around Jaghori.
152. In his evidence to the department, the applicant claimed that if he were to return to Afghanistan, he would be forced to travel to Pakistan to visit his family. As he is unable to enter Pakistan legally, he would be forced to travel there on the Afghanistan-Pakistan highways, which are extremely dangerous, especially for Shi'a Hazaras, and are heavily patrolled by the Taliban and their associated insurgent groups. The Tribunal has found that the

³⁹ DFAT, September 2011; DFAT March 2012, DFAT, November 2012; Independent Protection Assessment Office 2012, *Email to Thomas Ruttig*, 4 April.

⁴⁰ DFAT, November 2012.

⁴¹ *Ibid.*

⁴² DIAC 2011, *CIS Request AFG12298: Road security in Ghazni Country information report NO. 11/56* (Sourced from DFAT advice of 20 September 2011), 21 September (CIS [CX272986](#))

applicant is an Afghan national. There is no reason why he would be unable to obtain proper travel documents, safely travel to Kabul and make appropriate arrangements to see his family by travelling to Pakistan from Kabul.

153. On the basis of the evidence before it, including the country information referred to above, the Tribunal finds that there is no real chance that the applicant will be subjected to serious harm by the Taliban and/or Pashtuns for the reason of his race and/or religion if he were to return to his home district of Jaghori. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason in Afghanistan.

Complementary Protection

154. Having regard to the findings of fact above, the Tribunal does not accept that there is a real risk that the applicant will be arbitrarily deprived of his life by the Taliban. The Tribunal does not accept that, if the applicant returns to his home in the Jaghori district of Ghazni province, there is a real risk that he will suffer significant harm because he is a Hazara or because he is a Shia Muslim. The Tribunal has considered the applicant's claim that he if returns to Jaghori he has no land or means of supporting himself and that he would experience economic hardship. However, on the basis of the evidence provided, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will suffer significant harm as defined by the Act.
155. The Tribunal appreciates that routes or parts of routes from Kabul to Jaghori may be unsafe or insecure for all travellers. However, the mere fact that the applicant may travel from Kabul to Jaghori in order to go back to his home district of Jaghori upon his return to Afghanistan or travels to Kabul to make arrangements to visit his family in Pakistan does not mean, and the Tribunal does not accept, that there is a real risk that he will suffer significant harm. Even if the Tribunal were to accept, which it does not, that the applicant is likely to travel on these routes on a more regular basis, the Tribunal is cognisant of DFAT's advice, cited above,⁴³ that no particular ethnic group is being targeted on roads in Afghanistan. As noted above, the main targets on the roads in Ghazni, and nationally, are people employed by or with direct links to the Afghan Government or international community, regardless of ethnicity; or those carrying documentation which pointed to a connection with the government. Speeding, poor road conditions, criminality and IEDs caused or contributed to insecurity on roads. The Tribunal finds that any harm faced by the applicant on the roads in Afghanistan is faced by the population of the country generally and not by him personally. The Tribunal finds that there is taken not to be a real risk that the applicant will suffer significant harm in Afghanistan as a result of lack of security on roads or general violence.
156. The Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined. The Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Afghanistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.

⁴³ DFAT, November 2012.

CONCLUSIONS

157. The Tribunal is 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).
158. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

DECISION

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