



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA16/00560

Date and time of decision: 20 September 2016 18:33:24
Fraser Syme, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (“the applicant”) claims to be a Hazara Shia from Balochistan province, Pakistan. [In] May 2015, the applicant made an invalid application protection visa (“PV”). [In] September 2015 he lodged an application for a temporary protection visa (“TPV”). [In] August 2016, a delegate of the Minister of Immigration (“the delegate”) refused to grant the applicant a TPV.
2. The delegate found the applicant was a Hazara Shia from Balochistan and that he worked at a [workplace] in a market in his home town. The delegate did not accept as credible the applicant’s claims he and the [Employer] received threat letters from Lashkar-e-Jhangvi (“LEJ”) or *Sepah Wahabi*, but did accept it was plausible the applicant had been threatened by anti-Shia militia groups in his home town because he is a Hazara Shia. The delegate did not accept as credible the applicant’s claim his spouse was threatened in 2011 for her work or that her were kidnapped and be-headed by LEJ or *Sepah Wahabi*. Nor was the delegate satisfied the applicant would face serious or significant harm by the Pakistan authorities because of his religion or race or because he would return to Pakistan as a failed asylum seeker. The delegate did find the applicant faced a real chance of serious harm in his home town from LEJ or other anti-Shia groups because he is a Hazara Shia, but found in he would not face a real chance of serious harm if he relocated to Lahore. The delegate did not address in the decision whether it was reasonable for the applicant to relocate to Lahore for the purpose of s.36(2B)(a).

Information before the IAA

3. I have had regard to the review material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. I received no new information from the applicant. I obtained no new information. I note the review material includes the most recent DFAT country information report for Pakistan ¹ and most recent DFAT thematic report on Shias in Pakistan. ² However, the delegate often quoted from superseded versions of those reports. In making my decision, I have had regard to the information in the most recent DFAT reports.

Applicant’s claims for protection

5. The applicant’s claims are contained in the information to the IAA. They can be summarised as follows:
 - He is a Hazara Shia from Balochistan.
 - Anti-Shia militias target Hazaras for harm in his home town. He knows many Hazaras who were killed in his home town.
 - He worked at a [workplace] at market. He and his employer received threaten letters. He has variously said there were many letters, which were left outside the [workplace] at night and that there were [Number of] letters addressed to him and his employer. He

¹ DFAT Country Information Report, Pakistan – 15 January 2016 – CIS38A801264

² DFAT Thematic Report Shias in Pakistan’, DFAT, 15 January 2016 - CIS38A801265

has said the letters were from LEJ or *Sepah Wahabi*. Most of the [business owners] in the market were Hazara and many people stopped working at the market.

- The applicant's fiancée received threats in 2011 and was called an infidel because she worked for the [NGO 1] providing therapy to disabled people. Four of her colleagues were abducted by anti-Shia militias and killed. Elsewhere he has said his fiancé worked for the [NGO 2], or an NGO, but he could not remember if she worked for the [NGO 2] or the [NGO 1]. Elsewhere he said: the [Number of] colleagues were [Ethnicity]; were abducted by LEJ and *Wahabi* ; were be-headed and that this happened [Number of] weeks after his fiancé left her job after she was threatened in person by members of LEJ at the hospital where she worked. She now works for doctor clinic.
 - In November 2011, the [Employer] sold the business and went to [Country 1].
 - The applicant then stayed at home, it was too dangerous for him to go outside because he is Hazara. It was not safe for him to travel on the street, so he could not find work. He had no option but to leave Pakistan.
 - In February 2012, he left Pakistan. Elsewhere he has said he departed Pakistan in July 2012. And elsewhere he has said he left Pakistan three times, twice being deported back to that country from [Country 2] in early April and in mid May 2012. Elsewhere he has said he left his home town in February to go to Karachi, where he stayed for [number] months. Elsewhere he said he went to [Country 3] for [Number of] months at the beginning of 2012. Elsewhere he has said he was in Karachi and Lahore for the [Number of] months of 2012.
 - The Pakistani authorities will arrest him at the airport if he returns to Pakistan, because he left Pakistan and applied for asylum and he made claims against LEJ. LEJ has influence and control over the government.
 - The Pakistan government is unwilling or unable to protect him from anti-Shia militia. The majority of the government are Punjabi, the same as the Punjabi Taliban. Nowhere in Pakistan is safe for him to live.
6. The applicant fears if he returns to Pakistan he will be targeted for harm by LEJ, *Sepah Wahabi*, Punjabi Taliban, and/or other Sunni/anti-Shia militia and/or the Pakistan authorities because: he is Hazara; he is Shia; his fiancée worked for a NGO; he applied for asylum and lived for an extended period of time in Australia.

Refugee assessment

7. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

8. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

LEJ and Sepah Wahabi

9. It is convenient to first clarify the Sunni, anti-Shia militant groups whom the applicant claims have harmed him in the past and fears will harm him if he returns to Pakistan. As well as LEJ, the applicant claims to fear harm from *Sepah Wahabi* (although he often referred solely to *Wahabi*) and the Punjabi Taliban. I am unable to find reference to any organisation known as *Sepah Wahabi* in the country information within the review material. The delegate did not address the identity of *Sepah Wahabi*. The review material however includes a paper³ on sectarian violence in Pakistan. The paper explains that LEJ an extremist offshoot of *Sipah-e-Sahaba Pakistan* ("SSP") and that both are associated to *Deobandi* subset of Sunni Islam prevalent in South Asia, which in turn is associated to the *Wahhabi* subset of Islam, prevalent in the Gulf states and Saudi Arabia. The paper further states SSP and LEJ receive support and funding from Saudi Arabia. Reports from the UK Border Agency⁴ and the European Asylum Support Agency⁵ contain similar information. This country information leads me to conclude the applicant's reference to *Sepah Wahabi* is a reference to SSP. During his entry interview, the applicant also made reference to fearing harm from *Sepah*. During the TPV interview he said *Sepah* and LEJ are all the same and they are all *Wahabi*. I have therefore assessed his claims regarding *Sepah*, *Sepah Wahabi* or *Wahabi* as being in reference to SSP. I consider doing so gives every benefit to the applicant as SSP is a known anti-Shia organisation in Pakistan. Similarly, the same reports state the Punjabi Taliban is associated to *Tehreek-e-Taliban Pakistan* ("TTP"), also known as the Pakistan Taliban. TTP is another Sunni militant group which targets Shias for harm in Pakistan. So, again to give every benefit to the applicant, I have assessed his claims related to the Punjabi Taliban as a reference to the whole, wider TTP.

Fiancée

10. The applicant claims to fear harm from LEJ, SSP, TTP and/or other anti-Shia militants because his fiancée worked for the [NGO 2/NGO 1/NGO]. He would be considered to be in control of her as her fiancé. He then too would be considered an infidel because of her work. He also claims she quit that work in 2011 after being threatened by LEJ. He told the delegate some NGOs continue to ask her to work with them, but she declined to do so. Therefore the threat to him is ongoing, although she no longer works for an NGO.

³ CIS2F827D91993: Rafiq, A 2014, Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007, *Middle East Institute*, December

⁴ Country of Origin Information Report Pakistan 2013", UK Home Office, 09 August 2013

⁵ CISEC96CF13368: "EASO Country of Origin Information Report: Pakistan Country Overview", *European Asylum Support Office*, 01 August 2015

11. The applicant provided a marriage certificate between himself and lady, whom he referred to as his fiancée. During the TPV interview he told the delegate he was married and then he claimed their marriage ceremony plans were interrupted by threats to them both, but they remain in a relationship and are legally married, however they had not had any religious ceremony. Notwithstanding the marriage certificate, I will refer to her as the applicant's fiancée as his fiancée as that is how he referred to her, pending the performance of their religious vows. He consistently identified the lady as his fiancée throughout his application for protection and told the delegate he is in daily contact with her. Both during the entry and TPV interview, he spoke with passion about how she could be included in his application for protection. I am willing to accept the lady is the applicant's fiancée from a religious viewpoint, albeit they are legally married, and I accept they remain in a relationship.
12. The applicant has variously claimed his fiancée worked for the [NGO 1], for the [NGO 2] and for an NGO, the name of which he could not remember – but it may have been the [NGO 1 or NGO 2]. He told the delegate he did not ask his fiancée where she worked. He described her work as physiotherapist and as giving massage to disabled people, which when allowing for variations in interpreting I consider is the same position. He claims members of LEJ threatened his fiancée to be an infidel because of her work and threatened to harm her if she did not quit. I consider it reasonable that if the applicant's fiancée was genuinely threatened as claimed, that the applicant should be able to recall consistently his fiancée's place of work. That he has provided inconsistent claims about her workplace undermines the credibility of his claims. I am not persuaded by his explanation he did not ask where his fiancée worked.
13. The applicant further claimed [Number of] colleagues of his fiancée were abducted and killed by LEJ. In his TPV statement and TPV interview, he claimed the victims were [Ethnicity]. I note the delegate was unable to locate any media reports of such an event occurring in the applicant's home town. And while I note the applicant is not obliged to provide evidence substantiating his claims, he too did not provide any media reports of the beheading [Number and Ethnicity] nationals by the LEJ. I consider the beheading death of [Number of NGO Workers] would be a very newsworthy event, whether the victims were [Ethnicity] or not and would garner considerable media attention. I consider the absence of any media reports of the claimed harm to the colleagues of the applicant's fiancée greatly undermines the credibility of his claims.
14. I am not satisfied the applicant has provided credible claims regarding threats to his fiancée or the death of her colleagues. I reject the fiancée worked for the [NGO 1 or NGO 2] or an NGO. I reject she was threatened by the LEJ. I reject [Number] of her colleagues were abducted and be-headed by the LEJ. It follows I do not accept the applicant will be imputed as an infidel because of his fiancée's claimed past work. I note too she is not currently working at an NGO. But I do not accept that is because she fears being threatened by LEJ. It follows on the credible evidence before me, I am not satisfied the applicant faces a real chance of serious harm from the LEJ, SSP, TPP, other anti-Shia militants and/or the Pakistani authorities because of any imputed religious or political opinion arising from the claimed past work of his fiancée, now or in the reasonably foreseeable future, if he returns to Pakistan.

Failed asylum seeker

15. The applicant claims he will be harmed by the Pakistani authorities because he applied for asylum in Australia and has made claims against LEJ. He claimed he knows a Hazara asylum seeker who arrested by the Federal Investigating Agency ("FIA") after being returned to Pakistan from Australia, however, he did not know the circumstances of that person. I note the information in the most recent DFAT report that unlawful emigration is an offence in

Pakistan, punishable usually by a small fine. The applicant claims however he departed Pakistan lawfully on a genuine passport issued in his own name. On the evidence before me, I am not satisfied the Pakistani authorities would suspect the applicant has committed any offence of unlawful emigration. The most recent DFAT report further states there is no information that failed asylum seekers are punished on return to Pakistan, but there is information returnees may be questioned by FIA or other authorities as to whether the returnee is wanted for committing any crimes in Pakistan. The evidence before me does not suggest the applicant has such a profile. I note the applicant claims he was returned to Pakistan twice before by the Thai authorities in 2012 and he did not come to any adverse attention by the Pakistani authorities on either occasion. I note too during the TPV interview, he told the delegate his circumstances this time were different, because he had spent only one day in [Country 2] on each of those occasions, whereas he has resided in Australia for a few years and applied for asylum. The most recent DFAT report further states people who have spent time living in western countries are not subject to societal discrimination on return to Pakistan.

16. While I accept from the circumstances of his return the Pakistani government may become aware the applicant has applied for asylum in Australia, I do not accept the Pakistani authorities will have any knowledge of the nature of the applicant's claims for protection. The country information does not support the applicant's claims he would be arrested because he has no money to bribe the officials at the airport. The country information the delegate quoted in the decision regarding the Pakistan authorities cooperate with [NGO Agencies] to provide assistance to returnees. I also do not accept the applicant's claim LEJ, SSP, TTP or other anti-Shia militant groups have control over the Pakistan authorities. The most recent DFAT reports and the country information quoted by the delegate detail the steps the Pakistani government have taken to combat sectarian violence and against militant groups, including LEJ, SSP and TTP.
17. I am willing to accept the applicant may be questioned by the FIA on return to Pakistan, but am not satisfied being subject to a short period of detention for questioning alone would amount to serious harm when having regard to the non-exhaustive instances of serious harm set out in s.5J(5). I am not satisfied there is a real chance the applicant will suffer serious harm from the Pakistan authorities. LEJ, SSP, TTP, anti-Shia militia and/or Pakistan society because he applied for asylum and his lived in Australia for an extended period of time, now or in the reasonably foreseeable future, if he returns to Pakistan.

Shia Hazara from Balochistan province

18. The applicant claims to fear harm from LEJ, SSP and TTP as well as other anti-Shia militant groups because he is a Hazara Shia and that his fear extends throughout all of Pakistan, not only his home town. He further fears the Pakistan authorities will harm him because he is a Hazara Shia. That is because LEJ, SSP and TTP have influence over the Pakistan authorities. I have already rejected above that LEJ, SSP and TTP have influence over the Pakistan authorities.
19. At the TPV interview, the applicant claimed he received the first threat letter in mid-2010 and a second letter also in 2010. He was one of three employees of [Workplace]. Only he and the owner were named in the threat letters. He also said most of the [Businesses] in the market received letters. He could not remember the date he received the third and last letter. He described the letter stated the shop should be closed and they should leave the country or will be in a grave. He knew the letter was either from LEJ, *Sepah* or *Wahabi* because those groups were active in his home town and all consider Shias are *kaffir*. The delegate put to the applicant during his entry interview, he made no reference to receiving any threat letters and claimed he had to close his own [Business]. He replied that at his entry interview, he was only

able to provide brief details of his claims. I am persuaded by his explanation. I note the applicant has also claimed he left his home town to go to Karachi in February 2012, about [Number of] weeks after receiving the last letter, but that cannot be correct if as he said in the TPV statement that his employer sold the [Business] in November 2011 and went to [Country 1]. The applicant told the delegate he had problems with remembering and was unsure about the dates. I consider the applicant has provided inconsistent evidence regarding the threat letters which undermines the credibility of his claims he received any threat letters or that was the reason he departed Pakistan.

20. The applicant told the delegate after going to Karachi in February 2012, he went to Lahore about [Number of] months later, from where he flew to [Country 2]. But he was refused entry to that country and returned to Lahore . He returned to his home town in April. A few weeks later around the beginning of June, he flew a second time to [Country 2], but from Karachi. Again he was refused entry to [Country 2] and returned to Karachi the next day. He then went back to his home town. In July from Karachi he flew to [Country 2] a third time and was permitted entry and went on to travel to Australia through [a Country] and [another Country]. In his PV statement though, the applicant claimed after he left his home town, he stayed in Karachi for three months, before going to [Country 2]. The applicant again told the delegate he was having difficulty remembering the dates and what he said in the past. Although he was given time after the TPV interview to provide details of his addresses in Pakistan, he replied merely stating he lived in Karachi and Lahore during the first half of 2012. Later in the TPV interview, he told the delegate he went to [Country 3] for [Number of] months in 2012 to work. He then resiled from claiming he went to [Country 3], but once again said he went to [Country 3] for work. After the hearing he again resiled in writing that he said at the TPV interview he had gone to [Country 3] for work. I consider the applicant has provided inconsistent evidence regarding his whereabouts in 2012 and that undermines his claims he was departing Pakistan as a response to receiving the threat letters. In particular, he claims to have returned twice to his home town after when refused entry to [Country 2]. I consider that is inconsistent with the applicant's claims he had a genuine fear of harm in his home town.
21. For the above reasons, I do not accept the applicant received any threat letters from LEJ or SSP in 2010, 2011 or 2012. I do not accept the applicant left his home town in fear of harm from LEJ or SSP or TTP any other anti-Shia group because he received any threat letters. I consider the applicant has fabricated these claims as a basis upon which to apply for protection.
22. The latest DFAT reports state the vast majority of Hazaras are Shia and that Hazaras are physically distinguishable due to their facial features. The latest DFAT reports state there are approximately 900,000 Hazaras in Pakistan, 700,000 of whom reside in the applicant's home town and surrounding areas of Balochistan province, but that there are also large Hazara communities in the other main cities of Pakistan, including Lahore. At the TPV interview, the applicant estimated there were 500,000 Hazaras in his hometown. I note applicant provided his Pakistani ID card, passport, school records and driver licence as evidence of his identity. I note too he conducted his entry and TPV interviews in Hazaragi. I am willing to accept the applicant is a Hazara and a Shia and that his home town is in Balochistan.
23. The most recent DFAT reports and all of the country information in the review material, including several reports provided by the applicant, indicate that LEJ (the main perpetrator of violence) SSP and TTP target Shias in the applicant's home province and in particular, the applicant's home town. Harm includes mass and targeted killings, abductions and assaults. DFAT assess there is a moderate but declining risk of targeted harm by militant groups against Hazara Shias in Balochistan.

24. I am satisfied if the applicant was to return to his home town in Balochistan, he would face more than a remote chance, and therefore would face a real chance of serious harm from LEJ, SSP, TTP and/or other anti-Shia militia for the combined essential and significant reasons of his race as a Hazara and his religion as a Shia. I am satisfied the harm he would face, such as deprivation of liberty serious physical assault and/or loss of his life would be instances of serious harm. I am satisfied the LEJ, SSP, TTP and/or other anti-Shia militia would inflict that harm against the applicant in a systemic and discriminatory way.
25. I am satisfied the applicant has a well-founded fear of persecution from the LEJ, SSP, TTP and/or other anti-Shia militant groups for the combined reasons of his race and/or religion, now or in the reasonably foreseeable future, if he returns to his home town in Balochistan province.
26. I must now turn my mind to whether the applicant has a real chance of persecution throughout all areas of Pakistan and in particular Lahore, Punjab province.

Relocation

27. The applicant claims he would not be safe anywhere in Pakistan as a Hazara Shia, because the LEJ, SSP, TTP and other anti-Shia militant groups are everywhere in Pakistan.
28. The delegate asked the applicant why he would be unable to live in another part of Pakistan, such as Islamabad or Lahore. He said because of his facial features, anyone would know he is Hazara Shia and he would be in danger. The delegate put to the applicant the country information quoted in the decision regarding there had been no mass attacks against Shias in Lahore since 2010, targeted attacks have only been against Shia political and religious leaders, doctors and lawyers and there are no reported attacks targeting Hazaras. The applicant replied many militant groups started in Punjab province. The Wahabi are very powerful and united with the Punjabis. There are some Hazaras in Karachi, but none in Lahore. If he went back, he would have to return to his home town, because that is where most Hazaras live. He added Punjab is safer because the Prime Minister and his brother are from there. All the trouble is in Karachi and the applicant's home town. Elsewhere he accepted country information the delegate discussed with him regarding the Pakistani authorities taken steps to ensure the safety of *Ashura* parades during *Moharram*. He stated Shias and Hazaras are killed every day, but that did not make the news.
29. According to the most recent DFAT thematic report, Sunnis and Shias are generally more integrated in Lahore and that the level of generalised and sectarian violence is lower in Punjab than other parts of Pakistan. No Shia deaths from sectarian violence were reported in Lahore during 2015. The latest DFAT reports state too under the Pakistan constitution, Pakistani citizens are free to live anywhere in the country. I am satisfied the applicant could travel to and reside in Lahore.
30. On the basis of the evidence before me, I am not satisfied the applicant has a well-founded fear of persecution from LEJ, SSP, TTP and/or other anti-Shia militants or from the Pakistan authorities for any of the reasons in s.5J(1)(a), now or in the reasonably foreseeable future if he relocated to live in Lahore.
31. I have had regard to all of the evidence before me and I have considered the applicant's claims individually and cumulatively, as well as considering the personal circumstances of the applicant. I am not satisfied the applicant has a well-founded fear of persecution from LEJ, SSP, TTP, other anti-Shia militants and/or the Pakistani authorities reason or combination of

reasons in s.5J(1)(a), now or in the reasonably foreseeable future, if he returns Pakistan and relocates to Lahore.

Refugee: conclusion

32. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

33. A criterion for a protection visa is that the applicant is a non citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

34. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

Failed asylum seeker – questioning by FAI

35. I found above that the applicant may be questioned by FAI or other Pakistani authorities on return to Pakistan, but that questioning would not be serious harm. I have had regard to whether any harm the applicant may face arising during that questioning would be significant harm.

36. I am not satisfied that any brief detention or questioning by the FAI or other Pakistani authorities would, individually or cumulatively, constitute significant harm as exhaustively defined under ss.36(2A) and 5 of the Act.

Fiancée, Failed asylum seeker

37. I found above the applicant singularly or cumulatively does not have a real risk of serious harm from LEJ, SSP, TTP, other anti-Shia militants or the Pakistani authorities on the basis of: his fiancée's work; being a failed asylum seeker, or having resided in Australia for an extended period of time. I found too the applicant does not have a real risk of serious harm from the Pakistan authorities because he is a Hazara Shia. For the same reasons, and applying the authority in *MIAC v SZQRB*⁶ I am not satisfied the applicant will face a real risk of significant harm if he is removed Pakistan.

⁶ (2013) 210 FCR 505

Shia Hazara from Balochistan province

38. I found above that the applicant does face a real chance of persecution from LEJ, SSP, TTP and/or other anti-Shia militant groups in his home town in Balochistan province. For the same reasons, and again applying the authority in *MIAC v SZQRB*⁷, I am satisfied the applicant faces a real risk of significant harm in his home town in Balochistan province.

Qualifications to the real risk threshold

39. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

40. In relation to relocation, I found above the applicant would not face a real chance of serious harm if he relocated to live in Lahore. Again, for the same reasons, and applying the authority in *MIAC v SZQRB*, I am not satisfied the applicant faces a real risk of significant harm in Lahore. However, I must now turn my mind to whether it would be reasonable for the applicant to relocate to Lahore where there would not be a real risk of him suffering significant.

41. I accept the applicant will face some difficulty relocating to Lahore as he must find suitable employment and accommodation. As noted above the evidence before me is the applicant is engaged and his fiancée is working at a [business] in their home town. I consider it reasonable that the applicant would desire his fiancée to relocate to Lahore with him so they may continue their relationship. I note his fiancée must have some qualifications work at a [business]. I note too the applicant and his fiancée are still both relatively young and they have no children. I note as well the applicant has a primary school level of education, but that he has many years of experience selling clothes. While I note Punjabi is the main language of Lahore, the applicant declared as well as Hazaragi, he speaks Urdu, the national language of Pakistan, so he will still be able to communicate in Lahore to find work and accommodation. I note as well the applicant has shown himself to have the wherewithal to adapt to life in Australia. Finally, I note the applicant told the delegate he had spent some, albeit it limited time, in Lahore while attempting to depart Pakistan in 2012.

42. I am mindful of the country information discussed above regarding the general security situation in Lahore and the applicant's acknowledgement at the TPV interview that Lahore is generally safe, because it is the home city of the Prime Minister of Pakistan. I accept the applicant will be identifiable as a Hazara Shia because of his physical features, but the country information quoted above that there is a population of Hazaras in Lahore does not support his claim no Hazaras live in that city. Having regard to that country information and the personal circumstances of the applicant and his fiancée, I am satisfied it is reasonable for the applicant to relocate to Lahore for the purpose of s.36(2B).

⁷ (2013) 210 FCR 505

Complementary protection: conclusion

43. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of well-founded fear of persecution, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of serious harm for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a well-founded fear of persecution for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the first person), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) 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 non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

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