



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

**Decision and Reasons**

**Referred application**

---

PAKISTAN  
IAA reference: IAA21/08897

Date and time of decision: 16 March 2021 12:23:00  
S Kamandi, 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 Shia Muslim from Gilgit-Baltistan, Pakistan. On 20 September 2017, he lodged an application for a Safe Haven Enterprise Visa (SHEV). On 19 February 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the applicant a visa on the basis that he was not a person in respect of whom Australia owed protection obligations.

### 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). No further information has been obtained or received.

### Applicant's claims for protection

---

3. The applicant's claims can be summarised as follows:
  - The applicant is a Shia Muslim of Gilgiti ethnicity, a minority Shia ethnic group. He was born in Gilgit-Baltistan and resided in the village of [Village] in [Location 1], where he completed his primary and secondary education. He resided in Karachi and Islamabad to undertake further education and moved to Islamabad in 2010, where he remained until his departure in May 2013.
  - In Gilgit-Baltistan, many of his close family members, including his uncle and cousins have lost their lives or seriously wounded/crippled for life due to bomb blasts targeting the applicant's community. On one occasion, while the applicant was travelling with his uncle from Gilgit city to their village, the bus they were travelling on was attacked, and his uncle was injured.
  - After moving to Islamabad, the applicant did not return to Gilgit as it was unsafe to travel to Gilgit. In 2012, there was a bomb blast in [Location 2] in Gilgit district. The applicant's uncle lost his legs, his aunt lost one of her legs and another relative was killed. The Taliban continue to attack the applicant's community.
  - The applicant did not feel safe in Islamabad because of his ethnicity. The police were annoying him, asking why he had moved to Islamabad and were asking for money.
  - In 2011, the applicant and his brother were involved in a fight regarding the takeover of the mosque in Islamabad. They sustained minor injuries. The police were called and broke up the fight.
  - The applicant fears that he would be harmed when travelling to Gilgit from Islamabad to visit his family. The roads are dangerous and the villagers from villages along the road to Gilgit throw stones at buses because they have been told by extremists to target and attack Shias.
  - The applicant fears harm at the hands of extremists for reasons of his religion and ethnicity.
  - There are no safe places for Shias in Pakistan. He is identifiable as a Shia due to information on his National Identity Card.

- The Pakistani authorities are unable to protect the applicant's community. The Taliban operate with immunity and are supported by the Pakistani military.

### **Refugee assessment**

---

4. 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**

5. 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.
6. The applicant has consistently claimed that he was born in Gilgit-Baltistan and is a Shia Muslim. In support of his identity and nationality, the applicant provided copies of his Pakistani passport and National Identity Cards. I accept that the applicant is a Shia Muslim from Gilgit-Baltistan and a national of Pakistan and that Pakistan is the receiving country for the purposes of this review.
7. The applicant's evidence is that he completed his primary and secondary education in Gilgit. He provided a copy of his secondary school certificate examination records which indicates that the applicant completed his secondary education in Gilgit in [year]. The applicant's evidence is that he then went to Karachi and Islamabad to further his studies. His SHEV application indicates that in October 2008, he studied at [Institution 1] in Karachi. At the SHEV interview, the applicant stated that he moved to Karachi to study. His brother was also residing in Karachi and that after two years he returned to Gilgit. He then enrolled in another education institution in Islamabad and I note that his SHEV application indicates that he obtained a [Qualification] from [Institution 2] in Islamabad. At the SHEV interview, the applicant stated that he travelled between Islamabad and Gilgit while studying and then moved to Islamabad and was living there for about four to five years prior to his departure in May 2013. The applicant's address history in his SHEV application indicates that he lived in [Accommodation] in Islamabad from April 2008 to May 2010 and then resided in [an] area of Islamabad from May 2010 to May 2013. His SHEV application also indicates that he commenced operating his

business managing a [Business] in Islamabad in November 2010 and continued in that role until his departure from Islamabad in May 2013.

8. On the applicant's evidence, it appears that the applicant did not primarily reside in Gilgit from about after completion of his secondary education in around 2005 and that he moved to Karachi for two years to complete high school and then after returning to Gilgit he enrolled in [Institution 2] in Islamabad. While residing in Islamabad, the applicant continued to travel backwards and forwards from Islamabad to Gilgit to visit his family but stopped travelling to Gilgit for some years prior to his departure because he did not feel safe travelling to his village in Gilgit.
9. The applicant's parents and siblings all remain in Pakistan. The applicant's evidence is that his parents, his younger brother and a divorced sister and her children reside together in [Location 3] in Gilgit and another brother with his family resides in their [village] in [Gilgit]. Another brother studied in Peshawar and is residing in Islamabad looking for work. One of his sisters is residing and studying in an Islamic university in Islamabad and his other sister is married [and] moves around different areas in Pakistan.
10. At the SHEV interview, the delegate observed that given that the applicant has resided, studied and worked in Islamabad for a number of years prior to his departure, she was of the view that he would return to reside in Islamabad if returned to Pakistan. The applicant stated that he could live in Islamabad as the situation was "ok" at the time but could change in the future and that he would wish to visit his family in Gilgit and would feel unsafe travelling on the roads from Islamabad to Gilgit. The delegate assessed the applicant's risk of harm on return to Islamabad and on the evidence before her was not satisfied that the applicant faced a real chance of serious harm or a real risk of significant harm in Islamabad or while travelling to and visiting his family in Gilgit.
11. Given that the applicant has resided, studied and operated his own business in Islamabad in the years preceding his departure from Pakistan, his evidence that his siblings and cousins reside in Islamabad, and his evidence at the SHEV interview that he could reside in Islamabad, I also find that the applicant will very likely return to Islamabad if returned to Pakistan.
12. As noted in the delegate's decision, at his arrival interview, the applicant referred to having been annoyed by the police in Islamabad. He claimed that the police would ask him about why he was in Islamabad and were seeking bribes. I note that while the applicant claims that he did not feel safe in Islamabad, he has not provided any further details regarding any encounters with the police in his SHEV application. At the SHEV interview, apart from indicating that his business was not doing well, the applicant's evidence did not suggest that his studies or operation of his business from November 2010 until his departure in May 2013, was in any way impacted by any incidents or harassment by the police.
13. At the SHEV interview, the applicant was expressly asked if anything had happened to him while residing in Islamabad. He stated that there was one "tiny" incident that occurred in 2011. He claimed that he and his brother were called by the community to go to their mosque located [in] Islamabad. There were people who wanted to take over the mosque and the applicant's community gathered to oppose this resulting in a fight. The applicant indicated that he, his brother and a cousin were involved in the fight and that they sustained minor injuries. The police were called, and the incident resolved. The applicant referred to the incident as minor and his evidence does not suggest that he encountered any further problems as a result of this incident, was accused of any wrongdoing or charged by the authorities, or that he encountered

any other incidents or issues in the subsequent two years that he continued to reside and work in Islamabad.

14. Although the security situation in Pakistan has been described as complex, volatile and affected by domestic politics, politically motivated violence, ethnic conflicts and sectarian violence, in the recent years a number of reports from credible sources have recorded significant improvements in the country's security situation since the applicant's departure in 2013.<sup>1</sup> The improvement in the security situation has been attributed to the Pakistan federal government's establishment and deployment of counter terrorism operations across Pakistan since 2014. In June 2014, operation *Zarb-e-Azb*, targeting terrorist groups, was launched. After an attack by the Taliban on the Army School in Peshawar in December 2014, the Pakistani authorities also introduced a National Action Plan (NAP), which together with military operations formed a civil-military effort to combat terrorism. In 2017, further military operations, the *Radd-ul-Fassd* (succeeding operation *Zarb-e-Azd*) and *Operation Khyber-IV*, were launched. It is reported that the NAP and military operations led to significant reductions in the number of criminal and sectarian violence and terrorism related attacks in Pakistan.
15. The most recent 2019 DFAT report<sup>2</sup> indicates that while security varies across the country, security forces have sought to tackle violent and organised crimes across the country, particularly in large urban centres. In relation to Islamabad, the report indicates that other urban cities have higher levels of violent crime than Islamabad and that this is attributed to the large number of security personnel deployed in Islamabad relative to its population of two million. The 2020 Pakistan Institute for Conflict and Security Studies (PICSS) report<sup>3</sup> also indicates that there has been substantial reduction in the number of incidents (security forces actions and militant attacks combined) in Pakistan and that overall, security situation in Islamabad remained stable throughout the year.
16. In relation to the Shias in Pakistan, DFAT<sup>4</sup> reports that most Pakistani Shias are not physically or linguistically distinguishable from Pakistani Sunnis. It is reported that while some Shias may be identifiable by common Shia names and that tribal names can reveal a person's ethnicity or tribal affiliation, the Pakistani National Identity Cards do not identify a cardholder's religion, and passports do not distinguish between Sunni and Shia Muslims. Shias in Pakistan are most prominent during Shia religious events and pilgrimages to Iraq and Iran and their mosques and places of worship feature different Muslim iconography. It is reported that there has been no evidence of systematic discrimination against Shias in gaining employment in public and private sectors and DFAT assesses that Shias who are not Hazara or Turi generally do not face discrimination based on their religion. In relation to sectarian violence, it is reported that sectarian violence in Pakistan has historically targeted individuals, places of worship, shrines and religious schools and that Shias have been the subject of these attacks and face a threat from anti-Shia militant groups. However, it is reported that attacks on Shias in the recent years involved Hazaras in Quetta and other Shia groups in the former FATA and Karachi. Furthermore, the report provides that the Pakistani authorities' efforts to curb sectarian violence and measures taken to protect the Shia community, such as provision of escort

---

<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Pakistan", 20 February 2019, 20190220093409; DFAT, "DFAT Thematic Report – Shias in Pakistan", 15 January 2016, CIS38A801265; Pakistan Institute for Conflict and Security Studies, "2019 Annual Security Assessment Report", 9 January 2020, 20200122140652; US Commission on International Religious Freedom, "United States Commission on International Religious Freedom Annual Report 2018", 25 April 2018, CIS7B83941863.

<sup>2</sup> DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409.

<sup>3</sup> Pakistan Institute for Conflict and Security Studies, "2019 Annual Security Assessment Report", 9 January 2020, 20200122140652.

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

services for Shia pilgrims, have mitigated the risk of violence and reduced the number of attacks on the Shia communities. Overall, DFAT assesses that most Shias in Pakistan face a low risk of sectarian violence, particularly those who are not Hazaras, Turis or residing in areas such as Balochistan which remains a challenge in terms of security for the Pakistani authorities.

17. While I note the applicant's evidence that he did not feel safe in Islamabad, his evidence regarding his circumstances in Islamabad is that he was able to complete his studies, commence and operate his own business, and practised his religion and attended mosque. Apart from some unspecified incidents of questioning by the police and a minor incident involving his local mosque which the police assisted with, the applicant's evidence does not suggest that he was targeted or encountered any incidents by extremists or the authorities due to his religion or ethnicity. I also note that the applicant's siblings and cousins remain in Islamabad and he has not put forward any evidence that they have encountered any incidents or harm, harassment or problems due to their Shia religion or ethnicity.
18. The information before me does not indicate that there has been recent targeting of the Shia community in Islamabad or support a conclusion that there is a real risk of the applicant being caught up in violent or sectarian attacks in Islamabad. The applicant's assertion that he is identifiable as a Shia due to information in his National Identity Card is also not supported by country information which indicates that Pakistani National Identity Cards do not identify details of cardholder's religion. The applicant has not claimed that his name would reveal his religion or ethnicity, and his evidence does not suggest that he has been harmed or involved in any incidents because he was identified and targeted because of his Shia name.
19. On the evidence before me, I consider the chances of the applicant facing any harm for reasons of his religion or ethnicity in Islamabad to be no more than remote. While I note the applicant's assertion that the security situation in Islamabad could change in the future. The applicant has not provided any evidence in support and the country information which reports on the Pakistani authorities sustained efforts to tackle militant attacks and improve the overall security of the country, does not support a conclusion that there will be a material change or deterioration in the security situation in Islamabad in the foreseeable future.
20. I accept that the applicant's parents, two brothers and a sister continue to reside in Gilgit and the applicant's evidence is that he would travel to Gilgit from Islamabad to visit them.
21. The applicant's evidence regarding his experiences while residing in Gilgit is that he incidents with people were harsh and were throwing stones at him. On one occasion, the bus he and his uncle were travelling on from Gilgit city to their village was attacked and that his uncle was injured. In addition, the applicant claims that many of his close family members, including his uncle, aunt and cousins have lost their lives or seriously wounded/crippled for life due to bomb blasts targeting the applicant's community. The applicant claims that he did not feel safe traveling from Islamabad to Gilgit in the years prior to his departure from Pakistan and refers to a bomb blast in [Location 2] in Gilgit district in 2012, claiming that his uncle lost his legs, his aunt lost one of her legs and another relative was killed.
22. Country information<sup>5</sup> provides that Gilgit Baltistan is within the Pakistan-administered area of the disputed Jammu and Kashmir region, in the north of Pakistan. It is the only region in Pakistan with a majority Shia population and with a population of approximately two million people, the region is sparsely populated.

---

<sup>5</sup> DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409.

23. The history of sectarian conflict between Shias and Sunnis in Gilgit-Baltistan is dated back to the 1960s and 1970s and is attributed to population movement of Sunnis into the area backed by Pakistani government policies. The first sectarian clash in Gilgit-Baltistan is reported to have taken place in the mid-1970s when Sunnis raised objection to the Shias making a stage in the middle of the road to deliver speeches. Sectarian conflict appears to have continued in the region for decades resulting in the Shia community having been left with the perception that the government was moving rapidly towards establishment of a Sunni state in which the “islamisation” of laws was seen to reflect the “Islam” of the dominant community. The killing of Shia leader, Agha Ziauddin in 2005 caused widespread clashes and loss of lives in Gilgit and damaged social harmony and that in the period between 1988 to December 2010, 117 sectarian cases have been registered in the area.<sup>6</sup>
24. The South Asian Intelligence Review report published in April 2012<sup>7</sup> reports on incidents of violence and sectarian attacks on Shia communities across Pakistan in 2012. It refers to death of civilians in Gilgit as a result of a clash between the police and protesting cadres and sympathisers of a banned Sunni group and introduction of curfews due to violence that erupted as a result. A news report published in Express Tribune in 2012<sup>8</sup> reports on an attack in Babusar Pass, which connects Gilgit-Baltistan to the rest of the country, where 20 people were gunned down in four different buses, indicating that Shias were likely the target of the attack. The news report also indicates that attacks on Shias on buses were “something of modus operandi of militant groups” and that 18 Shia passengers were also killed in Gilgit in February of that year.
25. On 16 February 2021, the applicant’s representative emailed the delegate copies of a number of First Information Reports in Urdu and English translation of letters and reports in support of sectarian violence and attacks on Shias in Gilgit-Baltistan in the years between 1998 and 2012. The email indicates that information provided do not include claims or statements and contains letters and evidence in support of the applicant’s claim regarding the persecution of Shia Community in Pakistan. At the SHEV interview, the delegate observed that the First Information Reports were in Urdu and sought to confirm that the reports relate to incidents in Gilgit. The applicant confirmed that the reports related to incidents that took place in Gilgit. I note that the letters of support include information about attacks on Shias while travelling on roads in Gilgit-Baltistan in 2012, some of which have also been reported in news reports cited above.
26. Given the history of sectarian conflict between Shias and Sunnis in Gilgit-Baltistan which started with the movement of Sunnis to the predominately Shia populated region, I accept the applicant’s claim regarding his experiences while he resided in their village in Gilgit and travelled between Gilgit city and his village. I accept that his family members may have lost their lives or suffered wounds and injuries as a result of attacks on the Shia community and that the applicant did not feel safe in the area.
27. As indicated above, the applicant has not resided in Gilgit for some years prior to his departure from Pakistan. He resided in Karachi and then in Islamabad for purposes of his studies and later moved to Islamabad and established and operated his own business. Apart from experiencing what he refers to as people being “harsh” and one occasion when he was involved in an incident where the bus he was travelling on was attacked, the applicant’s evidence does not

---

<sup>6</sup> Pakistan Institute of Legislative Development and Transparency, “Sectarian Conflict in Gilgit Baltistan”, May 2011, CIS27448.

<sup>7</sup> South Asian Intelligence Review, “Gilgit-Baltistan Orchestrated Strife”, 9 April 2012, CX284923.

<sup>8</sup> Express Tribune (Pakistan), “Another sectarian massacre”, 16 August 2012, CX293267.

suggest that he was known to or had any personal profile with any militant groups that operated in Gilgit, the Sunni community, or with the Pakistani authorities.

28. Country information cited above also indicates that there has been significant improvement in the security situation in Pakistan overall and that sectarian based and militants' attacks have decreased significantly in most areas in Pakistan. The 2019 DFAT report<sup>9</sup> indicates that violent crimes in Gilgit-Baltistan is noted to be generally lower compared to other regions in the country due to the region's mountainous terrain, sparse and majority Shia population, and the fact that communities tend to live in isolation from each other. The report refers to attacks by militants on girls' schools in August 2018. The attacks are not characterised as sectarian violence but rather based on the militant's ideological opposition to female education and notes that it is not aware of any sectarian attacks taking place in Gilgit-Baltistan between 1 January 2017 and 6 May 2018. The 2020 PICSS report<sup>10</sup> provides that the security situation in Gilgit-Baltistan has remained stable with no militant attacks reported in the region.
29. In relation to travel between Islamabad and Gilgit, the applicant claims that he fears being attacked while travelling on road to Gilgit to visit his family. At the SHEV interview the applicant stated that his family fear for their safety when they travel from place to place in Gilgit. When asked what he feared, the applicant stated that his family feared being stopped and killed and referred to the incident when he and his uncle were travelling from Gilgit city to the village and their bus was attacked. He stated that they were throwing stones at the bus and when asked who these people were, the applicant stated that they were villagers from the villages along the road and that they were told by militants to attack Shias. While, I accept Shias travelling on roads in Gilgit were the subject of attacks in the past, the applicant has not provided any evidence regarding any recent attacks of this nature. At the SHEV interview, the applicant was asked if his family in Gilgit travel to Islamabad to visit his sisters or brother, the applicant stated that they did, but they travelled by air. When the delegate asked the applicant whether he could also travel to Gilgit by air to visit his family, he stated that he could and it was a safe option but he would still need to travel from the airport to his village in Gilgit and that was not safe to do so.
30. Country information<sup>11</sup> reports that there are flights between Islamabad and Gilgit and that since the applicant's departure, in 2016 special flights from major cities to Gilgit and holiday packages have been on offer to promote tourism in the country's northern areas. It is reported that due to threats of possible terrorist attacks, the security measures at the airport has increased with airport staff offered training to deal with such events. The information before me does not indicate that traveling out of the airport to villages in or around Gilgit is unsafe due to attacks on roads or otherwise. I accept that there have been reported incidents of Shias having been targeted and killed in road incidents and encounters between police and militants in the area in the past, the information indicates that Pakistani government have taken measures to curb militant activity in Pakistan, including in Gilgit-Baltistan, and that the area is considered as one of the safest in Pakistan with its security situation having remained stable in the recent years with no reports of militant attacks or sectarian violence in the area. While, the presence of militant activity cannot be entirely discounted, on the information before me, I consider the

---

<sup>9</sup> DFAT, "Country Information Report: Pakistan", 20 February 2019, 20190220093409.

<sup>10</sup> Pakistan Institute for Conflict and Security Studies, "2019 Annual Security Assessment Report", 9 January 2020, 20200122140652.

<sup>11</sup> The Express Tribune, "PIA to offer holiday packages for flights to Gilgit, Skardu", 7 October 2017, CXC90406620518; Dawn News Group – Pakistan, "Security beefed up at Skardu airport", 24 October 2016, CX6A26A6E20429; Business Recorder - Pakistan, "PIA announces schedule for four more flights for Skardu, Gilgit", 25 March 2016, CX6A26A6E20485.



chances of the applicant facing any harm while traveling to and visiting his family in Gilgit to be no more than remote.

31. Given the historical context of targeting of Shias as a minority religious group in Pakistan, the applicant's subjective fear of harm, based on his religion and ethnicity, if returned to Pakistan is understandable. However, as indicated above the government of Pakistan has taken measures and implemented operations with a view to restore security and curb militant activity in the applicant's home area. Various independent reports indicate that government action has significantly contributed to improvements in overall security situation in Pakistan. The establishment of a National Action Plan (NAP) and military operations to combat terrorism in my view illustrate the Pakistan's government's commitment to restore security in all areas in Pakistan. While the applicant claims that there are no safe places for Shias in Pakistan, that the authorities are unable to protect the applicant's community, with the Taliban having the support of the Pakistani military, given the extensive and enduring success of the Pakistani authorities in improving the security situation in Pakistan overall, I am not satisfied that the Pakistani authorities are unwilling or unable to offer protection to the Shia community.
32. Having regard to the applicant's profile and all of his circumstances, in the context of country information about the current security situation in Pakistan, I am not satisfied that he would, in the reasonably foreseeable future, face a real chance of any harm in Pakistan for any of the claimed reasons. The applicant does not have a well-founded fear of persecution within the meaning of s.5(J) of the Act

#### **Refugee: conclusion**

33. 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**

---

34. 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**

35. 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.
36. 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.

37. I have found above that the applicant does not face a real chance of harm for any of the claimed reasons. The Federal Court held that 'real risk' imposes the same standards as the 'real chance' test<sup>12</sup>. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm.
38. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Pakistan.

#### **Complementary protection: conclusion**

39. 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.

---

<sup>12</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## 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.