



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08486

Date and time of decision: 1 July 2020 17:04:00
D Hughes, 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 national of Pakistan. He applied for a protection visa on 15 December 2016. A delegate of the Minister for Immigration refused to grant the visa on 12 February 2018. A decision in this matter was initially made by the IAA on 10 September 2018 (IAA18/04377). The matter is currently before the IAA by judgment and orders of Judge [name] of the Federal Circuit Court, dated [in] May 2020.¹

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The applicant, through his representative, provided an initial submission to the IAA on 26 February 2018. On 1 March 2018, the applicant was advised by an officer of the IAA that the submission did not appear to comply with the 'Practice Direction for Applicants, Representatives and Authorised Recipients' issued by the President of the AAT. The officer noted that the statement was 11 pages in length (exceeding the five page limit) and the applicant had not provided copies or extracts of the new information relied upon.
4. On 5 March 2018, the applicant provided a revised statement that was five pages long and attached copies of the new information relied on as part of the submissions. Following remittal of this matter, on 12 June 2020, the applicant provided an updated one page statement, intended to replace the final page of the 5 March 2018 submission. The effect of this amended addendum is to update the original submission in a way that remains compliant with the five page limited provided for in the practice direction. In addition to the one page submission, the representative relevantly adds new country information, including the most recent Department of Foreign Affairs and Trade (DFAT) country report on Pakistan from 2019.
5. I am satisfied the submission complies with the practice direction, and I appreciate the representative's clear approach to updating and revising the initial submission.
6. In terms of the new country information from the March 2018 submission, I make the following assessment. With the exception of excerpts from the undated CIA Fact Book, the reports provided each predate the delegate's decision of 12 February 2018. The articles do not obviously contain credible personal information in the sense contemplated by s.473DD(b), referring generally to the situation in Pakistan. I am not satisfied the information was not, and could not have been, provided to the Minister before the Minister (the delegate) made the decision, or that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims.
7. In the event that I am wrong in any aspect of that assessment, I consider the travel advice for travellers issued by the Australian and UK Governments to be of very limited relevance in the context of this assessment – an assessment of the situation on return for a Pakistani national. I consider extracts from the CIA Fact Book about armed groups in Pakistan is accurate, but general in scope and of little assistance in terms of this specific assessment. In terms of the news articles relating to security incidents in Islamabad, I am satisfied the applicant was on notice about the issue of relocation to Islamabad (or Lahore) during the visa interview, and

¹ [Citation deleted].

that he had an opportunity to provide submissions on those matters. I also consider those news articles are subsumed by other more specific analysis before the IAA, including DFAT and the South Asia Terrorism Portal (SATP).

8. In each respect, I consider the more specific country advice before me, including from DFAT and other groups, negates the need for consideration of this more general information about the situation in Pakistan. In terms of these reports, I am not satisfied there are exceptional circumstances to justify consideration of this new information.
9. The revised one page submission from 12 June 2020 also contains new information, including updated country advice, and news reports relating to income standards in Pakistan, and corruption within public health. I am satisfied the information was not, and could not have been, provided to the Minister before the delegate made their decision.
10. Given the time that has passed since the original decision, I consider some updated country advice is required, particularly given the age of the information relied on by the delegate in their decision. I note the delegate relied on a DFAT report (15 January 2016) that had already been superseded by a later report (1 September 2017) at the time of that decision (10 September 2018). I note the previous IAA reviewer obtained and relied on that DFAT report on Pakistan,² (as well as information regarding sectarian violence targeting Shias in Pakistan from the SATP).³ The new information before me is succinct and specific to the applicant's circumstances, and that of his family. I also consider it assists in addressing the issues identified by the Circuit Court regarding the situation in Islamabad, and relocation to that area. In all the circumstances, I am satisfied there are exceptional circumstances to justify consideration of the new information provided in the revised 2020 submission, as well as that obtained by the IAA during the first review.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - He is a citizen of Pakistan. He was born in [year] in Quetta, Pakistan. He is Hazara by ethnicity, and a Shia Muslim. His family consisted of [number] people – the applicant, his parents, and [number] siblings. He is the [number] child of the family. He is married and has one daughter, born in [year].
 - His father was very young when he migrated to Pakistan from Afghanistan, and through his migration to Pakistan, he became a Pakistan citizen.
 - Although they were citizens of Pakistan, their lives as minority Hazaras (who came to Pakistan from Afghanistan) meant they were always in danger.
 - At the age of [age], he quit school and worked in [a] shop in Quetta, Pakistan. He worked there until 1999, when he gained employment with [an employer] as a [Occupation 1].
 - In 1997, the applicant was arrested and taken outside of Quetta and beaten by local police who [were customers of the shop] he worked at. They told him it was because [they were not satisfied with the quality of work] and that it must have been his fault. They threatened to kill him if he told anyone.

² DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

³ SATP, 'Shias Killed in Pakistan since 2001 (as at 26 April 2018)', CIS7B83941864.

- In 2003, the applicant was accosted and severely beaten by Balochi people while [working in Occupation 1]. They attempted to set him on fire before a group of older men intervened. He went to the local police to report the incident and was slapped by one of the officers. He was accused of doing something wrong and told he deserved what he got. The applicant did not know who to make a complaint to as each time he did he was discriminated against because of his race/ethnicity and religion.
- His problems in Pakistan were very extensive. He has been discriminated against many times because of his religion and race.
- In 2008, after finishing [work], his Balochi supervisor asked the [co-workers] to have tea, but the applicant was told 'piss of you dirty Shia, you are not allowed to have tea with us'. The other [workers] laughed.
- Despite the discrimination and problems they faced, he continued to live there and tried to work and earn money to support his family.
- In September 2011, the applicant was attacked and shot at by armed gunmen on a motorcycle, while [he was working] in [location]. The attempt was directed to kill the applicant. He expected a police report to be lodged and support from his boss, but he was instead asked to go off duty until further notice. He was forced to quit his job after 12 years.
- After a few months, he found employment [undertaking specified work]. On 4 October 2012, while [working at a location] (an area known for dangerous terrorist attacks on Hazara people), two motorbikes approached his crew. Sensing the danger, the applicant threw himself into [safety], but his colleagues were gunned down.
- After the incident, he decided to leave Pakistan. He has no safety in Pakistan because of his race and religion. He cannot change his facial appearance and cannot deny his religion. The people targeting them are Pashtun and Balochi who are Wahhabis. The Pakistan government is not willing to control the situation and stop the killing because they are all Pashtun and Balochis.

Factual findings

12. Based on his documentation, and his consistent oral evidence, I accept the applicant is Shia Hazara from Quetta. I am satisfied his family remain there and this is where he would return to in Pakistan. I am satisfied he is a citizen of Pakistan and has no right to enter and reside in any other country.
13. The applicant was not pressed by the delegate to any great degree about his substantive claims. I note the records of the applicant's 'departmental interviews' were before the delegate. After his arrival in Australia, in an interview in April 2013, the applicant claimed he had been targeted while working as a [Occupation 1] and that his life was in danger. In his arrival interview, from June 2013, the applicant referred to widespread insecurity and threats facing Hazaras. He referred to two specific incidents when he was personally targeted. First, when he was shot at by masked men while working at his office in September 2011. The second, when he was again shot at while working for a [different] company in April 2012.
14. In his written application from, the applicant referred to four specific incidents in which he was targeted. Broadly, he referred to a 1997 attack connected to his employment at a [shop]; a 2003 attack while he was [working in Occupation 1]; a September 2011 attack while [working in Occupation 1]; and an October 2012 attack while [undertaking specified work].

15. There are clear discrepancies in his evidence about the attacks that he faced in Pakistan, but I am conscious of the limits of the biodata and arrival interviews. The scope of these interviews may have meant that his evidence or claims were incomplete. The applicant has otherwise been consistent in his employment timeline between his arrival interview and his later evidence provided during this process. His evidence about his residency and family was also consistently advanced. I have given weight to the fact that the applicant's claims are consistent with country advice about insecurity facing Shias and Hazaras in Quetta during these periods. Nevertheless, I consider his reference to two attacks in his early interviews before the Department undermines his later claims that he was targeted on four occasions.
16. While I consider the applicant may have in part exaggerated his evidence about these attacks, I do accept that he faced attacks and insecurity to some extent as he claims. Having regard to all the evidence before me, I accept he was targeted at least once while [working in Occupation 1], and once while working for a [different] company. I accept the latter incident was likely his catalyst for leaving Pakistan. I also accept he faced some societal discrimination as he contends. Equally, I note the applicant was able to find stable long term work, and his family was able to live securely in Quetta. While I am satisfied the applicant has been targeted in the past for reasons of his ethnic and religious profile, I find he was not personally or specifically targeted. Instead, I am satisfied he faced opportunistic attacks because of his ethnic and religious profile. I find he is not at any specific ongoing risk from these past incidents. I am satisfied that is the extent of his profile, and that is the profile I have assessed him against on his return to Pakistan.
17. I am satisfied the applicant left Pakistan lawfully using a valid passport. The applicant has no adverse or criminal profile with the Pakistan authorities. Based on DFAT advice regarding the situation for returnees to Pakistan,⁴ I am satisfied there is no chance of the applicant facing harm or penalty for reasons of his lawful departure or for seeking asylum in Australia.

Refugee assessment

18. 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

19. 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

⁴ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

- 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.
20. I have accepted the applicant is Shia Hazara from Quetta and this is where he would return to live. I have accepted the applicant was targeted in the past while living in Quetta/Balochistan. I have found that he has exaggerated the number of incidents and extent of his targeting, but that assessment is ultimately secondary to my assessment of the overall security situation in Quetta, at least on current estimates. That assessment is as follows.
21. DFAT indicates there are between 600,000 to one million Hazaras in Pakistan, with most of them living in Quetta. Smaller but significant Hazara populations also live in major urban centres in Pakistan. Hazaras are predominantly Shia Muslims, and are targeted in sectarian violence for this reason. Hazaras in Quetta live mostly in enclaves for security reasons, with the security situation for Hazaras living outside the enclaves in the province of Balochistan considered to be more severe. The two enclaves, Hazaratown and Mariabad, have checkpoints and security provided by the paramilitary Frontier Corps. The Frontier Corps are known to routinely discriminate against and harass Hazaras at checkpoints.⁵
22. Analysis about the insecurity and harm Shia Hazaras have faced in Quetta is unequivocal.⁶ While I consider there is evidence of improvement in that analysis, there are also indications of setbacks, including a spate of incidents in 2018. In that context, I highlight and give weight to DFAT's assessment from March 2019 that Hazaras face a high risk of violence from sectarian militants when outside their enclaves in Balochistan.⁷ While I accept that living in enclaves in Quetta has improved the security situation for Hazaras, it has also restricted their ability to find employment and pursue higher education, and has led to economic exploitation and inflated prices.⁸
23. I consider that reality likely explains the work patterns of the applicant, which appear to have taken him out of the enclaves. Notwithstanding the insecurity, I consider it very likely the applicant would again seek out more meaningful work and livelihood opportunities and that this would likely require him to travel outside of the Hazara enclaves in Quetta. In that context, and given the country advice before me, I accept there is a more than remote chance that he would face harm because of his religious and ethnic profile within Quetta and Balochistan more broadly, at least having regard to current security assessments. It follows that I am satisfied there is a real chance of the applicant facing serious harm should he return to live in Quetta now or in the reasonably foreseeable future.
24. In terms of whether the applicant's real chance of harm extends to all areas of the receiving country, I have weighed advice before the IAA about security in areas outside of Quetta, such

⁵ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

⁶ SATP, 'Shias Killed in Pakistan since 2001 (as at 26 April 2018)', CIS7B83941864; Pak Institute for Peace Studies, 'Pakistan Security Report 2016', 1 January 2017, CISED50AD63; Center for Research & Security Studies, 'Security Report: July-September 2016', 28 October 2016, CIS38A80122494; Minority Support Pakistan, 'The Shia Hazara of Pakistan: A Community Under Siege', 1 April 2012, CIS23474.

⁷ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

⁸ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

as Islamabad, and the specific risks to those that share the applicant's ethnic and religious profile.

25. The Pakistani Government has implemented a number of security operations and measures to address the level of sectarian and terror-related incidents across the country. These measures are credited with a significant reduction in the number of violent and terrorism related attacks in Pakistan. They have disrupted the activities of militant groups and disrupted their access to former safe havens. As a result of these operations, there has been a declining trend in sectarian violence since 2014.⁹
26. Security in Islamabad is higher than in other parts of the country, due to the high number of security personnel deployed in Islamabad relative to its population.¹⁰ In 2017, DFAT stated that there is a strong security presence, including checkpoints throughout the city and its entry points, and patrols by the paramilitary Rangers. These security measures provide a strong deterrent to militant groups planning attacks in the capital, and large-scale militant or sectarian attacks in Islamabad are rare. Such violence more often takes the form of targeted killings (such as drive-by shootings) of high-profile community leaders.¹¹
27. DFAT states sources indicated Islamabad and Lahore are the safest places in the country for Shias. Shia and Sunni communities in these cities tend to be much more integrated. According to the CRSS, no deaths from sectarian violence occurred in Islamabad in 2016.¹² While I accept there have been security incidents in Islamabad, I do not consider more recent advice in other reports before me indicates any elevation or shift in the risk profile for Shias living in these cities.¹³
28. While not immune from insecurity, the weight of advice before me indicates that Islamabad is one of the safest places in Pakistan for Shias to live.¹⁴ The applicant challenges the notion of the level of relative safety for Shia Hazaras in Islamabad. I agree that term is perhaps an unhelpful guide when assessing the actual risk for persons with the applicant's profile.
29. In terms of the actual risk, DFAT assesses that Shias in Islamabad face only a low risk of sectarian violence.¹⁵ While highlighting the specific risk of profile of Hazaras, and highlighting the risks of ethnic discrimination outside of Quetta, DFAT and other sources do not specify recent attacks against the Hazara populations in Islamabad (or other areas such Lahore) or provide a clear assessment of the level of risk for persons with this profile in Pakistan. What is apparent is that there are small but significant Hazara populations in the major urban areas, and large Shia populations in Islamabad. DFAT states that the security measures in Islamabad provide a strong deterrent to militant groups planning attacks in the capital, and large-scale

⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; SATP, 'Shias Killed in Pakistan since 2001 (as at 26 April 2018)', CIS7B83941864; and others.

¹⁰ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

¹¹ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

¹² DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

¹³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; SATP, 'Shias Killed in Pakistan since 2001 (as at 26 April 2018)', CIS7B83941864.

¹⁴ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

¹⁵ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

militant or sectarian attacks in Islamabad are rare.¹⁶ Statistical reporting of incidents involving Shias supports that assessment.¹⁷

30. Given the high proportion of Hazaras that are Shias, I consider the country analysis and data relating to Shias in Islamabad is also instructive in any assessment of the targeting of Hazaras in Pakistan. It follows that in terms of either profile, I consider attacks in Islamabad are rare. As Hazaras are 'visually distinct', I accept the risks to them are somewhat more elevated than other Shias. That fact is reflected in DFAT's 2017 assessment of the risks for Shia Hazaras and non-Hazara Shias in Balochistan where it states that the visually distinct Hazara are at 'a somewhat higher risk' than other Shias.
31. I am satisfied there are Hazara and Shia populations in Islamabad. While I accept that Shia Hazaras in Islamabad are more likely to face societal discrimination, and I accept that the risk of sectarian and ethnic violence in Islamabad would also be somewhat higher for Shia Hazaras in Islamabad, I give weight to the limited number of incidents involving Shia/Hazaras in the city. I am satisfied that security is far higher in Islamabad. I am satisfied that large scale militant and sectarian attacks are rare, as are incidents involving the targeting of Shias and Hazaras. I am satisfied the applicant has no higher profile beyond his religious and ethnic profile. In that full context, while I accept that the risks of ethnic or sectarian violence cannot be ruled out completely, I consider the risks for Shia Hazaras living in Islamabad are remote, particularly for those with no additional high profile.
32. Outside of ethnic and sectarian violence, DFAT states that some (typically low-level) anti-Shia discrimination does occur in Pakistan. DFAT further states that Hazaras face a moderate risk of societal discrimination, including by government officials and security forces, in the form of obstruction at checkpoints, denial of or delay in access to identity documentation, employment and services. However, DFAT assesses such discrimination reflects individual prejudice rather than systematic and/or formal official discrimination.¹⁸ In 2017, DFAT states that societal discrimination in Pakistan tends to manifest in the form of positive discrimination (nepotism, patronage, etc.) in favour of one's own family, tribal or social group.¹⁹
33. I accept the representative's submission that the applicant is clearly identifiable as a Hazara, and therefore identifiable as a Shia. Based on the advice before me, I accept he may face discrimination for these reasons in a city such as Islamabad. However, I am not satisfied it would be anything other than low level. I note the discussion of discrimination refers to barriers in terms of documentation, and the resultant difficulties in terms of accessing other services. I note the applicant is well documented.
34. In the assessment below, I have not accepted that he only speaks Dari, and find he also speaks some Urdu and Pashto. I consider these factors may further reduce the potential or impact of any societal discrimination he may face. On the evidence before me, I am not satisfied any discrimination he may face would be at a level that would prevent him from finding employment, accommodation, or accessing basic services, including health care or education for his child. I am not satisfied that any societal or official discrimination he may face in Pakistan based on his ethnic or religious profile, would threaten his capacity to earn a livelihood, cause

¹⁶ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

¹⁷ SATP, 'Shias Killed in Pakistan since 2001 (as at 26 April 2018)', CIS7B83941864.

¹⁸ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

¹⁹ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

him significant economic hardship, deny him access to basic services, threaten his capacity to subsist, or otherwise constitute serious harm.

35. In summary, the country information before me indicates the overall security situation has improved markedly in Pakistan. That advice indicates that militant and sectarian violence in Islamabad is rare. I consider the reports before me indicate this is also the case in terms of generalised violence within the city.²⁰
36. While I again accept the risks cannot be ruled out altogether, I find the chance of the applicant facing harm for reason of his religious and ethnic profile in Islamabad, from Sunni extremist groups (including Lashkar-e-Jhangvi, Islamic State, the Taliban, etc.), or any other person or group, to be remote. I also consider the chance of harm from other generalised violence is also present in Islamabad, as it is throughout Pakistan, is present but remote. I find there is not a real chance of him facing serious harm for any of these reasons. It follows that I am satisfied the real chance of persecution does not extend to all areas of Pakistan. I find his fears of harm for these reasons are not well founded.

Refugee: conclusion

37. 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

38. 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

39. 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.
40. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

²⁰ Pak Institute for Peace Studies, 'Pakistan Security Report 2016', 1 January 2017, CISED50AD63; Center for Research & Security Studies, 'Security Report: July-September 2016', 28 October 2016, CIS38A80122494; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

41. I have found there is a real chance of the applicant facing significant harm if he were to return and live in Quetta, for reasons of his ethnic and religious profile as a Shia Hazara. However, I have found he would not face a real chance of harm for these reasons, or in terms of generalised violence, in other areas of Pakistan, specifically Islamabad. For the same reasons, while I am satisfied there is a real chance that the applicant would face significant harm in Quetta for these reasons, I am not satisfied there is a real risk the applicant would face significant harm in other areas of Pakistan, including Islamabad.

Qualifications to the real risk threshold

42. 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.
43. Having accepted there is a real risk of the applicant facing significant harm in his home area and the area he would return to in Pakistan, Quetta, I have considered whether it would be reasonable for the applicant to relocate to an area where he would not face a real risk of significant harm, such as Islamabad.

Access to Islamabad

44. Article 15 of the Constitution guarantees the right to freedom of movement in Pakistan, and internal migration is widespread and common. I am satisfied the applicant is a documented citizen of Pakistan, and that he would be free to relocate within Pakistan. I note that notwithstanding the risk of obtaining documentation from the NADRA office in Quetta (a risk I am not satisfied the applicant would need to face) DFAT advises that Hazaras that can afford to leave Quetta do so.²¹
45. Islamabad is an ethnically and religiously diverse city, with a population of around 2 million people. As a city, it has attracted large numbers of internal migrants from all over Pakistan. Islamabad is also one of the main areas Hazaras and Shias choose to relocate.²² I am satisfied the applicant can safely and reasonably access Islamabad. I do not consider there are any barriers to him reuniting with his family in Islamabad.

Assessment of reasonableness of relocation

46. The applicant has made a number of submissions on the issue of relocation.
47. The applicant refers to a number of barriers in terms of him finding employment. The applicant states that his primary language is Hazaragi (Dari) and states he is not fluent in other languages. While I accept he may not have fluency in Urdu or Pashto, I am not satisfied he does not have

²¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

²² DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

effective use of these languages. The applicant previously indicated in his initial interactions with the Department that he speaks Urdu and Pashto. It is apparent that his work has taken him outside of the Hazara areas in Quetta, including work with a local [employer] and Pashtun employees, and I am satisfied he would have Urdu and Pashto language skills as he previously contended. While I accept his secondary education was limited, I do not accept the applicant's oral evidence that he is illiterate. He clearly indicated in his visa application that he could speak, read and write Dari. I am satisfied he has the necessary language skills to relocate within Pakistan, to a place such as Islamabad.

48. DFAT indicates that Pakistan's official unemployment rate is 6 per cent. Underemployment is high, especially amongst the young, and a significant proportion of work in the economy is informal.²³ I note the applicant has a strong resume of formal and longstanding work. I consider it more apt to describe him as working class than low skilled. I note the country advice before me indicates that Shias and Hazaras have strong representation in employment, including in the public sector and small businesses. DFAT relevantly states that cities such as Islamabad (home to mixed ethnic and religious communities) provide greater access to employment (as well as education and health care services).²⁴
49. I accept there would be challenges for the applicant in finding work, but I reject his contention that it would be impossible for him to find a job in Islamabad, particularly given his demonstrated skillset and work experience. I note the discrimination faced by Hazaras/Shias, and that may bar access to some employment (e.g. where nepotism favours another candidate), however I am not satisfied it would be at a level where he would be denied access to formal employment and a living wage.
50. I accept that the cost of living in Islamabad is higher than in Quetta, particularly when it comes to rent/housing. The applicant has a family and I accept he would require adequate housing for his family. Equally, I note there is information before me that indicates wages are higher in Islamabad.²⁵ While I accept the housing costs are considerably higher than in Quetta, I consider they would in part be offset by the increased wages in Islamabad. DFAT advice confirms that is the case.²⁶ It may be that he does not have the type or size of house his family has in Quetta, but I am satisfied he would be able to find adequate housing for his family.
51. In terms of other expenses, the applicant has highlighted that his daughter is of school age, that schooling is expensive in Islamabad, and that she would be prevented from accessing education. DFAT indicates that access to public education is provided for under the constitution, and free and compulsory education is given to all children from the age of five to sixteen years.²⁷ I accept there may be challenges in public education, but I am not satisfied it is a barrier for the applicant and his family to relocate to Islamabad.
52. The applicant also contends that there are barriers in terms of health care. He submits that public health care is underfunded, neglected, and impacted by corruption,²⁸ and that he and his family would ultimately need private healthcare, which would be beyond his means.

²³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

²⁴ DFAT, 'Thematic Report - Shias in Pakistan', 15 January 2016, CIS38A801265.

²⁵ Numero, 'Cost of Living Comparison Between Quetta, Pakistan And Islamabad, Pakistan', 20 March 2017, CISED50AD361.

²⁶ DFAT, 'Thematic Report - Shias in Pakistan', 15 January 2016, CIS38A801265.

²⁷ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

²⁸ Osama Bin Javid, 'Corruption, neglect cripples Pakistan's public health system', Al Jazeera, www.aljazeera.com/news/2019/06/corruption-neglect-cripples-pakistan-public-health-system-190625102232216.html, 25 June 2019.

53. I have had regard to the report provided, and the impacts of barriers and corruption in Pakistan's health care, particularly among Pakistan's poor. DFAT advice is consistent in this regard stating that basic health care in Pakistan is free, but limited capacity, lack of funding, corruption, slow economic growth and overarching governance challenges combine to reduce quality and accessibility.²⁹ Those issues appear to be present throughout Pakistan, not Islamabad specifically, and I consider they are most acute for those in poor and rural areas, as the video attached to the applicant's media report appears to indicate.
54. The applicant has not detailed any health concerns he or his family face, but it is reasonable to expect his family might require access to health care in the future. I am satisfied that the applicant and his family would have access to basic and free health care, albeit I accept it may have its limitations. I accept his family may need to supplement that care with private health care, but the applicant has not satisfied me this would be beyond his means, or make relocation unreasonable. I also note the barriers to accessing health care in Islamabad would be far lower than what he and his family faced in Quetta, where insecurity outside the enclaves prevents residents from accessing health care.
55. In all the circumstances, I am not satisfied the limitations or corruption within the public health system, which I again consider is present throughout Pakistan, would mean that it would not be reasonable for the applicant and his family to relocate to Islamabad.
56. I have found that there are Shia and Hazara communities in Islamabad. DFAT advises that outside of Balochistan, Hazaras report finding it safer to live separately amongst the general community than to relocate to live near other Hazaras, where they can be easily profiled and targeted. It is not clear to me whether this is the case in Islamabad, or whether the applicant would choose to live in a Hazara or Shia community, but I consider that would be likely given my assessment of the low risk to Shia Hazaras living in Islamabad. Nevertheless, I accept he may choose to live elsewhere in the city for reasons of security and therefore may not have a high level of community support in Islamabad. I accept that could be a factor against the applicant and his family relocating. However, given the existence of Shia and Hazara communities in Islamabad, I am not satisfied he or his family would face isolation. I am satisfied they would be able to draw on these communities, for example in terms of the practise of his faith, even if they chose not to live amongst them.
57. The applicant contends that he could not subsist in Islamabad, highlighting the difficulties facing the Prime Minister in Islamabad.³⁰ I consider the financial circumstances of the Prime Minister provide little insight in to the reality for ordinary Pakistanis living in and or relocating to Islamabad. I do accept that Islamabad is more expensive than Quetta,³¹ but I also consider there are factors that indicate he could overcome those challenges. The applicant is able-bodied and has a range of skills and long term work experience. Given his strong background, I am satisfied he would be able to find formal work that is at a level far above subsistence, and that he would be able to satisfactorily provide for himself and his family. I do not discount there will be challenges. While I accept he may not have the community support he would have in Quetta, I also consider the situation is far more favourable in Islamabad than elsewhere in Pakistan, both economically and in terms of the security and wellbeing of the applicant and his family. I also again give weight to DFAT's assessment that a city such as Islamabad would provide greater access to employment, education and health care services.³²

²⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

³⁰ Dawn, 'No pay rise for Imran, says PM office', <https://www.dawn.com/news/1531579>, 31 January 2020.

³¹ Numero, 'Cost of Living Comparison Between Quetta, Pakistan And Islamabad, Pakistan', 20 March 2017, CISED50AD361.

³² DFAT, 'Thematic Report - Shias in Pakistan', 15 January 2016, CIS38A801265.

58. I am not satisfied he would need to hide or modify his behaviour to avoid harm. I have found there is no real chance or real risk of him facing serious or significant harm in Islamabad. I have accepted he may face some discrimination, but I am satisfied it is low level and I do not consider this would impact on his ability to live safely and find work in Islamabad. I am satisfied he would be able to find work, find sufficient accommodation, safely reunite with his family, and provide for their needs in Islamabad, in terms of health, education and other basic services.
59. More broadly, I have weighed the security situation in Islamabad in terms of the reasonableness of relocation. I have had regard to the applicant's concerns about the 'relative safety' of Islamabad. I again agree that is a vague standard by which to assess a city in this context. What I give weight to is my earlier assessment that there is no real chance or risk of the applicant (or his family) facing serious or significant harm in Islamabad. More broadly, I accept that insecurity does happen in the city, however I give weight to the limited number of security incidents, and the extent of the security measures in the city. I also consider the security situation is far more secure than in Quetta/Balochistan. In all the circumstances, while imperfect, I consider the security situation in Islamabad is a factor in favour of the reasonableness of relocation.
60. I again acknowledge that that relocation within Pakistan would be challenging for the applicant and his family. However, in full consideration of the evidence and information before me, I am satisfied it would be reasonable for the applicant to relocate to another city outside of Quetta, such as Islamabad, where there would not be a real risk that he will suffer significant harm.
61. As I am satisfied it would be reasonable for the applicant to relocate within Pakistan, it follows that s.36(2B) applies and there is taken not to be a real risk that the applicant will suffer significant harm in Pakistan.

Complementary protection: conclusion

62. 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

In this Act, unless the contrary intention appears:

...

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.