



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA16/00416

Date and time of decision: 30 August 2016 14:47:47
Rosie Mathlin, Reviewer

Decision

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

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be of Hazara ethnicity and Shia religion, from Quetta, Pakistan. He is in his late [age]. He arrived in Australia by boat, undocumented, [in] November 2012.
2. [In] August 2015 he lodged an application for a Safe Haven Enterprise Visa (SHEV), claiming to fear harm from militant groups, Pashtuns and “the Agency” on account of his ethnicity, Hazara, and his religion, Shia.
3. The delegate refused to grant the visa in a decision dated [July] 2016. He did not accept that the applicant had been personally threatened, as he claimed, but accepted that Hazara Shias face a real chance of persecution in Quetta. The delegate concluded, however, that as there was not a real chance of the applicant being harmed in cities such as Karachi, Lahore and Islamabad, the real chance of harm did not relate to all areas of Pakistan. For the purposes of complementary protection, the delegate found that in his particular circumstances, it would be reasonable for the applicant to relocate to an area of Pakistan such as Karachi, Lahore or Islamabad, where there was not a real risk that he would suffer significant harm.

Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The applicant provided further information to the IAA. This consisted of
 - A statutory declaration dated [August] 2016 responding to the findings made by the delegate. The applicant also stated that he faced harm as a failed asylum seeker who has spent time in a Western country, or who has connections in a Western country. I consider that this is an implied claim which arises squarely on the material before the delegate and is not new information pursuant to s.473DD, so I have considered it. The applicant also specified additional groups from which he claims to fear harm to include *Sippah Sahaba (SSP)*, *Jesh Mohammad* and *Ehle Sunnat wal Jammaat*. Again, I consider that this is not new information, as the information considered by the delegate includes these groups as among those responsible for sectarian attacks on Hazara Shias.
 - Country information reports from human rights and news sources attached to an email of 15 August 2016. I have not had regard to this new information. Much of it could have been provided to the Minister’s delegate before the decision was made and it is not apparent why it was not provided to him. The fact that an applicant is unrepresented and unaware of what supporting material may be relevant to their case is not an exceptional circumstance. None of the information is personal information and much of it does not relate directly to the circumstances of the applicant – for example a report of an August 2016 attack on lawyers in Quetta claimed by both Islamic State and *Tehreek e Taliban Pakistan Jamat ul Ahrar*; while this report illustrates the continuing ability of military groups to carry out such attacks it does not necessarily disclose a real risk of harm to Hazara Shias. One report concerns criminal, political and sectarian violence in Karachi; another reports on violent demonstrations in Islamabad following the execution of an “Islamist assassin” who in 2011 had murdered a Punjab governor over his call to reform blasphemy laws often used to oppress religious minorities. Other

reports which do concern the situation of Hazara Shias in Pakistan and their targeting by extremist groups are similar to the information which was considered by the delegate and referred to the IAA. I do not consider that there are exceptional circumstances which justify consideration of this information.

- A submission received on 24 August 2016 which contains legal argument and commentary on the delegate's decision. I have considered this document.
6. Pursuant to s.473DC(1)(a) the IAA has obtained and considered new information, being the Pakistan Institute for Peace Studies (PIPS) Pakistan Security Report 2015¹ which contains the most recent information about security incidents in Pakistan. The delegate considered the earlier report covering 2014², however in view of the volatile and frequently changing nature of the security situation in Pakistan, particularly in the light of a major anti-terrorism operation instituted by the Pakistani government in 2014; and the need to consider the most up to date assessment of conditions in Pakistan in order to properly assess the applicant's claims, I consider that there are exceptional circumstances which justify considering this new information.

Applicant's claims for protection

7. The applicant's claims are contained in the information referred and subsequently given to the IAA. They can be summarised as follows:
- From 2010 he worked [in] a shop in [a] Bazaar in Quetta. The owner of the shop was also a Hazara Shia.
 - In November 2010 and January 2011 the applicant received phone calls from an unknown person who threatened the applicant and his employer, saying that they were infidels and should leave the area or be killed.
 - They ignored the first threat. After receiving the second threat they changed their routine and their operating hours so that it would be more difficult for people to target them.
 - In February 2011 posters were placed on the door of every Hazara Shia owned shop on the street calling for Shias to be killed.
 - Three or four days later the applicant's employer was attacked on the way home from work. He suffered gunshot wounds and was seriously hurt.
 - After that the applicant stopped going to work. He stayed at home. He could not sleep properly. He felt mentally under pressure and insecure; he could not escape the fear that he could easily have been killed if he had been with his boss on the night he was shot. He rarely went out. His behaviour changed. He talked and participated less in gatherings. He developed depression. During that time other Hazara shop owners were targeted.
 - Asked by the delegate why anyone who wished to harm him could not have located him at home he said that the area of Mariabad (Mehrabad) was safe for Hazaras but they could not move outside that area.
 - Asked why he could not relocate to another area of Pakistan where he could be safe, the applicant said that he would be identifiable as a Hazara Shia anywhere he went. He

¹ Pak Institute for Peace Studies (PIPS), "PIPS 2015 Pakistan Security Report", 5 January 2016, CIS38A80121056

² Pak Institute for Peace Studies (PIPS), "2014 Pakistan Security Report", 1 January 2015, CISEC96

has never travelled outside Quetta and has no family, friends, or relatives anywhere else in Pakistan. He said that he was identified by name in the threatening phone calls, and this might mean that extremist groups have been collecting information about him. He stated that it would be difficult for him to find a job because Hazaras are targeted and employees would be reluctant to hire him.

Refugee assessment

8. 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.

Identity and nationality

9. There is no issue as to the applicant's identity or nationality. I accept that he is a national of Pakistan and of no other country. Pakistan is the receiving country for the purposes of the Act.
10. Based on the available information I accept that the applicant is a Hazara Shia, formerly resident in Quetta, Balochistan.

Well-founded fear of persecution

11. 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.
12. I accept the applicant's claims about violence against Hazara Shias in Quetta. DFAT assesses that the major threat to Shias in Pakistan (including Hazaras) comes from anti-Shia and militant groups, including *Lashkar-e-Jhangvi* (LeJ), *Sipah-e-Sahaba Pakistan* (SSP) and *Jundullah*, as well as *Tehreek-e-Taliban Pakistan* (TTP).³ Because they are ethnically distinct, Hazaras are readily identifiable as Shia Muslims and have been targeted by sectarian militants on this basis.⁴ LeJ has claimed responsibility for a large number of attacks on the Shia community, particularly

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report Shias in Pakistan", 15 January 2016, CIS26834 at 4.4

⁴ DFAT, "Thematic Report "Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264 at 4.16

Hazaras in Quetta. In an open letter in November 2012, LeJ leaders declared their intention to 'abolish the impure sect' of 'Shias and Hazara Shias'. Other militant groups express strong anti-Shia sentiments. DFAT assesses that there is a moderate level of sectarian violence in Balochistan, where Hazara Shias remain segregated in two predominantly Hazara enclaves, and are a key target of militant groups. Country information confirms that numerous shootings and suicide attacks on Shia Hazaras took place in Quetta in the years prior to the applicant's departure and subsequently. A number of such attacks have been directed at marketplaces and shopkeepers.⁵

13. The delegate did not accept that the applicant and the owner of the shop where he worked were explicitly threatened as the applicant claims, or that the owner of the shop was attacked in February 2011, or that the applicant did not work from that time until his departure from Pakistan in July 2012. The delegate noted that in his initial TPV application and his subsequent SHEV application, the applicant stated that he was employed until July 2012. The applicant explained this discrepancy at the SHEV interview on the basis that it was a mistake, but the delegate did not accept that the applicant could have been mistaken about when he stopped working, given his claim that the reason he stopped working was the fear of harm that led him to flee Pakistan. I note that in the entry interview the applicant also stated that he worked until July 2012, and this could account for the repetition of the wrong information in the subsequent application forms. Of greater concern to me is that at the entry interview the applicant did not mention the threats of harm made to the shop owner and himself, stating only that he left Quetta because of explosions in which Hazaras were targeted. However, this discrepancy has not been discussed with him. Having regard to the detailed information provided in his statutory declaration and at the SHEV interview about the threats, the attack on his employer and the impact this had on his psychological state, I am prepared to accept that these incidents occurred as claimed. Country information indicates that Hazara shopkeepers in Quetta are commonly subject to sectarian attacks.
14. Accepting that the applicant and his employer were threatened as he claims, and that the threats were related to their ethnicity and religion, I do not accept that the applicant was personally targeted as an individual rather than as a Hazara Shia. I note that the applicant remained in Quetta for almost eighteen months after the attack on the shop owner, and while I accept that he was afraid to continue to work in the Bazaar or to go out very much, I do not accept that he would have faced targeted harm over this period as an individual. I consider that the specific threat he faced ended when he ceased working in the Bazaar, although I accept that he was still at risk of harm from any attack directed at Hazara Shias generally. I am not satisfied that the persons who previously threatened him have an ongoing interest in him, given the lack of any further threats or violence directed at him during the period that he remained in Quetta following the phone threats. I do not consider that they would pursue him as an individual if he returned to Pakistan; I consider the possibility that they would identify and pursue him again even in Quetta is small. I am not satisfied that there is a real chance that he would face harm in connection to those past threats if he were to return to Quetta, or indeed, anywhere in Pakistan.
15. I am satisfied, however, that there is a real chance, now and for the reasonably foreseeable future, of the applicant suffering harm as a result of sectarian violence in Quetta directed against Hazara Shias. According to the most recent United States Department of State report:

⁵ DFAT "Thematic Report Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264 at 4.18-4.20; DFAT Thematic Report "Shias in Pakistan", 15 January 2016, CIS26834; US Department of State, "Pakistan - Country Reports on Human Rights Practices 2015", 13 April 2016, OGD95BE926173, section 6.

*Members of the Hazara ethnic minority, who are Shi'a, continued to face discrimination and threats of violence in Quetta, Balochistan. According to press reports and other sources, they were unable to move freely outside of Quetta's two Hazara-populated enclaves. Consumer goods in those enclaves were available only at inflated prices, and Hazaras reported an inability to find employment or pursue higher education. They also alleged government agencies discriminated against Hazaras in issuing identification cards and passports. To avoid sparking violent incidents, authorities confined Shi'a religious processions to the Hazara enclaves. Anti-Shi'a graffiti was common in Quetta. According to multiple media reports, assailants killed at least 16 persons in attacks against Hazara Shi'as during the year. Media reported that on July 6, gunmen killed two Hazaras and a police officer in front of a passport office in Quetta; on July 17, a suicide bomber attempting to enter a Hazara neighborhood in Quetta blew himself up, killing two; and on July 28, gunmen on a motorcycle killed two Hazaras in Quetta.*⁶

16. I have taken into account country information indicating that sectarian violence has decreased throughout Pakistan since 2014 following the implementation of a National Action Plan targeting militant and terrorist activity, which includes military operations against terrorist and militant groups.⁷ Even so, there were ten sectarian attacks in Balochistan in 2015, seven of which specifically targeted Hazaras and two which targeted Shias in Quetta, in addition to a further attempted attack near a Hazara area.⁸ DFAT assesses that there is a moderate level of sectarian violence in Quetta and that despite a decline in the number of sectarian attacks, Shias remain a key target of Sunni militant groups like LeJ.⁹ The United States Department of State described sectarian attacks against Hazara Shias in Quetta during 2015 as "common".¹⁰
17. I am satisfied that if the applicant returned to live in Quetta for more than a transitory period, and sought to resume his work in a shop, attend mosque and travel to and from his home, he would face a real chance of being killed by LeJ, or another Sunni Muslim extremist group, as a consequence of attacks targeting Hazara Shias for reason of their ethnicity and religion.
18. The applicant claims that the Pakistani government is trying to protect Hazaras, but is unable to do so. This accords with country information. DFAT assesses that the authorities are willing to protect Hazara Shias and other minority communities threatened by extremist groups, but "capacity constraints" and other factors limit their ability to do so.¹¹ The US Department of State reports that police often failed to protect members of religious minorities, including Shias, although there had been improvements.¹² The US Commission on International Religious Freedom also assesses that despite government efforts it failed to provide adequate protection to targeted groups or to prosecute perpetrators or those calling for violence.¹³ I accept that the authorities are unable to provide protection to Hazara Shias in Quetta, such that there remains a real chance of serious harm.

⁶ US Department of State, "Pakistan - Country Reports on Human Rights Practices 2015 ", 13 April 2016, OGD95BE926173, section 6.

⁷ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 4.1; DFAT "DFAT Country Information Report Pakistan" at 2.28 .

⁸ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265 at 4.24

⁹ Ibid at 4.25.

¹⁰ US Department of State, "Country Reports on Terrorism 2015 – Pakistan", 2 June 2016, OGD95BE926424

¹¹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265 at 5.1-5.2.

¹² US Department of State, "Pakistan - Country Reports on Human Rights Practices 2015 ", 13 April 2016, OGD95BE926173, section 1(d).

¹³ United States Commission on International Religious Freedom (USCIRF), "USCIRF Annual Report 2015 - Pakistan", 30 April 2015, CISEC96CF1676, p.2.

19. However, for the applicant to have a well-founded fear of persecution within the meaning of s.5J(1), the real chance of persecution must relate to all areas of the country. The delegate considered that the applicant would not face a real chance of harm in Karachi, Lahore or Islamabad.
20. I have considered whether the applicant would face a real chance of harm in an area outside Quetta, specifically Islamabad.
21. As I have found above, I am not satisfied that the individual or group who threatened the applicant in Quetta have any ongoing interest in him and I am therefore not satisfied that there is a real chance that they would seek to locate him outside Quetta. The available information suggests that he was targeted in the specific context of a Hazara Shia working in a Hazara owned shop in Quetta. I am satisfied that there is no real chance that the applicant faces harm outside Quetta from the group or individual who threatened him there.
22. As to the risk of harm faced by the applicant as a Hazara Shia in an attack directed at Hazara Shias generally, county information indicates that Islamabad is home to mixed ethnic and religious communities, including a large Shia community and a small Hazara community.¹⁴ Numerous police checkpoints along highways leading to Islamabad and within the city provide a strong deterrent to militant groups planning attacks and the streets of the city are patrolled by paramilitary rangers.¹⁵ DFAT assesses that Islamabad is relatively safe for migrant Shia communities. There are no recent reports in the information before me of attacks on Hazaras in Islamabad. In the light of the country information about the security situation in Islamabad, and taking into account that the applicant would be easily identifiable as a Hazara Shia, I am not satisfied that there is a real chance that he would suffer harm in Islamabad on the basis of his ethnicity or religion.
23. The applicant has claimed that he faces harm on return to Pakistan as a failed asylum seeker from a western country, or a person who has lived in or has connections with a western country. DFAT assesses that “Despite a growing Islamisation, western influence remains pervasive in many parts of Pakistan, particularly in major urban areas. Many Pakistanis—including Hazaras—have relatives living in western countries. Many living abroad return to Pakistan frequently to visit relatives and are not at any increased risk because they have spent time in western countries”.¹⁶ There is no information before me from any other source to indicate that failed asylum seekers from Western countries or people who have lived in or have connections with Western countries face a real risk of harm for that reason anywhere in Pakistan.
24. Although I am satisfied that the applicant has a well-founded fear of persecution in some areas of Pakistan, including Quetta, his usual place of residence, I am not satisfied that there is a real chance that the applicant will face serious harm in Islamabad. In these circumstances, the real chance of persecution does not relate to all areas of the receiving country and s.5J(1)(c) is not satisfied. The applicant does not have a well-founded fear of persecution within the meaning of s.5J(1).

¹⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 2.8, 2.9, 5.4.

¹⁵ DFAT "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264, 5.20.

¹⁶ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, at 3.62; DFAT, "Thematic Report "Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264

Refugee: conclusion

25. 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

26. 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

27. 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.
28. As discussed above, I am satisfied that the applicant faces a real chance of harm in Quetta. As "real chance" and "real risk" involve the same standard¹⁷ I am also satisfied that there is a real risk that he will suffer significant harm, such as being arbitrarily deprived of life, should he return there in the reasonably foreseeable future.
29. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm.
30. As discussed above, I have found that there are areas of Pakistan where the applicant does not face a real chance of persecution. The delegate considered Karachi, Lahore and Islamabad as areas where the applicant was not at risk of harm, and where he could reasonably relocate.
31. At the SHEV interview the applicant claimed that the people who threatened him in Quetta could find him and harm him anywhere. For the reasons discussed above, I do not accept this. Given the nature of the threats he claims to have received, and the lack of further threats or harm against the applicant in the period prior to his departure from Pakistan once he stopped working in the Bazaar, and the country information about the type of danger faced by Hazara Shias generally, I am not satisfied that there is a real risk that the groups or persons who threatened the applicant in Quetta will have any interest in locating and harming him elsewhere.
32. The applicant has also stated that it would be hard to relocate because he has only ever been to Quetta and he has no friends or family outside Quetta. The applicant claimed that he can be recognised as a Hazara anywhere because of his face, and Hazaras are widely targeted. It

¹⁷ MIAC v SZQRB (2013) 210 FCR 505.

would be hard to find employment as employers would be afraid that their workplace might be at risk of being targeted by extremists if the applicant worked there. In her submission of 24 August 2016 the applicant's representative argues that much of the information relied on by the delegate to support a finding that it would be reasonable for the applicant to relocate to another city in Pakistan refers to the situation for Shias generally, rather than Hazara Shias specifically. She argues that just because Pakistan is a multi-ethnic society, this does not mean that there is a crossing of ethnic lines between different tribes which share the Shia faith. A Hazara Shia may not be able to rely on Shia from other tribes for support when relocating. It would be necessary to examine whether Hazara Shia support networks exist. She notes the considerations raised in the UNHCR Guidelines¹⁸ as to the viability of an internal flight or relocation option for religious minorities fearing persecution in Pakistan, which require that factors including the availability of traditional support mechanisms such as relatives and friends, livelihood opportunities, and the situation with regard to criminality and security. The Guidelines do not provide specific information about any particular difficulties that Hazaras may face relocating within Pakistan.

33. I accept that the applicant does not have family or friends outside Quetta. Nor has he lived, in Pakistan, outside Quetta. I find that he has a reasonable education, having completed high school. He is literate in Hazaragi and Urdu and speaks Pashto; he states that his spoken and written English is "reasonable". He was consistently employed in Quetta as a [occupation]. I consider that the applicant's ability to travel to Australia and manage here indicates a certain resilience and strength of character, however I note that Australian society is different to Pakistan, and that a capacity to survive here without family or friends does not necessarily mean that an applicant could manage in the same way in a country where tribal and ethnic distinctions are more important.
34. DFAT advises that because of Pakistan's size and diversity there are viable relocation options for most religious and ethnic minorities,¹⁹ however DFAT does not specify those ethnic groups for which this might not be viable. DFAT assesses that Shias can relocate with relative ease and frequency because of family and community networks throughout Pakistan, and states that migrant communities provide a support network.²⁰ I accept that, as he says, the applicant has no family or support networks anywhere in Pakistan outside Quetta. DFAT's assessment that the broad Shia community is able to relocate easily *because of* family and tribal networks implies that without these, relocation would be difficult.
35. Much of the information about the viability of relocation addresses the situation of Shias generally. Hazara Shias make up only 1% of the population of Pakistan, whereas Shias make up 20%.²¹ Unlike Shias from other ethnic groups, Hazara Shias are readily identifiable because of their distinctive facial features. There is a Hazara Shia community of reasonable size (some fifteen thousand) in Karachi, but there is no specific information before me about the size of the Hazara Shia communities in Lahore or Islamabad. DFAT describes them as "small".²² There is no information before me to indicate what level of support, if any, a Hazara Shia such as the applicant could expect to receive from the small Hazara Shia communities in Islamabad/Rawalpindi or Lahore; or whether he would receive any support from Shia communities made up of other ethnic groups.

¹⁸ UN High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 1 May 2012, CIS23071

¹⁹ DFAT, "DFAT Country Information Report Pakistan" at 5.18

²⁰ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, at 5.4-5.6

²¹ DFAT "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264 at 2.9, 3.5; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265 at 2.4.

²² DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265 at 4.18

36. I accept that, as claimed in his statutory declarations, the applicant fell into depression after his employer was shot in Quetta. I accept that he experienced personality changes, stopped going out and found socialising difficult. The information before me does not indicate that the applicant has been working or studying in Australia. I accept that any psychological impact of his experiences in Quetta would add to the difficulties that the applicant would experience in relocating within Pakistan without the support of family, friends and community.
37. DFAT assesses that there is a moderate level of generalised violence in Karachi where a number of Hazaras have been killed in both targeted and random attacks. DFAT reports that "Militants have also conducted large-scale attacks on Shia mosques, religious processions and Shia enclaves in Karachi in 2015".²³ Despite recent improvements in the security situation overall in Pakistan, DFAT assesses that Sunni militant groups including LeJ, which have targeted Hazara Shias, maintain a presence in Karachi, where the security situation remains volatile.²⁴ The website South Asia Terrorism Portal describes Karachi as the most violent district in Pakistan (second only to Quetta).²⁵ While I accept that the level of violence directed at Hazara Shias in Karachi is not such that the applicant would face a real chance of harm directed at him for reason of his ethnicity or religion, I do not consider that it is reasonable to require the applicant to relocate to a city where there is such a high level of generalised violence and where the security situation is described as "volatile", having regard to his personal characteristics, as discussed below.
38. As to the security situation in Lahore and Islamabad during 2015, against a backdrop of a general reduction in sectarian and political violence by militant groups, there were seven sectarian terrorist attacks in Punjab (where Lahore is located) and Islamabad, a 63% decrease from the year before. Four attacks targeted Shia; five of the total attacks took place in the twin cities of Islamabad/Rawalpindi, while one was in Lahore.²⁶ Over the same period, 98% of people killed in sectarian attacks were concentrated in eight regions which included Karachi, Quetta, and Islamabad/Rawalpindi. (91% of sectarian attacks occurred in these locations.²⁷)
39. Overall, in the light of the available information, which is limited, I am not satisfied that it would be reasonable for the applicant, given his particular circumstances, to relocate to an area of Pakistan such as Islamabad/Rawalpindi or Lahore. I have taken into account the following factors. The applicant has no support networks in any of those locations. There is no information before me about the size of the Hazara Shia communities in those cities, or about whether broader Shia communities made up of other ethnic groups would provide the kind of social networks and support to a Hazara Shia that the applicant would need in order to find employment and accommodation. The applicant's only work experience is as a [occupation] in [shops]. He does not appear to have any particular skills or experience that would equip him to find employment in a new city where he knows no one; and, in the case of Islamabad, where the cost of accommodation and of living is high.²⁸ I accept that the applicant experienced psychological difficulties following the shooting attack on his employer. In conjunction with the personal difficulties which I am satisfied the applicant would face, I consider that the security situation in Islamabad and Lahore, while better than that in Quetta and Karachi, is not sufficiently stable or safe to support a finding that it is reasonable for the applicant to relocate

²³ Ibid at 4.17

²⁴ Ibid at 4.18

²⁵ South Asia Terrorism Portal, "South Asia Intelligence Review Weekly Assessments and Briefings Volume 14, No. 33, February 15, 2016", 14, 15 February 2016, CIS38A8012242

²⁶ Pak Institute for Peace Studies (PIPS), "PIPS 2015 Pakistan Security Report 2015 ", 5 January 2016, CIS38A80121056

p 30

²⁷ Ibid

²⁸ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265 at 5.5-5.6.

there. While I consider that the risk of harm to the applicant does not rise to the level of a real chance, I consider that the level of insecurity in Islamabad or Lahore, considered in the light of the other obstacles to relocation faced by this applicant, render it unreasonable.

40. In relation to relocation I have considered those areas of Pakistan where relocation would, prima facie, appear to be reasonable. The delegate considered that these areas were Karachi, Islamabad and Lahore, and based on the country information that was before the delegate I likewise consider that these are areas where there is a Hazara Shia community and where there is no real risk of harm to Hazara Shias. Having considered all of the available information about the possibility of relocation for Hazara Shias within Pakistan, and specifically to Karachi, Islamabad or Lahore, including the security situation, the presence of a Hazara Shia community, the personal characteristics and qualifications of the applicant and the impact of those on his capacity to survive without his family, obtain employment and a place to live, I conclude that it would not be reasonable for the applicant to relocate to an area of the country where there would not be a real risk of significant harm for the purpose of s.36(2B)(a).
41. For all of the reasons above, s.36(2B) of the Act does not operate such that the applicant is taken not to have a real risk of significant harm in Pakistan.

Complementary protection: conclusion

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

Decision

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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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

91W Evidence of identity and bogus documents

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

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

...

91WA Providing bogus documents or destroying identity documents

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

...