



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA20/08715

Date and time of decision: 16 November 2020 16:53:00  
M Simmons, Reviewer

**Decision**

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The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

*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

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### Visa application

1. The referred applicant (the applicant) claims to be a Hazara Shia and a Pakistani national. On 6 March 2017 he lodged an application for a Safe Haven Enterprise Visa.
2. On 3 December 2018 a delegate of the Minister for Immigration refused his application. The matter was referred to the IAA which affirmed the delegate's decision on 30 April 2019. On 8 October 2020 the Federal Circuit Court ordered, by consent, that the matter be remitted to the IAA to be determined according to law.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 27 December 2018, the IAA received a submission from the applicant's representative which refutes a number of the delegate's findings. These matters constitute argument rather than new information.
5. On 23 October 2020 the applicant's representative advised that the portion of the submissions dated 27 December 2018 that address the delegate's decision (approximately 3 pages) continues to apply to the IAA review, however the portion of those submissions that presents country information on the security situation for persons with the applicant's profile in Karachi (approximately 2 pages) was withdrawn.
6. On 27 December 2018 the applicant's representative also provided an annexure of country information as an accompaniment to the legal submissions, which comprised a series of news reports on attacks in Karachi and a timeline of terrorist attacks in Pakistan. These reports are the cited in the 2 pages of the legal submissions that were subsequently withdrawn as noted above. While the submissions they underpin have been withdrawn, the applicant has not stated that he no longer wishes to rely on the reports themselves. These reports were not before the delegate and are new information. The reports were published between 8 May 2004 to 30 October 2016. Some are more than a decade old and many pre-date the applicant's departure from Pakistan. All the articles are dated prior to the lodgement of the applicant's visa application. The articles are put forward to rebut the delegate's suggestion that the applicant could relocate to another city, such as Karachi, an issue that was squarely raised by the delegate at interview. The agent, who also attended the interview, did not indicate why this information could not have been provided in the post-interview submission to the delegate which were submitted before the delegate's decision and which canvassed the issue. I am not satisfied that it could not have been provided before the delegate's decision. The reports do not constitute credible personal information in the relevant sense; they are general media reports on security related incidents. The delegate referred to various sources of more recent and more detailed information on the security environment in Karachi and Pakistan more generally. The agent does not explain, nor is it readily apparent, how country information and general reporting less current than similar information cited by the delegate may have affected the consideration of the applicant's claims. The applicant has not satisfied me that either limb of s.473DD(b) is met in respect of this information. Moreover, the applicant has now offered more recent country information and I have also obtained more recent information on the situation in Pakistan. Given the various considerations I have

outlined, I am not satisfied that there are exceptional circumstances that justify consideration of this information per s.473DD(a).

7. On 23 October 2020 the applicant's representative provided the following to the IAA:
  - A cover letter;
  - Submission containing updated country information (Attachment A);
  - Submission responding to the First IAA Decision (Attachment B);
  - Statement of the applicant dated 23 October 2020 (Attachment C);
  - Country information referred to in the submissions (Attachment D).
  
8. The cover letter constitutes an explanation in respect of the new information requirements in s.473DD. In that letter the representative argues that the information provided in Attachments A–D is 'new information' per s.473DC(1) because it is information that was not before the delegate and is relevant to the review. I am satisfied that Attachment A, Attachment C and Attachment D all contain new information. However, Attachment B is a submission explaining why the applicant disagrees with certain conclusions of the previous IAA decision. The previous IAA decision was quashed and is of no relevance to this review, as such Attachment B is not information that I consider may be relevant per s.473DC(1)(b). Attachment B does not contain new information.
  
9. Attachment A mostly contains extracts of country information and reporting on the situation in Pakistan. Attachment D comprises the sources of those extracts in full. The exception being two 2019 decisions from the Administrative Appeals Tribunal (AAT), discussed below. Almost all the sources referred to were published in 2019 or 2020. It is submitted that this new information post-dates delegate's decision and therefore meets s.473DD(b)(i). I accept that submission in respect of most of those sources, other than two in particular. Two articles from the Human Rights Commission of Pakistan were published in February and April 2018, both well prior to the delegate's December 2018 decision. It has not been suggested, and I am not satisfied that either the information from these sources could not have been provided prior to the delegate's decision, or that it constitutes credible personal information that may have affected consideration of the applicant's claims. It is general country information on the security situation in Pakistan. The information from the two reports of the Human Rights Commission of Pakistan does not meet s.473DD(b). Otherwise I am satisfied that the new information in Attachments A and D meets s.473DD(b)(i). None of the new information in Attachment A meets s.473DD(b)(ii). It has not been suggested, and I am not satisfied that it constitutes credible personal information that may have affected consideration of the applicant's claims; it is general reporting on the security situation in Pakistan.
  
10. Of the remaining reports I am satisfied there are exceptional circumstances justifying consideration them, other than the 2 AAT decisions. It has now been more than two years since the delegate made the decision and the information relied upon in that decision is now quite dated. Some of the new country information in these attachments updates reports that were relied upon by the delegate. Notably the 2019 reports from the Australian Department of Foreign Affairs and Trade (DFAT) and the United Kingdom Home Office (UKHO), and the two 2020 Quarterly Security Reports from the Center for Research and Security Studies are all updated versions of earlier reports that were cited by the delegate. Also provided is extracts from reports of the United States Department of State and the South Asian Terrorism Portal, both of which produced earlier material that was cited by the delegate. The

DFAT and UKHO reports are specifically prepared to aid in the assessment of claims from protection. I am satisfied that there are exceptional circumstances justifying consideration of these reports, other than in respect of the two 2019 AAT decisions.

11. It is submitted that the two 2019 AAT decisions are instructive; a contention which I do not accept. Both decisions are reviews on decisions to cancel protection visas. While the decisions do concern Pakistani Hazara Shia applicants, these are otherwise unrelated matters. Unlike the other sources of new information, these are not assessments of the situation in Pakistan, but rather reflect the deliberations of decisions makers considering a different set of facts to those before me and operating under a different legal framework. I accept that the AAT decisions post date the delegate's decision and therefore could not have been provided prior to that decision, as such s.473DD(b)(i) is met. It has not been suggested, and I am not satisfied that these decisions constitute credible personal information, which had it been known, may have affected consideration of the applicant's claims,<sup>1</sup> noting they concern unidentified persons of no asserted relation to the applicant. S.473DD(b)(ii) is not satisfied. The applicant had opportunity to provide any of the country information cited in those decisions to the IAA, and in respect of sources some earlier sources to the delegate, and in regard to some sources has in fact done so. I am not persuaded that the reasoning or conclusions in those AAT decisions is of relevance to the review at hand. I am not satisfied that there are exceptional circumstances justifying my consideration of those AAT decisions, and s.473DD is not satisfied.
12. I am satisfied the material in Attachments A and D meets s.473DD and I have considered it, other than the two 2018 reports of the Human Rights Commission of Pakistan which did not meet s.473DD(b), and the two 2019 AAT decisions which do not meet s.473DD(a).
13. The statement from the applicant (Attachment C) includes comments discussing and responding to findings of the delegate. These are not new information but are legal argument and have been considered. It also contains some new information regarding events after the delegate's decision, including in relation to his son's return to Quetta about a year ago, and that a cousin who previously ran a [business] in Karachi returned to Quetta six to seven months ago due to harassment from Sunni extremists. These events are said to have occurred well after the delegate's decision. In light of this, I am satisfied that information about them could not have been provided before that decision was made and that s.473DD(b)(i) is met. I am also satisfied that there are exceptional circumstances justifying consideration of the new information in the applicant's statement, including because this information concerns recent events in the country of reference involving persons related to the applicant, and that it has been a considerable period of time since the applicant last provided information in support of his claims. The requirements of s.473DD are met.
14. I have obtained updated information for a source cited by the delegate, namely a database that compares the cost of living between major Pakistani cities.<sup>2</sup> I have also obtained recent information on the security situation in Pakistan generally.<sup>3</sup> I am satisfied that there are exceptional circumstances justifying consideration of this new information, including that it updates information relied upon by the delegate some two years ago.

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<sup>1</sup> *DOE18 v Minister for Home Affairs* [2019] FCA 1596.

<sup>2</sup> Numero, 'Cost of Living Comparison Between Quetta, Pakistan And Islamabad, Pakistan', Published March 2017, Last Updated November 2020, CISED50AD3611.

<sup>3</sup> European Asylum Support Office (EASO), 'Pakistan: Security situation', October 2020, 20201102100212; Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2019', 05 January 2020, 20200114102703.

## Applicant's claims for protection

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15. The applicant's claims can be summarised as follows:

- He fears being targeted by Sunni extremist groups because he is a Hazara Shia.
- In 1999, he was robbed while [working] and the [vehicle] was stolen. Some years later he subsequently gave up [working in this field] due to safety concerns.
- In about 2005 he opened a business that sold [various items]. He travelled to Karachi on occasion negotiate with suppliers. However, when he heard of the kidnapping and murder of some Hazaras on the bus route usually took to Karachi, he stopped going there.
- In 2010, Lashkar-e-Jhangvi bombed the Liaquat Bazaar, and a friend who owned a neighbouring shop was killed. The presence of various Sunni extremists in Quetta continued to increase around this time. As violence against Hazaras became more frequent, the applicant became fearful for his safety. He began varying his route to work, avoiding large gatherings, and remaining within Quetta's Hazara neighbourhoods as much as possible.
- Hazara people have peacefully protested for protection against sectarian violence many times, including in response to attacks against their community. The applicant participated in a number of these protests. Sometimes thousands of people peacefully protested along the streets and asked for protection from the government. Many of these protests have continued since he left Pakistan.
- The applicant travelled briefly [overseas] in July 2011. He considered applying for asylum but returned to Pakistan after friends assured him things were getting better. However, the security situation had not improved. There was a suicide bombing about a month after the applicant returned, followed by attacks in 2011 on Hazaras on Spini Road in Quetta, and Shia Muslims, including Hazaras, travelling to Iran. Another attack in 2012 targeted shopkeepers [in] Quetta, which was [not far] from the applicant's shop. Friends and acquaintances of the applicant were injured in other attacks that same year.
- Fearing for his safety, the applicant borrowed money and arranged to leave the country. He departed in September 2012. Attacks continued once the applicant left Pakistan, including an attack on [a] club [in] which his son was caught up. The applicant also heard reports of Hazaras being kidnapped in recent years.
- As Hazaras have a distinct physical appearance, he would be targeted wherever he went in Pakistan. The Pakistani authorities are unable to protect him. The applicant believes should he return from Australia because to Quetta he would be targeted as it is a common view that those who have been to Western countries have greater wealth and because the extremist groups in Quetta hate the West and those associated with it. Recently, a cousin who previously ran a [business] in Karachi returned to Quetta due to harassment from Sunni extremists.

## Factual findings

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### Identity and background

16. The applicant claims to be a Hazara Shia who originates from Quetta in Baluchistan. He has provided a reasonably detailed and consistent account of this area of Pakistan and his experiences while residing there. He was able to talk freely of landmarks in that city during his interview with the delegate. There is evidence before me of money transfers by the applicant to relatives in Quetta, which further supports his claimed identity and place of origin. Documentation including an expired passport and national identity card corroborate his claimed origins from Quetta and his claimed identity. The delegate questioned the applicant about his Shia faith and his religious worship, as well as his claimed home area, to which the applicant gave confident, unprompted responses. I accept that the applicant's identity is as claimed, that he is a Pakistani citizen, Hazara Shia from Quetta, and that his family continue to reside in that [city]. Pakistan is the receiving country for the purpose of this assessment.

### Experiences in Pakistan

17. The applicant claims that since approximately the year 2000, religious and ethnic tensions in Quetta increased and violent incidents became more common. He also asserts that as Hazaras are generally recognisable due to their particular facial features, and because Hazaras are mostly Shia, their community has been specifically targeted. In the years preceding his departure from Pakistan, the applicant mentioned a number of attacks in which friends and acquaintances of his were harmed and/or killed in attacks by Sunni extremist groups, and indicated that he had on occasion narrowly avoided being caught up in such incidents himself. I accept that distinct appearance make Hazaras easily identifiable.<sup>4</sup> While other ethnic groups in Pakistan are also adherent to Shia Islam, I accept that Hazaras are more easily discernible compared to other Shia minorities contributing to them being prime targets for sectarian extremist groups.<sup>5</sup> I also accept that Hazaras have been the subject of sectarian violence in Baluchistan for an extended period including in the years prior to the applicant's departure. The UKHO reported in 2019 that Hazaras have consistently been targeted by terrorists and religious fanatics since 1999 through suicide bombings and targeted killings, with more than 2,000 having reportedly been killed in the last 14 years, including around 540 in Baluchistan since 2012.<sup>6</sup> Citing the USCIRF report for 2018, the UKHO noted violent sectarian groups have perpetrated massive attacks on Hazara neighbourhoods in Quetta despite the additional security provided by the government for those neighbourhoods since 2013.<sup>7</sup> The applicant's account of the security situation in Quetta and the targeting of his ethnic and religious community is credible.
18. The applicant claimed that while in Pakistan he participated in various protests in response to attacks against Hazara. Reports before me indicate that in recent years that Hazaras in Quetta have regularly protested against sectarian violence and attacks against their

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<sup>4</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>5</sup> United Kingdom Home Office (UKHO), 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

<sup>6</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

<sup>7</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

community and lobbied for greater protection from the authorities.<sup>8</sup> At interview the applicant gave one example of attending a protest after a Shia Imam Bargah was bombed, and also indicated he had attended a number of such protests to advocate for greater protection of Hazara Shia by the authorities. He confirmed that his involvement in these protests was as an attendee only and that he was not a speaker or organiser. I accept that he attended protests in Quetta as claimed.

19. The applicant described an incident that occurred during 1999 while he was working as [an Occupation 1]. He claimed was robbed at gunpoint and his [vehicle] stolen. Beyond stating that the robbers were not Hazaras, the applicant did not initially suggest a sectarian motivation for the attack. When asked by the delegate if he had any information to indicate this was anything other than purely criminal attack the applicant replied that he did not. After a break in the interview to talk with his agent, the applicant then indicated that he considered that the theft of his [vehicle] was motivated by his Hazara ethnicity, but did not give any additional details as to why he thought this. He further stated that the police did nothing because he was Hazara. The applicant then said that the police arrested one of the offenders but because he was a government employee the police released him. While I accept that the theft of his [vehicle] occurred, I am not satisfied that it had a sectarian motivation. On the evidence presented I am not satisfied it was anything other than a criminal incident and I do not accept that it resulted in the applicant being of any adverse interest. I note that following this incident the applicant continued to [work in Occupation 1] for another five years without apparent incident.
20. I accept that in roughly 2004 the applicant started a business [selling] [items]. While he was not questioned in great detail, his evidence in relation to this business seemed to flow naturally and my impression was that he was at ease answering questions on the subject. He described travelling to negotiate with suppliers and that his store was located near to a [venue] he frequented. His account of this his store ownership was generally credible and I accept that he operated this business his claimed. He also described how over time the deteriorating security situation affected how he carried on this business. He ceased travelling to Karachi for supplies, reduced his trading hours and travelled via different routes between his home and his store. He indicated that after he left Pakistan his family moved the business inside the [Area 1] for safety, but doing so has caused them financial difficulty. A 2019 source cited by the UKHO report that many Hazara businesses that previously ran in Quetta's wholesale markets have closed or moved into the enclaves, however some Hazaras still venture out into Quetta in search of work while others do so to keep businesses running.<sup>9</sup> According to the 2018 USSD report consumer goods in those enclaves were available only at inflated prices.<sup>10</sup> I note that the delegate indicated at interview that the applicant had been providing financial support to his family in Quetta during his time in Australia. Financial records before me indicate that over a number of years since the applicant has transferred funds to relatives in Quetta. I accept the applicant's evidence in respect of the family business and that he has provide them financial support during his time in Australia.

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<sup>8</sup> Pakistan Today, 'Hazara man gunned down in Quetta', 18 June 2018 CXBB8A1DA30155; Unrepresented Nations and Peoples Organization (UNPO), 'Balochistan Hazara Protest in Quetta Following Targeted Killings and Persecution', 18 April 2018, CXBB8A1DA26107; Voice of America, 'Pakistan's Shi'ite Hazara on Hunger Strike to Protest Targeted Killings', 1 May 2018, CXBB8A1DA28343; Aljazeera, 'Hazara Shia Muslims end protest in Quetta over killings', 3 May 2018, CXBB8A1DA28338.

<sup>9</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

<sup>10</sup> As cited in UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

## Residence in Australia

21. I am satisfied the applicant left Pakistan lawfully using a valid passport. I accept that were the applicant to return to Pakistan he would do so after having resided in Australia for an extended period and after having requested asylum here.

## Refugee assessment

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22. 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

23. 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.
24. The security situation in Pakistan is historically complex and subject to considerable regional variation. In the years before the applicant’s journey to Australia, Pakistan generally and Quetta specifically was the subject of significant violence. In the period following the applicant’s departure, security forces have launched various operations in an effort to combat terrorism and improve the volatile security environment. In June 2014 Operation Zarb-e-Azb was launched, followed soon after by the introduction of a National Action Plan (NAP) in response to an attack at school in Peshawar that killed 132 children. In February 2017, Operation Radd-ul-Fasaad succeeded Operation Zarb-e-Azb following a series of separate attacks in February 2017 across Lahore, Quetta, and Sehwan, which killed at least 100 people and left several hundred injured.<sup>11</sup> According to DFAT, observers credit these operations with a significant reduction in the number of violent and terrorism related attacks in Pakistan. In 2018, up to 262 reported terrorist attacks killed 595 people. This is a significant decrease from 2013, when the terrorist death toll included 3,000 civilians and 676 security force personnel.<sup>12</sup> While terrorist attacks declined in recent years, armed groups remain a

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<sup>11</sup> DFAT, ‘Country Information Report - Pakistan’, 20 February 2019, 20190220093409.

<sup>12</sup> DFAT, ‘Country Information Report - Pakistan’, 20 February 2019, 20190220093409.

threat to Pakistan's domestic security, notably including Sunni extremist groups that continue to actively target Shia and Hazaras in Baluchistan. Lashkar-e-Jhangvi (LeJ), a Sunni paramilitary terrorist group, conducted seven terrorist attacks in 2018 (compared to 10 in 2017; LeJ faction, LeJ Al-Alami, also conducted 8 terrorist attacks in 2017). LeJ primarily targets Shia, especially the Hazara community in Quetta. In total, the two groups were responsible for killing 132 people in 2018.<sup>13</sup>

25. Analysis from a variety of sources indicates that insecurity and targeted violence against Shia Hazaras Quetta persists, despite some improvements during recent years. In its January 2020 assessment, PIPS reports that there were many as 7 sectarian-related attacks were reported from Balochistan in 2019, compared to 6 such attacks in the previous year.<sup>14</sup> These attacks killed 31 people, as compared to only 8 in the year before, and injured 77 others. All these attacks concentrated in Quetta and Ziarat districts only, and mostly targeted Hazara Shia community with the exception of one attack against each of the Sunni and Bohra community members.<sup>15</sup> Notable incidents targeting Hazara and/or Shia in Quetta during 2019 included:

- 6 August 2019, when a shopkeeper was killed and 13 others were wounded in a bomb explosion in a shoe market near busy Meezan Chowk, Quetta. The Express Tribune reported that that Hazara community were the target.<sup>16</sup>
- On 7 June 2019, a group of Hazara were returning to Quetta from Ziarat when explosives planted in their van went off near the Kawas area. Two persons were killed and 9 injured.<sup>17</sup>
- On 30 May 2019 suspected would-be suicide bomber wearing a lady's dress tried to enter a Shia imam bargah in Quetta. Upon being stopped by the policemen, he hurled a grenade at the security personnel injuring a policeman.<sup>18</sup>
- 14 April 2019, 20 were killed in a bomb blast targeting Hazaras at a market in Quetta while they were being escorted by security forces on.<sup>19</sup>

26. A UKHO 2019 report similarly notes that while there was a slight decrease of attacks and casualties in Baluchistan in 2018 compared to 2017, during the first half of 2019, there was an increase in killings in the area.<sup>20</sup> The September 2019 'Hate Tracker Report' by the Jinnah Institute indicates that from January to September 2019, 82 Hazaras were killed in attacks throughout Pakistan.<sup>21</sup> The 2019 Report on International Religious Freedom expressed concern that sectarian violence continued to be perpetrated in Pakistan by the Lashkar-e-Jhangvi, Tehreek-e-Taliban, and the Islamic State, 'targeting Shia Muslims, particularly the predominantly Shia Hazara community'.<sup>22</sup>

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<sup>13</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>14</sup> PIPS, 'Pakistan Security Report 2019', 05 January 2020, 20200114102703.

<sup>15</sup> PIPS, 'Pakistan Security Report 2019', 05 January 2020, 20200114102703.

<sup>16</sup> Express Tribune cited in EASO, 'Pakistan: Security situation', October 2020, 20201102100212.

<sup>17</sup> PIPS, 'Pakistan Security Report 2019', 05 January 2020, 20200114102703.

<sup>18</sup> PIPS, 'Pakistan Security Report 2019', 05 January 2020, 20200114102703.

<sup>19</sup> United States Commission on International Religious Freedom (USCIRF), 'United States Commission on International Religious Freedom Annual Report 2019 – Pakistan, 29 April 2019, 20190508143726; Al Jazeera, 'Pakistan: Deadly Explosion Rips through Quetta Market', 13 April 2019, #20190415122942.

<sup>20</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

<sup>21</sup> Jinnah Institute, 'Hate Tracker: A spatial representation of violent extremism across Pakistan', September 2019, CIS38A80121293.

<sup>22</sup> USCIRF, 'United States Commission on International Religious Freedom Annual Report 2019 – Pakistan, 29 April 2019, 20190508143726.

27. In 2019, DFAT's overall assessment was that Hazaras face a high risk of violence from sectarian militants because of their religious beliefs, and that Hazaras face a higher risk than other Shia due to their distinct appearance and due to segregation.<sup>23</sup> A 'high risk' is relevantly defined by DFAT as existing where the department is aware of a strong pattern of incidents.<sup>24</sup> Notably, in 2017 DFAT's assessment was that Hazara faced only a moderate risk of such harm.<sup>25</sup> The 2019 DFAT report further notes that the security situation in Quetta has become so restrictive, and the likelihood of attack so high, that Hazaras remain largely within the confines of the enclaves, depending exclusively on the basic services available there. While significant security measures taken by Hazara communities partly mitigate the risk of violence within the Hazara enclaves in Quetta, Hazaras moving out of the enclaves, within and outside of Baluchistan, face a high risk of societal discrimination and violence.<sup>26</sup> Local media claim that security threats and government restrictions mean they are unable to report accurately on Hazara security in Baluchistan.<sup>27</sup>
28. The information before me does not suggest that there was a material shift in the situation in Quetta during 2020. In October 2020, the European Asylum Support Office (EASO) reported that sectarian violence is still present in Balochistan, and that members of the local Shia community, mostly members of the Hazara community in Quetta have fallen victim of violent attacks, targeted killings and suicide attacks.<sup>28</sup> Citing a source at the Pakistan Institute for Peace Studies (PIPS), for the first seven months of 2020 EASO reported 37 security incidents in Baluchistan, 23 of which were indicated as 'terrorist attacks' in Baluchistan, with Quetta the most affected district.<sup>29</sup> The Centre for Research and Security studies documented persistent attacks in Quetta and Baluchistan throughout 2020, noting in the first quarter of 2020 Quetta had had the highest number of fatalities (30) of any district nationally, and Baluchistan saw the largest surge was in violence related casualties (60%).<sup>30</sup> In the second quarter Baluchistan had the highest number of casualties following after Khyber Pukhtunkhwa and Sindh.<sup>31</sup> In the third quarter, Baluchistan had the second highest number of both fatalities and casualties from violence.<sup>32</sup> The South Asia Terrorism Portal reported in 2020 that attacks continued in Quetta, relevantly including one being killed and six injured in a hand grenade attack in a shop in Brewery Road (a predominantly Hazara area) in August; four being injured in an explosion outside a Shia mosque in September; two being shot dead in Chakki Shahwani area in September and ten being seriously injured in a hand grenade attack in October.<sup>33</sup>
29. I accept that the applicant is a Hazara Shia who originates from Quetta in Baluchistan, and that his family continue to reside in the [Area 2]. DFAT estimates there are between 600,000 to one million Hazaras in Pakistan, with most living in Quetta and smaller populations in other major urban centres. Hazaras are predominantly Shia Muslims and are targeted in sectarian

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<sup>23</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>24</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>25</sup> DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

<sup>26</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>27</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>28</sup> EASO, 'Pakistan: Security situation', October 2020, 20201102100212.

<sup>29</sup> EASO, 'Pakistan: Security situation', October 2020, 20201102100212.

<sup>30</sup> Center for Research and Security Studies 'Quarterly Security Report 2020 - 1st Quarter, 2020', 7 April 2020, #20200416144229.

<sup>31</sup> Center for Research and Security Studies 'Quarterly Security Report 2020 - 2nd Quarter, 2020', 16 June 2020, #20200720094602.

<sup>32</sup> Center for Research and Security Studies 'Quarterly Security Report 2020 - 3rd Quarter, 2020', 8 October 2020, #20201012113549

<sup>33</sup> South Asia Terrorism Portal (SATP) 'Pakistan: Timeline (Terrorist Activities) - 2020 - October', 4 November 2020, 20201109095623; SATP, 'Pakistan: Timeline (Terrorist Activities) - 2020 - September', 30 September 2020, 20201002125327.

violence for this reason.<sup>34</sup> Hazaras in Quetta live mostly in enclaves for security reasons. The two enclaves, Hazaratown and Mariabad, have checkpoints and security provided by the paramilitary Frontier Corps, however the Frontier Corps are known to routinely discriminate against and harass Hazaras at checkpoints.<sup>35</sup> Human Rights Watch has reported that Hazaras fear security forces operating checkpoints in Baluchistan as they may be involved in attacks against the community.<sup>36</sup>

30. While I accept that living in enclaves in Quetta has improved the security situation for Hazaras who remain within their confines, it has also restricted their ability to secure their livelihoods, to pursue higher education, to access medical care and has led to economic exploitation and inflated prices.<sup>37</sup> The applicant's evidence was that during the years before his departure, he tried to limit leaving the [Area 1] due to fear of violence. He also indicated that while he has been in Australia his family have similarly sought to limit risk by seldom travelling outside of the enclave and that they moved the business inside one of the enclaves. The applicant indicated that he provides his family with some financial support as their ability to support themselves is limited due to being mostly confined to the enclave. He claims it is necessary for them to leave the enclaves from time to time including for reasons related to the operation of the family business, whilst some of his children were pursuing higher education and to access certain medical treatment. DFAT relevantly reports that the Hazara community relies heavily on Hazara vendors who risk their own security to move limited food and supplies into Hazara enclaves.<sup>38</sup> While authorities provide some security escorts on occasion for Hazara vendors leaving the enclaves to obtain supplies, the groups have also come under attack in recent years resulting the deaths of vendors, Hazaras seeking supplies and accompanying security personnel.<sup>39</sup>
31. Some of the applicant's sons have completed college level studies but have struggled to obtain secure employment within the enclaves and remain reliant on the family business. The applicant indicated that the family is struggling to support themselves financially even with the limited assistance he provides them from Australia, and that they would find it hard to support him without those funds were he to return to Pakistan. I am satisfied that as the family head and the person who established the family business, were he to return to Quetta the applicant would reassume some responsibilities in relation to the family business, and that this may include sourcing supplies from outside the enclaves. I note that prior to operating the business the applicant [worked as an Occupation 1] for a living, something which he stopped due in part due to security concerns. I am satisfied that either due to the operating the family business, or otherwise seeking to support himself and his family such as by possibly returning to [working as an Occupation 1], the applicant would be required to leave the [Area 1] at least occasionally to secure a livelihood for himself and his family should he return to Quetta, noting he would no longer receive Australian welfare payments. I accept that while resident in Quetta the applicant participated in protests against the sectarian targeting of Hazara Shia. Some of these protests occurred at the location of attacks, in areas outside the enclaves. Given the security situation for his ethnic and religious community

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<sup>34</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>35</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>36</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>37</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>38</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>39</sup> PIPS, 'Pakistan Security Report 2019', 05 January 2020, 20200114102703; United States Commission on International Religious Freedom (USCIRF), 'United States Commission on International Religious Freedom Annual Report 2019 – Pakistan, 29 April 2019, 20190508143726; Al Jazeera, 'Pakistan: Deadly Explosion Rips through Quetta Market', 13 April 2019, #20190415122942.

remains poor, I accept that were he to return to Quetta he would likely engage in similar protest actions in the future. Notwithstanding the insecurity, I consider it very likely the applicant would again be required him to travel outside of the [Area 1] on occasion should he return to Quetta in the foreseeable future and I accept that he would do so. This includes for reasons relating to the operation of the family business and the otherwise seek to earn and livelihood and to take part in protest actions as has did previously. In that context, and given the security assessments before me, I accept there is a more than a remote chance that he would be targeted by Sunni extremists because of his religious and ethnic profile outside of the [Area 1] within Quetta and in Baluchistan more broadly. This targeted violence has resulted in numerous Hazara casualties and deaths. 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, because he is a Hazara Shia. While the Pakistani authorities have sought to provide security to Hazara Shia, I am not satisfied that effective protection measures are available, noting reports that despite these efforts attacks have persisted over recent years and Hazara coveys escorted by security forces have been specifically targeted resulting in civilian deaths.<sup>40</sup>

32. In terms of whether the applicant's real chance of harm extends to all areas of the receiving country, it is contended that the applicant would be at risk as a Shia Hazara anywhere in Pakistan. I have weighed advice about security in areas outside of Quetta, and the specific risks to those that share the applicant's ethnic and religious profile. I note that there is some ambiguity in respect of DFAT's 2019 assessment of the risk face by Hazara Shia from sectarian militants, notably the extent to which that risk arises across the country. While not clearly limiting the scope of hits high risk assessment to particular areas, DFAT notes that most Hazara live in Baluchistan and focuses most of its assessment on the risk faced by the community in that province, and offers little comment on the situation for Hazaras in other major urban centres. The applicant was specifically asked by the delegate whether he could relocate to another city in Pakistan, such as Islamabad, to avoid harm. He indicated that doing so would be difficult because he did not know anyone there and that it was unsafe to reside outside of a [Area 1]. He also indicated he fears harm wherever he goes in Pakistan due to being identifiable as a Hazara, and therefore presumed to be a Shia, owing to his particular facial features.
33. The delegate raised possible relocation to Islamabad, Karachi or Lahore. The applicant stated that other places were even worse as he would not have the protection of living in a [Area 1]. The delegate pointed out that the applicant's son appears to have lived and studied in Lahore without incident. The applicant claimed that his son lived almost solely on campus, that he had grown a beard for disguise and relied on friends to bring him supplies. I have some doubts as to the extent to which his son lived a reclusive existence during his time in Lahore, and I consider the applicant's evidence on this point may be exaggerated. The applicant did not point to evidence to indicate Hazara Shia were targeted for harm in Lahore or that they routinely sought to hide their ethnicity in support of these contentions. Although I note the UKHO reports on a survey in which Hazara respondents discussed trying to conceal their ethnicity and religion by various means while outside predominately Hazara areas. This including wearing helmets in public order to conceal their identity (rather than wearing helmets for safety), being discreet as to where and when they pray, representing themselves as Uzbeks when asked, and omitting words from their names to conceal their Shia Hazara identity.<sup>41</sup> The applicant indicated that his son finished his studies in Lahore in 2019, after which he returned to Quetta. Given he indicated in his March 2017 statement

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<sup>40</sup> Al Jazeera, 'Pakistan: Deadly Explosion Rips through Quetta Market', 13 April 2019, #20190415122942.

<sup>41</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

that his son was already in Lahore studying, it is plausible, and I accept, that his university course would have finished in 2019. The applicant's evidence has consistently been that the other members of his immediate family in Pakistan have continually resided in Quetta, which I accept. The applicant did also allude to having a cousin and/or a friend in Karachi, who he claims has since relocated to Quetta a move he claims was due to the insecurity in Karachi. I have some doubts regarding this narrative, given the applicant also says, Quetta is also afflicted by insecurity. The applicant indicated he saw this person when he was travelling to Karachi for business supplies but otherwise has not maintained much of a relationship with him. The applicant indicated that this person is unable to provide him with financial support as he has to support his own family. Given there is no indicating that they are particularly close, I accept that contention.

34. Islamabad was specifically suggested by the delegate to the applicant as a place he may be able to safely reside in. While no area is completely without risk, the weight of the material before me supports a conclusion that Hazara Shias do not face more than a remote chance of harm in Islamabad for reasons of their ethnicity and religion. The UKHO cites a variety of sources including PIPS and the National Commission for Human Rights, and various media reports, all of which confirm Islamabad is home to a Hazara population and that it has been a destination for Hazaras seeking to leave Quetta.<sup>42</sup> Similarly In early 2019 DFAT identified Islamabad as a preferred option for internal relocation for Hazaras leaving Baluchistan.<sup>43</sup> DFAT assessed that security in Islamabad was higher than in other parts of the country, suggesting it is due to the high number of security personnel deployed in Islamabad relative to its population.<sup>44</sup>
35. That general assertion that Islamabad is comparatively more secure is corroborated by statistical analysis of recorded incidents and more recent data. In the first quarter of 2020, the Centre for Research and Security Studies (reporting on casualties rather than the number of incidents) note that that of 244 violence related casualties nationally, only three occurred in Islamabad Capital Territory (compared to 95 in Khyber Pakhtunkhwa and 87 in Baluchistan).<sup>45</sup> In the second and third quarters for 2020, there were six and one casualties respectively in Islamabad Capital Territory, compared to 108 and 122 in Khyber Pakhtunkhwa, and 25 and 89 in Baluchistan.<sup>46</sup> PIPS reported a single reported terrorist attack from Islamabad in 2019, in which two policemen were killed and another injured in an attack on a security picket.<sup>47</sup> The same report notes that Islamabad reported no attacks in 2018.<sup>48</sup> Similarly, for the whole of 2017, just two fatalities and five injuries were recorded in Islamabad from sectarian related attacks, out of a total of 815 deaths and 1,736 injuries nationally.<sup>49</sup> These figures should also be considered against the sizeable population of Islamabad of around two million people, including migrants from all over the country.<sup>50</sup> The various reports before me do not indicate a campaign or pattern of targeted harm against Shia and/or Hazara in Islamabad. While sources including DFAT and the UKHO note that

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<sup>42</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras' November 2019, 20191220084848.

<sup>43</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>44</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>45</sup> Center for Research and Security Studies 'Quarterly Security Report 2020 – 1st Quarter, 2020', 7 April 2020, 20200416144229.

<sup>46</sup> Center for Research and Security Studies 'Quarterly Security Report 2020 – 2nd Quarter, 2020', 16 June 2020, #20200720094602; Center for Research and Security Studies 'Quarterly Security Report 2020 – 3rd Quarter, 2020', 8 October 2020, #20201012113549

<sup>47</sup> PIPS, 'Pakistan Security Report 2019', 5 January 2020, 20200114102703.

<sup>48</sup> PIPS, 'Pakistan Security Report 2019', 5 January 2020, 20200114102703.

<sup>49</sup> Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report", 22 January 2018, CIS7B83941282.

<sup>50</sup> DFAT, 'Pakistan Country Information Report', 1 September 2017, CISED50AD5515.

members of these communities are at risk from Sunni extremists in other areas of Pakistan, the risk assessments before me do not indicate either that such extremists groups are generally active in Islamabad, or that Hazaras and/or Shia's are commonly targeted there. The detailed reporting from various credible sources indicates that for a number of years now, Islamabad has consistently recorded very incidents of sectarian violence. The information before me does not support a conclusion that the applicant faces a real chance of any harm from Sunni extremists in Islamabad for reasons of his ethnicity and/or religion and I am not satisfied he does.

36. The applicant has not claimed to fear harm from any agent of persecution other than Sunni extremist groups. He has not, for example, indicated he fears being subjected to persecutory harm arising out of either official or societal discrimination in Pakistan. DFAT states that some (typically low-level) anti-Shia discrimination does occur in Pakistan, and that outside the Hazara enclaves in Quetta, 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, assesses such discrimination is considered to reflect individual prejudice rather than systematic and/or formal official discrimination.<sup>51</sup> DFAT does not specify whether this assessment applies only in Baluchistan or across the whole of Pakistan. The UKHO's assessment is that in general, the level and nature of societal discrimination faced by Hazaras does not amount to a real risk of persecution or serious harm.<sup>52</sup> Drawing heavily from DFAT's 2019, the 2019 UKHO assessment also seems to Quetta specifically, noting while there is little societal discrimination that restricts Hazaras in their daily life, but also notes that due to security concerns, there are restrictions in freedom of movement outside of the 2 Hazara enclaves in Quetta.<sup>53</sup> Notwithstanding, on the material before me I am not satisfied that such possible treatment, while regrettable, amounts to a real risk of serious harm. The discriminatory treatment outlined in the reports before me does not, in my view, suggest a threat to life or liberty, significant physical harassment or ill-treatment, or conduct that may otherwise threaten the applicant's capacity to subsist. I note the discussion of discrimination refers to barriers in terms of documentation, and the resultant difficulties in terms of accessing other services. The applicant has documentation and he has not indicated that he previously experienced difficulties in this respect while in Pakistan. I am not satisfied that any such official or societal discriminatory treatment would constitute real chance of serious harm for the applicant in Islamabad.
37. The applicant also claimed to fear harm in Pakistan due to his period of residing in Australia and for being perceived as wealthy for that reason. The delegate put to the applicant that there did not seem to be any available country information to indicate that those returning to Pakistan from western countries were targeted on that basis. The applicant responded that conditions were getting worse every day and that two of his neighbours had been targeted in their shops in Quetta. The applicant also pointed to the fact that his distinct facial features would distinguish him as a Hazara. The delegate pointed out a number of times that these seemed to be arguments relating to his Hazara ethnicity rather than as a returnee from a western country. The applicant eventually stated that other people from western countries had faced similar issues but was not able to provide details. The applicant also contended that because he had been here for some time people would assume, he had money. DFAT reported in 2017 that western influence is pervasive in many parts of Pakistan, particularly in

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<sup>51</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>52</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras' November 2019, 20191220084848.

<sup>53</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras' November 2019, 20191220084848.

large urban centres.<sup>54</sup> More recently it was concluded that returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country.<sup>55</sup> I am not satisfied that this applicant faces a real chance of any harm in Pakistan, including in Islamabad, for any reason related to his period of residency in, or request for asylum in, Australia, even when considering other factors such as his ethnicity and religion .

38. I am not satisfied there is a real chance of him facing serious harm for any reason in Islamabad. It follows that I am satisfied the real chance of persecution does not extend to all areas of Pakistan. Accordingly, his fear of persecution is not well founded.

### **Refugee: conclusion**

39. 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**

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40. 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**

41. 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.

42. 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.

43. For the reasons set out above I have found there is a real chance of the applicant facing serious harm from Sunni extremist groups were he to return to Quetta, for reasons of his ethnic and religious profile as a Hazara Shia. For the same reasons, while I am satisfied there is a real risk that the applicant would face significant harm in Quetta. I am satisfied that the violent treatment intentionally inflicted upon Hazaras in Quetta by Sunni groups may often involve severe pain or suffering, whether physical or mental, and can be regarded as cruel or inhuman treatment or punishment, thereby amounting to significant harm.

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<sup>54</sup> DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

<sup>55</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

## Qualifications to the real risk threshold

44. 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.
45. Having accepted there is a real risk of the applicant facing significant harm in Quetta, I have considered whether there is an area of Pakistan where the applicant would not face such a risk. For the reasons that follow, I have identified Islamabad is such a place.
46. While Islamabad has not been immune from security incidents, the material before me indicates that the security situation in Islamabad is positive. Both incidents of violence and resultant casualties remaining consistently very low in that city during recent years.<sup>56</sup> The applicant's evidence at the delegate's interview was that the security situation poor everywhere in Pakistan and due to his Hazara facial features he would be recognised and in danger, however those assertion are not borne out in the reports before me. In the first three quarters of 2020, the Centre for Research and Security Studies reported ten violence related casualties in the Islamabad Capital Territory.<sup>57</sup> PIPS reported a single reported terrorist attack in Islamabad in 2019, in which two policemen were killed and another injured, and no attack in 2018.<sup>58</sup> Earlier reporting from PIPS noted that three sectarian attacks resulting in two fatalities and five injuries were recorded in Islamabad for the entirety of 2017, out of a total of 815 deaths and 1,736 injuries nationally.<sup>59</sup> The sustained, low number incidents over a number of years lead me to conclude that there is no risk of any harm to the applicant, including treatment amounting to significant harm, from Sunni extremist groups in Islamabad. DFAT states that some (typically low-level) anti-Shia discrimination does occur in Pakistan, and that outside the Hazara enclaves in Quetta, 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.<sup>60</sup> DFAT does not specify whether this assessment applies only in Baluchistan or across the whole of Pakistan. I am not satisfied that such treatment attracts a real chance go significant harm as relevantly defined. The material before me does not suggest that this treatment may involve the applicant being arbitrarily deprived of his life, subjected to torture, having severe pain or suffering inflicted upon him, or that such treatment is intended to cause extreme humiliation. I note that the applicant himself has not suggested that he fears any such societal or official discriminatory treatment and has only

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<sup>56</sup> PIPS, 'Pakistan Security Report', 22 January 2018, CIS7B83941282; Center for Research and Security Studies 'Quarterly Security Report 2020 – 1st Quarter, 2020', 7 April 2020, 20200416144229; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>57</sup> Center for Research and Security Studies 'Quarterly Security Report 2020 – 1st Quarter, 2020', 7 April 2020, 20200416144229; Center for Research and Security Studies 'Quarterly Security Report 2020 – 2nd Quarter, 2020', 16 June 2020, #20200720094602; Center for Research and Security Studies 'Quarterly Security Report 2020 – 3rd Quarter, 2020', 8 October 2020, #20201012113549.

<sup>58</sup> PIPS, 'Pakistan Security Report 2019', 5 January 2020, 20200114102703.

<sup>59</sup> Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report", 22 January 2018, CIS7B83941282.

<sup>60</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

alluded to fearing violence from Sunni groups. The material before me does not support a finding that this applicant faces a real risk of treatment amounting to significant harm in Islamabad in the foreseeable future, and I am not satisfied that he does.

47. I have considered whether it would be reasonable for the applicant to relocate to an area of Pakistan where such a risk would not exist, such as Islamabad. For the reasons that following I consider such relocation would not be reasonable for this particular individual.
48. Asked to why it would not be reasonable for him to relocate to another part of Pakistan such as Islamabad, Karachi or Lahore, the applicant indicated that the security situation poor everywhere and due to his Hazara facial features he would be recognised and in danger. Information referred to above indicates that for a number of years Islamabad has recorded low rates of sectarian violence and is amongst the safest regions within Pakistan. Supportive of the applicant's ability to establish himself elsewhere in Pakistan is that he has some experience working in different industries and running his own business, as well as language abilities in Hazaragi, Urdu, Pashto and some English. However the applicant has been outside of Pakistan for eight years and has not worked during that period. While in Australia he has been unable to secure employment and is reliant upon financial support from welfare agencies. In response to the delegates findings that his prior experience will enable him to find future employment, the applicant noted that while he once worked in [specified] trades, he has not done this work since about 1980.
49. The delegate found that while the applicant's cost of living may increase if he relocates to a larger city, but he would also expect to earn a higher income to compensate for this. The delegate found the applicant's language skills and extensive work experience would enable him to establish and support himself in a new city and he was satisfied the applicant would be able to obtain employment and secure shelter for himself and his family of six in a city outside of Quetta, finding there was no information to show the applicant would be prevented in any way from accessing employment. The applicant contends that the cost of living in a large city outside of Baluchistan would be prohibitively expensive for him. The UKHO cited a media report quoting a Hazara man who had left Quetta for Islamabad, and asserted Islamabad is very costly as compared to Quetta and that it is not possible for the poor people to get a house on rent in big cities like Rawalpindi or Islamabad.<sup>61</sup> In 2020, average rent for one bedroom apartment on the outskirts of Islamabad was 160% higher, on average, compared to comparable accommodation in Quetta.<sup>62</sup> The information before me corroborates the applicant's assertions that the cost of living is considerably higher in Islamabad compared to other cities.
50. The applicant is nearing [age] years of age. His evidence is that he suffers from aches and pains, high cholesterol, and becomes fatigued easily. He has not provided accompanying medical evidence, although it is plausible, and I accept a person of his age may tire easily and may experience the ailments he has described. He contends that in Pakistan people retire before his age and employers will not hire someone of his age. For these reasons he would not be able to work to support himself financially. DFAT reports that average life expectancy at birth in Pakistan is approximately 68 years (2018), compared to an average of 69 years (2016) across South Asia and 82 years (2018) in Australia.<sup>63</sup> Increasing rates of migration to large urban areas is reportedly creating increased competition for securing employment with unskilled persons relocating to Pakistan's large cities commonly engage in daily wage labour

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<sup>61</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848.

<sup>62</sup> Numero, 'Cost of Living Comparison Between Quetta, Pakistan And Islamabad, Pakistan', Published March 2017, Last Updated November 2020, CISED50AD3611.

<sup>63</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

with little job security.<sup>64</sup> DFAT assesses lack of economic opportunity acts as a significant push factor for internal migration to urban centres, resulting in increased competition.<sup>65</sup> While there is some ambiguity as to the pervasiveness, DFAT noted that outside Hazara enclaves in Quetta, Hazaras face a moderate risk of societal discrimination, including by government officials and security forces, in the form of denial of or delay in access to identity documentation, employment and services. While such discrimination reportedly reflects individual prejudice rather than systemic / and or formal discrimination,<sup>66</sup> I accept that its possible such treatment may impede the applicant's efforts to establish and support himself outside of Quetta.

51. Despite abilities in several languages, I am not satisfied that the applicant's personal attributes or work history would make him readily employable in elsewhere in Pakistan, such as in Islamabad, in the foreseeable future. Relevant here is his age, ethnicity, ailments, the high competition for unskilled work, and his extended period of absence from employment. While the applicant has business experience, I am not persuaded that these skills would mean that he would be readily employable in the kind of work likely to be open to him in Islamabad. I am not satisfied that the applicant would be in a position to compete with other low-skilled younger workers in order to find employment which could sustain him in an environment where he has no connections. Despite his previous experience, I consider it extremely unlikely that the applicant would be able to start another business in Islamabad. He is now at a more senior age and seemingly without any relevant connections in Islamabad. The information before me indicates that he would be returning with very few capital resources, given his extended reliance on welfare payments to support himself in Australia and his family in Quetta, and that he loaned funds to travel to Australia. As noted above, there are comparatively much higher costs in Islamabad compared to Quetta.<sup>67</sup> These considerations lead me to conclude the applicant is unlikely to be able to establish and operate a business in Islamabad that would enable him to support himself.
52. The applicant's family in Quetta comprises his wife and [number of] children of whom two are married. He contends that they are financially reliant upon him as the family business has struggled since it was relocated inside the Quetta enclaves, and they otherwise have very limited means of generating income. Information before me indicates that during his time in Australia he has transferred funds to them sporadically. The applicant's evidence, which I accept, is that he has always resided with his family in Quetta. I accept that he has no family network in any other parts of Pakistan that would be able to assist him in re-establishing himself. The information before me does not suggest that the Hazara or broader Shia communities would provide the kind of social networks and support that the applicant would need in order to find employment and accommodation in Islamabad. Reports confirms the applicant's claim that housing in Islamabad is significantly more expensive than Quetta and other cities.<sup>68</sup> The delegate found that the applicant would be able to relocate his entire family to Islamabad and secure accommodation for them based on the assumption that the applicant would be able to obtain a higher wage there. The applicant's children are all over 18, two are married and have their own families to support. Noting the significantly higher cost of living in Islamabad, and the reports I have referred to which suggest it is generally too

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<sup>64</sup> UN High Commissioner for Refugees, 'Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan', 1 January 2017, UNAEAA5947.

<sup>65</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>66</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>67</sup> Numero, 'Cost of Living Comparison Between Quetta, Pakistan And Islamabad, Pakistan', Published March 2017, Last Updated November 2020, CISED50AD3611.

<sup>68</sup> Numero, 'Cost of Living Comparison Between Quetta, Pakistan And Islamabad, Pakistan', Published March 2017, Last Updated November 2020, CISED50AD3611.

expensive for shop keepers to afford to relocate from Quetta to Islamabad, I consider it is more likely that his adult children would likely remain in Quetta where they are established and due to financial limitations. However I consider his wife would likely seek to join him in Islamabad and that in doing so she would be financially reliant upon him.

53. A necessary consequence of the applicant's relocation would be separation from his Quetta based children and grandchildren for the foreseeable future. The applicant would not be able to freely visit any or all of his children who remain in Quetta, noting that road travel in Baluchistan and travel in Quetta to access the Hazara enclaves is particularly dangerous for Hazara Shia. The UKHO cites reports that Hazara regard driving to Karachi for medical treatment, for example, as too unsafe.<sup>69</sup> I acknowledge the applicant has been separated from his family during his time in Australia. However, as he progresses to a more senior age, opportunities for him to spend time with his immediate family will become fewer and far between. Although the applicant seems to be in reasonable health, he is now [not far] from reaching the average life expectancy for males in Pakistan.<sup>70</sup>
54. I do note that the applicant has a son in Australia who has previously loaned him some funds prior to his departure from Quetta. It is contended that the applicant and his Australian based son have since fallen out and no longer communicate. I have some doubt as to this assertion, as there has been little detail offered as to why this relationship broke down. On one view the timing of the claimed end of their relationship (following the delegate's decision) could suggest it was orchestrated to bolster the applicant's claims he would lack financial support from family members were he to return to Pakistan. Moreover, I note that the applicant did not initially disclose that this son was present in Australia as he was seeking not to contradict the son's earlier assertion to be an Afghan national. Given this previous untruthful representation, and the limited detail as to why the relationship apparently soured, I have some doubts in respect of the applicant's latest evidence in respect of this son. I do not accept that he no longer communicates with this son. However even if this relationship has not broken down as is now claimed, there is no sound evidence before me to suggest that this son would be in position to provide the applicant with financial support so as to overcome the difficulties identified with them relocating to Islamabad.
55. It is not reasonable for the applicant to relocate. His age, lack of familial or social connections outside of Quetta, and the difficulties he would face obtaining suitable employment and affordable accommodation elsewhere in Pakistan, leave me unsatisfied that he would be able to establish himself and adequately support himself and his wife. While I have identified Islamabad as a location where he would not face a real risk of significant harm, I consider he would face these same impediments to relocation were he to relocate elsewhere, outside of Quetta. Overall, I am not satisfied that it would be reasonable for this applicant, given his particular circumstances, to relocate to an area of Pakistan where he does not face a real risk of significant harm.

### **Complementary protection: conclusion**

56. There are 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 meets s.36(2)(aa).

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<sup>69</sup> UKHO, 'Country Policy and Information Note - Pakistan, Hazaras', November 2019, 20191220084848; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

<sup>70</sup> DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

## Decision

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The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

## Applicable law

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### ***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.