



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/10116

Date and time of decision: 12 January 2022 14:57:00
S MacKenzie, 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) arrived in Australia [in] July 2013 as an unauthorised maritime arrival, claiming to be a citizen of Afghanistan. On 21 September 2017 he lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV), claiming to be a national of Pakistan. The applicant claimed to fear harm in Pakistan on account of his ethnicity and religion.
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 28 October 2021. She accepted the applicant was a national of Pakistan and found there was a real chance he would face serious harm in his home area for reason of his ethnicity and religion. However, she found that the real chance or real risk of persecution did not relate to all areas of Pakistan.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He is a Shia Hazara from Quetta;
 - He recalls several sectarian attacks while growing up in Quetta. His father's cousin was killed in such an attack;
 - If returned to Pakistan, he fears being harmed or killed by Sunni extremist groups such as Lashkar-e Jhangvi (LeJ), Islamic State, and Sipah-e-Sahaba Pakistan (SSP) due to his profile as a Shia Hazara.

Refugee assessment

5. 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

6. 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.
7. Since his arrival in Australia, the applicant has consistently claimed to be a Shia of Hazara ethnicity. However, his evidence as to his background, family, nationality, and life in Pakistan has been problematic.
8. The information before me indicates the applicant was interviewed by the then Department of Immigration and Citizenship or Department of Immigration and Border Protection on 14 August 2013 (arrival interview), 20 August 2013 (biometric interview), and 17 April 2014 (age determination interview). His evidence in those interviews can be summarised as follows:
- His name is '[Alias 1]'
 - He was a minor when he arrived in Australia, born in Afghanistan in around [year]
 - He is a national of Afghanistan and no other country
 - Prior to coming to Australia, he lived most of his life in Pakistan
 - His father has been missing since he was aged around 2 years
 - He has no siblings
 - He could not read and had no formal education in Pakistan
 - He departed Pakistan on a passport given by a smuggler
 - He had no family in Australia.
9. In a statutory declaration, dated 19 September 2017, accompanying his written SHEV application, the applicant claimed that the above information provided soon after he arrived in Australia was false. He was in fact born in Pakistan and a citizen of that country. He claimed that he was not a minor when he arrived in Australia, that his father, a [Occupation 1], was never missing, that he had several siblings, that he had several family members living in Australia, that he attended school in Pakistan to Year [level], and that he departed Pakistan using a Pakistan passport obtained himself. The applicant provided a number of Pakistani identity documents that revealed his true name and his true date of birth. He also provided documents evidencing his educational and extra-curricular achievements.
10. The applicant explained in his statutory declaration that he had earlier provided a false identity because he was afraid. He said people had told him that he could be sent to Nauru if he said he was from Pakistan and over the age of 18 years. People told him if he said he was from Pakistan he would be sent back. In an interview with the delegate on 29 June 2021 (SHEV interview), he reiterated that he earlier provided a false identity due to fear he would be returned to Pakistan.
11. When I consider all the information before me, including his Pakistani documentation provided throughout the SHEV process, I accept the applicant was born in Pakistan and is a

national of that country. I accept he is a Shia Hazara from Quetta in Balochistan province. I also accept he has never been to Afghanistan and is not a national of any other country. Like the delegate, I find Pakistan to be the receiving country.

12. In his statutory declaration, the applicant said he had no future in Quetta. He said that in his area Hazaras were forced into isolation. He recalled several targeted attacks in Quetta while growing up. His father's cousin was killed in one such attack in 2008. He participated in peaceful protests against the attacks, but nothing changed. He left Pakistan because of the attacks, which also continued after he arrived in Australia. The applicant claimed that if returned to Pakistan he was at risk of being killed by Sunni extremist groups such as LeJ and SSP due to his profile as a Shia Hazara. He reiterated the same fears in the SHEV interview. He advised the delegate that, as a Shia Hazara, he feared harm from extremist groups operating in Pakistan such as LEJ, SSP and ISIS (Islamic State).
13. Country information confirms there were several sectarian attacks in Quetta between 2004 - 2013 and beyond.¹ I accept the applicant's evidence about his experiences growing up in Quetta. I accept he departed Pakistan due to a fear of being harmed or killed on the basis of his ethnicity and/or religion.
14. The applicant was born and raised in Quetta and has never lived in another part of Pakistan. It is where his parents and a brother remain. When I consider his evidence as a whole, including his former representative's oral submissions in the SHEV interview, I find Quetta is the applicant's home area for the purpose of this assessment.
15. In February 2019, DFAT reported that the security situation varied across Pakistan and that militant attacks could occur anywhere. It noted that in 2018 Balochistan faced the most significant security challenges due to activity by both religious and nationalist non-state actors. DFAT noted that the Pakistani armed forces had launched several security operations across Pakistan to target terrorist, separatist and criminal groups. DFAT also reported that despite improved security measures and general improvements to the security situation in Pakistan that have led to a steady decrease in successful attacks, a large number of official and non-government interlocutors reported that Hazaras in Quetta, who mostly live in enclaves, continued to face a significant risk of violence.²
16. In November 2019, the UK Home Office reported an increase in security measures for Hazaras in Quetta, including check points around the Hazara enclaves, patrol routes between Hazara Town and Mariabad, and some security escorts outside of the enclaves. The UK Home Office assessed that, in general, the state appeared willing and able to provide effective protection to Hazaras.³
17. Country information before me indicates the targeting the Hazaras or Shias in and around Quetta since 2019. In April 2019, a blast at a vegetable market in Quetta targeting the Shia Hazara population killed 20 and injured at least 48.⁴ In May 2019, Quetta police reportedly

¹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264; UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines Assess Protection Religion Minorities PAK", 1 January 2017, UNAEAA5947; Dawn (Pakistan), "509 Hazaras killed in terror-related incidents during last five years in Quetta NCHR report", 20 March 2018, CXBB8A1DA25915

² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

³ UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", November 2019, 20191220084848

⁴ US Department of State, "Country Reports on Human Rights Practices for 2019 - Pakistan", 10 March 2020, 20200312102402; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 4 January 2020, 20200114102703; Human Rights Commission of Pakistan (HRCP), "State of Human Rights in 2019", 30 April 2020, 20200603194632

killed an alleged suicide bomber when he attempted to gain entry to an Imambargah.⁵ In August 2019, Islamic State claimed responsibility for a blast targeting the Shia Hazara community in Quetta that killed one person and injured at least 10.⁶ In October 2020, seven people were killed by an IED explosion in the Hazarganj area of Quetta.⁷ In January 2021, Islamic State claimed responsibility for the killing of 11 Shia Hazaras working as miners near the small town of Mach, not far from Quetta.⁸

18. In the SHEV interview, the applicant's former representative argued that while Shia Hazaras may be safe within their enclaves in Quetta, they face harm when they leave the enclaves for different reasons such as engaging in employment.
19. Overall, the country information before me indicates that the sectarian targeting of Shia Hazaras in Quetta has significantly decreased in recent years.⁹ However, the country information also indicates it is primarily within the Hazara enclaves of Quetta that Shia Hazaras have remained relatively safe. In the applicant's circumstances, I am not satisfied if returned to Quetta that he would remain solely within the Hazaras enclaves. I accept his evidence in the SHEV interview that he supports his family financially and I am satisfied if returned to Pakistan he would seek to continue to do so. DFAT indicates that many job opportunities in Quetta are outside of the Hazara enclaves and this means the applicant would likely need to travel beyond the enclaves for employment purposes. Although the UK Home Office reported in November 2019 improved security measures, including the existence of some security escorts outside of the Hazara enclaves, and that the state appeared willing and able to provide effective protection to Hazaras, multiple other sources report that Hazaras are unable to freely move outside of the enclaves.¹⁰ DFAT also reported in 2019 that Hazaras moving out of the enclaves, within and outside of Balochistan, faced a high risk of societal discrimination and violence, and that outside of their enclaves in Quetta, Hazaras face obstruction at checkpoints from government officials and security forces, and denial or delay in access to identity documentation, employment and services.¹¹ I accept the reporting from the UK Home Office, DFAT, and the US Department of State that indicates Hazaras, due to their visually distinct identity, are more vulnerable to attacks when they leave their enclaves in Quetta.
20. On the information, I accept there is more than a remote chance the applicant would be targeted by Sunni extremist groups for reason of his ethnicity and religion, if he were to return to Quetta and frequently travel outside of the Hazara enclaves within the city. Although there appears to be a significant decrease in large scale attacks targeting the Shia Hazara community and security improvements in recent years, the information indicates that Shia Hazaras have continued to be targeted by Sunni extremist groups and are more vulnerable to harm when travelling outside of the Hazara enclaves within Quetta. I accept for

⁵ Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 4 January 2020, 20200114102703

⁶ US Department of State, "Country Reports on Human Rights Practices for 2019 – Pakistan", 10 March 2020, 20200312102402; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 4 January 2020, 20200114102703

⁷ Pakistan Today, "IED attack in Quetta kills 7, injures several", 25 October 2020, 20201027102816

⁸ Aljazeera, "Gunmen kill many Hazara Shia coal miners in southwest Pakistan", 2 January 2021, 20210106090202

⁹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 4 January 2020, 20200114102703; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2020", 15 June 2021, 20210630123526; US Department of State, "International Religious Freedom Report for 2019 – Pakistan", 10 June 2020, 20200617121515; UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", November 2019, 20191220084848

¹⁰ US Department of State, "Country Reports on Human Rights Practices for 2019 – Pakistan", 10 March 2020, 20200312102402

¹¹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

the purposes of this decision that on return to Quetta that there is more than a remote chance that the applicant would be targeted for serious harm such as death or significant physical ill treatment by Sunni extremists. I am satisfied that his ethnicity and religion would be an essential and significant reason for the harm.

21. However, pursuant to s.5J(1)(c) of the Act the real chance of persecution must relate to all areas of the receiving country. I have considered whether the applicant would be at risk of serious harm on the basis of his ethnicity or religion, or other relevant characteristic, elsewhere in Pakistan. For the reasons given below, I am not satisfied that he faces a real chance of persecution in Islamabad. Having regard to the applicant's circumstances, I am not satisfied that the threat of harm he may face on return by Sunni extremist groups in Quetta extends beyond his localised region.

Islamabad

22. Islamabad is a large urban centre with an ethnically and religiously diverse population of around 2 million.¹² There are Shia and Hazara communities living in Islamabad, with many having migrated from Quetta over the years.¹³ DFAT identified the city as a preferred option for relocation for Hazaras (along with Lahore and Karachi).¹⁴ Article 15 of the Constitution guarantees the right to freedom of movement in Pakistan. Internal migration is widespread and common.¹⁵ DFAT reports that there is a large number of security personnel deployed in Islamabad relative to its population.¹⁶ Islamabad is serviced by an international airport.¹⁷ The applicant is a Pakistani citizen holding a national identity document and has a legal right to return and reside anywhere in Pakistan.¹⁸ There is nothing in the material to suggest he would be unable to safely and lawfully access Islamabad.
23. I note DFAT broadly assessed in 2019 that Hazaras faced a 'high risk'¹⁹ of violence from sectarian militants because of their religious beliefs.²⁰ However, when read in context, it appears DFAT was referring to the situation for Hazaras in Quetta and Balochistan. I note in the same report DFAT identified the city of Islamabad as a preferred option for relocation for Hazaras and assessed that Shias in that city faced a 'low risk'²¹ of sectarian violence.²² I also give weight to reporting from the Pakistan Institute for Peace Studies between 2019 and 2020 that indicates there has been no sectarian violence targeted at Shia Hazaras in Islamabad during that period.²³ I note there was one attack reported in Islamabad in 2019 that claimed the lives of two policemen and injured one other, but there is no indication this was sectarian in nature.²⁴
24. I acknowledge the reporting before me from DFAT and other sources that the security situation in Pakistan is complex and volatile. I have taken into account the scale, frequency

¹² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹³ UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", November 2019, 20191220084848; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁵ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁶ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁷ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁹ DFAT defines 'high risk' as it is aware of a strong pattern of incidents.

²⁰ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²¹ DFAT defines 'low risk' as it is aware of incidents but has insufficient evidence to conclude they form a pattern.

²² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²³ Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 4 January 2020, 20200114102703; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2020", 15 June 2021, 20210630123526

²⁴ Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 4 January 2020, 20200114102703

and locations of attacks against Shias, Hazaras, and other profiles held by the applicant in recent years. I have also taken into account the improved security situation, and the implementation of security measures across the country. The information before me indicates the Pakistan government has invested heavily in Islamabad's security and the city has seen little sectarian violence in recent years. On all the evidence, I am not satisfied the applicant faces a real chance of harm in Islamabad for reason of his ethnicity, his religion, or as a Shia Hazara from Quetta now, or in the reasonably foreseeable future.

25. I acknowledge DFAT's assessment in 2019 that Hazaras (outside of Hazara enclaves in Quetta) faced a 'moderate risk'²⁵ 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. DFAT assessed such discrimination reflected individual prejudice rather than systematic and/or formal official discrimination. In contrast, the UK Home Office assessed in its 2019 report specifically about Hazaras in Pakistan that there is little societal discrimination that restrict Hazaras in their daily life.²⁶ I also note DFAT's 2019 assessment that low-level anti-Shia discrimination does occur at the community level and can manifest in violence or damage to property.²⁷ Considering the information as a whole, while I accept the applicant as a Hazara or Shia may experience a level of societal discrimination in Islamabad, I am not satisfied that any such treatment he may face would constitute serious harm.
26. At the end of the SHEV interview, the applicant's former representative submitted that the applicant's brother, now living in Australia, left Pakistan for "similar reasons" to the applicant and had been granted protection here. It was argued that the delegate should make a similar finding in the applicant's case. In his statutory declaration of September 2017, by way of correcting information provided at his biodata and arrival interviews about family members in Australia, the applicant had stated that his brother arrived in Australia by boat in 2012 and was subsequently granted a permanent protection visa. Apart from the representative's assertion that the applicant's brother left Pakistan for similar reasons to the applicant, no information has been provided pertaining to his brother's circumstances or the basis on which he sought or was granted protection. I am prepared to accept the brother was granted protection in Australia sometime before October 2017. However, I am mindful that I am not bound by other protection decisions and this review requires me to consider the particular circumstances of the applicant and the evidence before me. I am also mindful that the country information, as set out above, indicates the situation for Shia Hazaras has improved since the applicant's brother's protection application was decided. On the information before me, I am not satisfied the applicant's brother's visa grant prior to October 2017 assists the applicant's case.
27. I have considered, but decided against, exercising my discretion to obtain new information about the applicant's brother's protection application in Australia. The applicant has not indicated that his claims for protection rely on his brother's individual circumstances or case. While I note the broad assertion that the applicant's brother left Pakistan for similar reasons to the applicant, I consider if the applicant did regard his brother's individual circumstances as relevant to his own case, he could have provided information to the Minister about the basis on which his brother had sought protection. I also note the delegate did not address in her decision the applicant's brother's matter and the applicant has not provided any submissions to the IAA about that, or anything else, despite being informed by the IAA that

²⁵ DFAT defines 'moderate risk' as it is aware of sufficient incidents to suggest a pattern of behaviour

²⁶ UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", November 2019, 20191220084848

²⁷ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

he could provide submissions concerning the delegate's findings and provide further information. As noted in the Practice Direction for Applicants, Representatives and Authorised Recipients and Fact Sheet (sent to the applicant on 2 November 2021), review applicants can provide a written submission about why they disagree with a decision or about a claim or matter presented that was overlooked. They can also provide further information which can be considered in limited circumstances. Further, even if the brother left Pakistan for "similar reasons" to the applicant, as submitted in the SHEV interview, his application was decided over four years ago and, as noted above, the more recent country information indicates the situation for Shia Hazaras has improved in recent years.

28. Included in the review material is a letter dated 13 March 2014 confirming that the applicant's personal details (including name, date of birth, nationality, gender, details about his detention such as when and where detained, and the reason) was in the public domain, though not easily accessible, on the Department's website for a short period in February 2014. The letter states that the published information did not include any addresses, former addresses, phone numbers, or any other contact information. Further, no protection claims were published. As noted in the delegate's decision, the applicant has not advanced any protection claims in connection with the website disclosure and I agree with the delegate that none arise on the material. While I accept the applicant was affected by the 2014 website disclosure the information before me does not suggest this increases his risk profile or otherwise increases his chance of suffering harm in Pakistan.
29. In the SHEV interview, the delegate asked the applicant about his marital status. In response, he said "nothing, I'm still single". He confirmed twice more that he was single. The delegate then put to him that he had indicated on social media he was engaged. In response, he admitted that he was but said he was no longer living with his fiancée. He said his fiancée was an Afghan national and permanent resident of Australia. Although I have concerns, I am prepared to accept the applicant may be engaged to an Australian permanent resident. I consider that if he returns to Pakistan he may potentially be separated from his fiancée and he may find these circumstances distressing. However, I am not satisfied that one or more of the reasons set out in s.5J(1) of the Act is the essential and significant reason for this or that the applicant faces a real chance of persecution as a result of any potential separation from his fiancée.
30. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

31. 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

32. 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

33. 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.
34. 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.
35. I have found above that the applicant would face a real chance of serious harm in returning to his home area of Quetta in Balochistan. For the same reasons, I am also satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Pakistan, the applicant will face a real risk of significant harm if he returns to Quetta.
36. While it is possible that the applicant may be subjected to societal discrimination in Islamabad, I am not satisfied that any discrimination faced would constitute significant harm as defined.
37. I accept that if the applicant returns to Pakistan he may be separated from his fiancée and I am sympathetic to these circumstances. While such a parting would be distressing, I am not satisfied that any suffering caused to the applicant if he were separated from his fiancée would constitute any form of significant harm as defined, including cruel or inhuman or degrading treatment or punishment, which requires an element of intention in relation to the infliction of harm which is absent here. I am not satisfied that the Australian authorities, in removing the applicant from Australia in accordance with the requirements of the Act, would intend to cause pain or suffering or extreme humiliation by doing so. Having regard to the Federal Court's decision in *SZRSN v MIAC*²⁸, I do not consider that harm arising from the act of removal itself, such as separation from his fiancée, meets the definition of 'significant harm' in s.36(2A).
38. I have otherwise concluded that, in Islamabad, the applicant does not face a real chance of harm for the reasons claimed including in connection with his ethnicity, his religion, or as a Shia Hazara from Quetta. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm in Islamabad.
39. Having regard to the applicant's personal circumstances, I have considered whether it is reasonable for him to relocate to Islamabad. In the SHEV interview, the applicant's former representative submitted it was not reasonable for him to relocate as he would be unable to subsist due to his ethnicity and religion. It was submitted he would face racism as a Shia Hazara and that he has no existing support networks in any other part of Pakistan.
40. I accept the applicant has no family or other existing support network in Islamabad. I also accept that he would seek to continue to provide financial support for his family. The

²⁸ *SZRSN v MIAC* [2013] FCA 751.

applicant is educated in both Australia and Pakistan to Year [level]. As well as speaking Hazaragi, he also speaks, reads, and writes Urdu and English, the two official languages of Pakistan.²⁹ The applicant's evidence in the SHEV interview is that in Australia he has had ongoing employment since 2017 and secured shared accommodation with a housemate. The evidence indicates he has demonstrated an ability to travel to unfamiliar places and secure ongoing employment and accommodation in a culture and environment likely more foreign to him than what he will find in Islamabad. While I acknowledge familial and social connections in Pakistan may be advantageous economically, I consider the applicant has demonstrated resilience and resourcefulness in recent years and I am not satisfied his lack of family or existing connections in Islamabad will prevent him from being able to access employment, accommodation, or subsist. The applicant is young, is in apparent good health, and I am not satisfied he has any vulnerability which would act as a barrier to him establishing himself in Islamabad. As noted earlier, Islamabad is a large urban centre with an ethnically and religiously diverse population. There are Shia and Hazara communities in Islamabad, many from Quetta, and the city has been identified by DFAT as a preferred option for relocation for Hazaras. Pakistan's Constitution guarantees the right to freedom of movement in Pakistan and internal migration is widespread and common. As a Pakistani citizen holding a national identity document, the applicant has the legal right to return and reside anywhere in Pakistan. The information indicates that there is a significant security presence in Islamabad and the city is relatively stable and secure, with low levels of sectarian violence.

41. On all the evidence, I do not consider the applicant's ethnicity and/or religion, that living away from family, or the absence of existing connections, would make relocation to Islamabad unreasonable. I am not satisfied that, in Islamabad, he would face racism or other treatment in connection with his ethnicity and/or religion that would lead to him to be unable to subsist. I have accepted the applicant faces a real risk of significant harm in Quetta and I am satisfied he would not seek to travel from Islamabad to visit his family there. I also consider it unlikely his family would seek to travel outside the secure enclaves of Quetta to visit him in Islamabad. Even if I were to accept the applicant's family would seek to visit him in Islamabad, I am not satisfied this would lead the applicant to face a real risk of harm. I accept that on return to Pakistan, the applicant would continue to be separated from his immediate family. I also accept this would be difficult for him, but these difficulties would likely exist regardless of where he lived in Pakistan, or if he remained in Australia. In all the circumstances, I am not satisfied that further separation from his family in the foreseeable future makes relocation to Islamabad not reasonable. While I accept relocating to a new city won't be without challenges, on all the evidence, I am satisfied the applicant would be able to establish and support himself in Islamabad, as a Shia Hazara without the support of existing family or other connections.
42. I have had regard to the concerns raised about the reasonableness of relocation in Pakistan. However, in considering the applicant's personal circumstances and the country information, I am satisfied it is reasonable for him to relocate to and remain in Islamabad.

Complementary protection: conclusion

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

²⁹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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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.