



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/06362
Date and time of decision: 25 March 2019 12:27:00
K Allen, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Hazara Shia from Quetta in the Balochistan Province of Pakistan. On 28 July 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 11 February 2019 a delegate of the Minister for Immigration (the delegate) made the decision to refuse the grant of the visa on the basis that the applicant was not owed protection.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. I have considered a new report by the Australian Department of Foreign Affairs and Trade (DFAT) on Pakistan published on 20 February 2019. This report contains information on the situation for Hazara Shias from Balochistan. It updates the DFAT report on Pakistan published on 1 September 2017 which was before, and relied upon by, the delegate. The report has been specifically prepared for the purpose of assisting in determining protection obligations. I am satisfied there are exceptional circumstances to justify considering this information. A copy of the report was provided to the applicant for his consideration on 19 March 2019.
5. On 22 March 2019 the applicant's representative provided a submission explaining why he disagrees with the delegate's decision. To the extent that it contains argument about information already before the delegate I have had regard to it in making this decision. It also makes submissions in relation to the new DFAT report and relocation and given my findings above and the fact that the applicant was not previously represented, I am satisfied that there are exceptional circumstances to justify considering the new information including the submissions about the new DFAT report.
6. I note that in his submission of 22 March 2019 the applicant's representative has stated that one of the applicant's vulnerabilities is that he has spent considerable time in a Western country seeking asylum and would be returning as a failed asylum seeker with no networks in other parts of Pakistan. It is not apparent whether this is intended as a statement of fact or as a new claim. I consider that this could be construed as a new claim that the applicant fears harm as an asylum seeker returning from a Western country. However, I note that the applicant has not made this claim at the primary stage and no evidence or details have been proffered to support this claim. Given that this is a bald assertion absent of any further detail, which was not made at the primary stage, and the applicant was not precluded from making this claim earlier, I am not satisfied that there are exceptional circumstances to justify considering the new claim.

Applicant's claims for protection

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

- He was born in [year] in Loralai Balochistan, approximately three hours from Quetta. He faced discrimination at school as a result of his Hazara ethnicity and Shia religion and left school at [level] to work [in Business 1].
- In 2002 he and his family moved to Mariabad in Quetta because they faced discrimination, lived in poverty and were not able to support themselves to survive and earn a livelihood in Loralai as Shia Hazaras.
- He saw bodies, explosion, attacks and targeted killings of Shia Hazara people in Pakistan throughout his lifetime. When he moved to Quetta it became worse. The Lashkar-e-Jhangvi (LeJ) targets Shia Hazaras openly.
- One Ashura Day, Shia Hazaras were marching down the street in Quetta and there was a huge explosion. It was targeted at Shia Hazaras and many people died.
- Another incident happened on Quds day near the [Market 1] where he and his [Relative A] had gone for shopping as there are not many markets or shops in Mariabad. He witnessed a big explosion which targeted a procession by the Shia community to mark Quds Day and resulted in the killing of many people.
- He also recalls an incident, sometime around 2009 where a shop near to where his [Relative A] worked, owned and run by Shia Hazaras, was the target of a shooting.
- There is very little work in Mariabad so it was very difficult for him to support himself and earn a livelihood. He found work [at Business 1] when he first arrived in Quetta, then worked [in] a Shia Hazara area, along [a certain] Road. There were many problems for him during this job. For example, once he heard a bomb was planted [within his workplace] and many [workers] were being threatened to stop working by terrorist groups. He stopped this job before he could be hurt.
- He tried to return to his former employment at the [Business 1] but on the day he went back, there was a targeted shooting of [the business owner] and other [workers] were [also] injured. It was too dangerous to work there.
- [In] December 2012 he departed Karachi airport on his own passport for [Country 1] and then travelled to Australia via [Country 2] and [Country 3].
- In September 2018 his [Relative A] was killed on [Road 2] in Quetta during Muharram on his way to [Market 1]. He was targeted because he was a Shia Hazara participating in a Muharram event.
- He is seeking protection in Australia because he fears he will be killed because of his religion, as a Shia Muslim and his ethnicity, as a Hazara person, by terrorist groups that target Hazara Shias like the Taliban and LeJ. If he somehow manages to avoid being killed, he fears serious harm in the form of economic hardship, an inability to earn a livelihood and constant harassment because he is a Shia Hazara.

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.

Well-founded fear of persecution

9. 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.

10. The applicant claimed that he was born and lived in Loralai Balochistan as a child and he faced discrimination at school as a result of his Hazara ethnicity and Shia religion. He claimed that in 2002 he and his family moved to Mariabad in Quetta because they were not able to support themselves in Loralai as Shia Hazaras. In support of his claimed identity the applicant provided his National Identity Card (NIC), Pakistani Driver's License and a copy of his Pakistani Passport which notes his permanent address as being in Quetta. The applicant provided a consistent and credible account of his life in Pakistan in Loralai and Quetta and his experience of living in the Shia enclave of Mariabad. He also explained his Shia religious practice including participation in major Shia events and he spoke Hazaragi in his interactions with the Department. I am satisfied that the applicant's identity is as claimed that he is Hazara and Shia and is from Quetta in Pakistan and that Pakistan is the receiving country.

11. In his SHEV application the applicant did not claim to have been personally harmed in Quetta. However, he did report seeing the violence first hand including attacks on Hazara Shias by LeJ during Shia occasions such as Ashura and Quds Day. In his SHEV interview he provided new information about his family. He stated that in September 2018 during Muharram his [Relative A] was killed when armed men opened fire on him on [Road 2] when he was on his way to [Market 1] to buy a sheep for the festivities. The applicant's accounts of these attacks on Shia Hazaras in Quetta, including the attack on his [Relative A], are supported by country information and the applicant has been consistent in describing what I accept is his genuine fear of returning to Pakistan as a result of these tragedies.

12. The applicant claimed that [in] December 2012 he departed Karachi airport on his own passport. He provided a copy of his passport which was issued in 2010. When asked about his passport at his SHEV interview, the applicant explained to the delegate that he obtained it in 2010 in case the opportunity arose to leave Pakistan. However, it took his family a long time to arrange the money for his departure and his mother was concerned about reports of drownings en route to Australia so he was unable to leave until December 2012. I accept that the applicant departed the country legally.

13. The applicant claimed that he fears serious harm, including death, from militant groups in Pakistan, particularly the LeJ, owing to his race and religion as a Hazara Shia. The applicant stated that he can be identified in Pakistan as a Shia Muslim by his Hazara facial features, as

all Hazaras are assumed to be Shia Muslims. DFAT reports¹ that the Hazara ethnic group, native to Hazarajat in central Afghanistan, is of Eurasian descent, rendering Hazaras visibly distinct from other ethnic groups in Pakistan. Estimates of the size of the Hazara population in Pakistan range from around 600,000 to fewer than one million. Most Hazaras are Shia Muslim, predominantly of the Twelver Sect (athna asharia), although a small number are Sunni.

14. DFAT reports that militant Sunni groups such as LeJ have targeted Hazaras in Pakistan for their sectarian affiliation and that LeJ primarily targets Shias, especially the Hazara community in Quetta² and this is borne out by the applicant's description of his experiences in Quetta. Overall, I am satisfied that no specific incident has caused the applicant himself to have a raised profile in Pakistan with LeJ, Sipah-e-Sahaba or any other militant Sunni group or person or that there has been any targeted campaign specifically against the applicant or his family. I am not satisfied that the applicant has an ongoing adverse profile with any actor or group in Pakistan for any reason aside from the fact of his ethnicity and religion.
15. DFAT³ reported in 2016 that about 20% of Pakistan's Muslim population identified as Shia, while 75% identified as Sunni. Shias were spread throughout Pakistan and did not constitute a majority in any of the provinces, but there were significant numbers in and around Quetta. Large Shia communities also lived in urban centres including Karachi, Lahore and Islamabad. Shia and Sunni communities were reported to be generally well-integrated in these centres, but Hazaras in Quetta tended to live in their own community in Hazara Town or Mariabad. Although Shias were well represented amongst high-level professionals, poorer areas such as Quetta provided limited employment opportunities and many Hazaras there were self-employed or worked for small businesses.
16. In 2019 DFAT reported⁴ that the Hazara community in Quetta continues to live in two main areas, Hazara town and Mariabad. The government provides some security to the Hazara enclaves. The paramilitary Frontier Corps maintains checkpoints on roads leading to Hazara town in Quetta, and searches people on entry and exit. Government forces also provide security for Shia religious processions. Improved security measures by the community and general improvements in the security situation in Pakistan have led to a steady decrease in successful attacks, however, a large number of official and non-government interlocutors report that Hazaras in Quetta continue to face a significant risk of violence.
17. An NCHR official report released in March 2018⁵ stated that terrorism-related incidents in Quetta between January 2012 and December 2017 had killed 509 Hazaras and injured 627. The Hazara community claims that, between 1 January 2017 and 30 April 2018, 17 attacks had killed 29 and injured 18 Hazaras. Seven of these attacks, killing nine and injuring five, occurred between 1 January and 29 April 2018. Community statistics accord with international media reports, which note between March and mid-April 2018, at least seven people were killed in five attacks against Hazara Shias in Quetta.
18. Hazaras report⁶ the security situation in Quetta has become so restrictive and the likelihood of attack so high, that they are reluctant to travel outside of or between the two enclaved areas, including for basic services, such as food, education, health care and employment.

¹ Department of Foreign Affairs & Trade (DFAT), "DFAT Country Information Report - Pakistan", 20 February 2019, 3.27

² Ibid, at 2.89 & 3.29

³ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265

⁴ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.30

⁵ Ibid, 3.34

⁶ Ibid, 3.36

Consequently, Hazaras have access only to services within enclave walls. The Hazara community also relies heavily on a small number of Hazara vendors who risk their own security to move limited food supplies into Hazara enclaves. Local media reports that consumer goods, economic opportunity, employment and education are limited inside Mariabad and Quetta necessitating travel outside of these areas⁷. Typically, Hazaras are targeted when travelling to or from these areas including in the '[Road 2]' area of Quetta where the applicant's [Relative A] was killed travelling to the market⁸.

19. The wider province of Balochistan is also reported by DFAT⁹ to have historically suffered from ethno-sectarian tensions and politically motivated violence, including violence from an active separatist movement. However, I note that the applicant has not claimed to have been targeted or to have experienced harm or to fear harm as a consequence of separatist violence in Balochistan.
20. I am satisfied that there is a real chance of sectarian violence being committed against Hazara Shias in Quetta. I am satisfied that the applicant will spend time in Shia areas in the course of his home and work life and that he will attend Shia places of worship and participate in Shia events. He may travel on the roads in and out of Shia areas to access additional services that are not available in the enclaves. I am satisfied on that basis that he faces a real chance of being harmed by sectarian violence. I am satisfied that any harm the applicant may face will be for the essential and significant reasons of his religion and/or ethnicity. I am further satisfied that the harm he may face will include death or serious injury and is serious harm as contemplated by s.5J(3). I am satisfied that the applicant faces a real chance of persecution should he return to Quetta.
21. However, s.5J(1)(c) of the Act requires that the real chance of persecution relates to all areas of the receiving country.
22. In his SHEV application and recent submission to the IAA the applicant made submissions about his ability to relocate within Pakistan. He stated that he did not consider moving within Pakistan because Hazaras are easily recognised by their appearance and because of the language they speak. It is assumed that if they are Hazara, they are also Shia Muslims. They can also be identified by their names on their identity cards. Consequently in Quetta, Hazaras live in an enclave for safety. I accept that this is the case. He also stated that it is dangerous to travel anywhere in Pakistan as a Shia Hazara. As soon as you are identified, as on a bus, you are targeted by Sunni terrorist groups. He also claimed that Shia Hazaras are targeted everywhere for death and harassed and discriminated in getting employment anywhere in Pakistan. Official jobs are never given to Shia Hazaras. In addition, Karachi is one of the most dangerous places in terms of terrorist attacks, robberies, thefts and other crimes. I note that the applicant travelled to Karachi en route to Australia and does not claim to have ever been subject to harm either in transit or once he arrived in Karachi. In his submission to the IAA the applicant provided more detail about his concerns in relation to relocation including the financial difficulties and discrimination he would face.
23. The applicant also noted in his SHEV application that, for about the first year after he arrived in Australia, he had difficulty sleeping. He advised the he has since got a lot better and can sleep now. However, it still hurts for him to talk about the harassment he experienced as a

⁷ US Department of State, 'Country Reports on Human Rights Practices for 2017 – Pakistan', 30 April 2018, OGD95BE927478

⁸ [Article deleted]

⁹ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.107

Shia Hazara in Pakistan and the violence he witnessed there. I accept this to be true given his treatment in Balochistan and the violence he witnessed in Quetta. In his SHEV interview the applicant advised the delegate that he was feeling well that day and did not indicate that he had any health concerns. He has not provided anything to suggest that the situation with regards to his health may have changed. Based on the information provided by the applicant, I do not consider that he has any ongoing health or psychological conditions that would prevent him returning to Pakistan, in particular a less volatile part of Pakistan.

24. In his SHEV interview the delegate asked the applicant if there was anywhere in Pakistan where he could relocate. It was put to the applicant that country information notes that there are Hazara and Shia communities living in large urban areas including Karachi, Lahore, Multan, Islamabad and Peshawar¹⁰. In response, the applicant stated that he is poor with limited education and those cities are too expensive to live in and all of his family is in Quetta. He also said that he would face discrimination outside of Quetta like he did in Loralai.
25. Because of Pakistan's size and diversity, the country information before me indicates that there are locations in Pakistan where Shia Hazaras do not face a real chance of persecution. DFAT reports¹¹ that outside Balochistan, Hazaras report finding it safer to live separately amongst the general community than to relocate to live near other Hazaras, where they can be easily profiled and targeted. Hazaras' preferred options for internal relocation are, in order, Lahore, Karachi and Islamabad. Many large urban centres such as Lahore and Islamabad are home to mixed ethnic and religious communities and offer a greater degree of anonymity and better opportunities for employment, access to services and state protection than rural or smaller urban areas¹². Section 15 of the Pakistan Constitution guarantees the right to freedom of movement in Pakistan¹³. There are no legal impediments to relocation and this applies equally to Shias and other religious sects, however, the security situation varies between Pakistan's provinces¹⁴. There is no information before me to indicate that the applicant would not be safe flying into those cities from Australia and I note that Islamabad has a particularly unblemished security record. As noted above, the government has increased security operations in major centres reducing frequency of sectarian and generalised violence.
26. I note the applicant's submission in relation to DFAT's assessment that Hazara's face a high risk of violence from sectarian militants that other Shia due to their appearance and segregation. I accept that the applicant displays the physical characteristics of a Hazara and as a consequence, he may be identified as a Shia and/or a Hazara in Pakistan wherever he lives. However, I am not satisfied that he would face a real chance of harm in Lahore, Karachi or Islamabad, including if he is identified as a Shia and/or a Hazara. DFAT reports¹⁵ that there are Hazara communities in large urban areas of Pakistan including Karachi (Sindh Province) (up to 15,000), Lahore (Punjab Province), and Islamabad. Shia and Sunni communities in cities are much more integrated.
27. There are a number of news reports that describe the lives of Hazaras who have fled Quetta after being impacted by violence and have had to relocate to cities such as Islamabad and

¹⁰ DFAT, 'DFAT - Thematic report: Shias in Pakistan', 15 January 2016, CIS38A801265, 2.9

¹¹ DFAT, 'DFAT Country Information Report - Pakistan', 20 February 2019, 3.43

¹² Ibid, 5.32

¹³ Ibid, 5.31

¹⁴ Ibid, 2.69

¹⁵ DFAT, 'DFAT - Thematic report: Shias in Pakistan', 15 January 2016, CIS38A801265, 2.9

Lahore where they can live without fear for their lives¹⁶. Hazaras have found protection in these cities despite the continuing presence of sectarian militant groups, such as LeJ¹⁷. According to the SATP, the frequency of sectarian attacks has reduced annually since the launch of the counter-terrorism military operation Zarb-e-Azb and the National Action Plan (NAP) in 2014. 16 incidents of sectarian violence killed 231 people and injured 691 in 2017, compared with 131 incidents killing 558 and injuring 987 in 2013. This trend continued in 2018, with a 40 per cent reduction in sectarian violence (12 incidents) compared to 2017.¹⁸

28. Shias live throughout Punjab, including in Lahore. According to the SATP, three incidents of sectarian violence in Punjab in 2017 killed three people and injured one, and no incidents of sectarian violence occurred between 1 January and 6 May 2018. Of the targeted attacks by gunmen, which have occurred upon Lahore's Shias, almost all have targeted political, community and religious leaders or professionals such as doctors and lawyers¹⁹. I am satisfied that the applicant does not have a profile of this kind and he has never claimed that he or any other member of his family has been involved in any political group or association. I also note that the largest sectarian attack in Punjab in 2016 targeted Christians. While violence can occur in any part of Punjab, DFAT assesses that Shias in Lahore face a low risk of sectarian violence²⁰. I note, moreover, that the State has shown a willingness and ability to protect large Shia gatherings in major cities such as Lahore²¹.
29. DFAT reports that credible sources have said Islamabad is one of the safest places in Pakistan for Shias and that the Shia and Sunni communities are more integrated there²². An October 2017 Dawn report states that an estimated five hundred Hazaras have relocated to Islamabad, where they reportedly feel 'less insecure' than in Quetta but worry about their families back in Quetta²³. Islamabad has a population of around two million people, including a large number of internal migrants from all parts of the country²⁴. While violence can occur in any part of Punjab, DFAT assesses that Shias in Islamabad face a low risk of sectarian violence. In 2017 DFAT²⁵ reported that there is a strong security presence in Islamabad, including checkpoints throughout the city and its entry points, as well as patrols conducted by the paramilitary Rangers. These security measures were assessed as providing a strong deterrent to militant groups planning attacks in Islamabad, and as a result large-scale militant sectarian attacks in Islamabad have been rare. Such violence had more often taken the form of targeted killings (such as drive-by shootings) of high-profile community leaders. DFAT had no reporting that Hazaras had been targeted by sectarian violence in Islamabad in recent years or that the situation for Hazaras had been deteriorating in that city. DFAT²⁶ has not assessed that generalised violence, including violent crime, to be a significant issue in

¹⁶ Dawn (Pakistan), "Security should be for everyone, not just Islamabad", 10 October 2017, CXC90406616511; Express Tribune, "Fear and loathing returns for Quetta's Hazara community", 16 October 2017, CISED50AD5957; Express Tribune, The (Pakistan), "Hazara genocide 'We cannot keep the fear of our families out of our work'", 10 March 2013, CX317819; Express Tribune (Pakistan), "The Malalas of Quetta", 12 July 2015, CXBD6A0DE10020.

¹⁷ Dunya News, "LeJ terrorist held in Rawalpindi, explosives seized", 7 June 2017, CXC90406611225; Dawn (Pakistan), "LeJ al-Alami claims responsibility for professor's murder", 9 April 2017, CXC9040666859

¹⁸ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 2.91

¹⁹ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 16 August 2015, CISEC96CF1171

²⁰ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.106

²¹ News International-Pakistan, "Ashura observed across the country peacefully", 12 October 2016, CX6A26A6E10809; Associated Press of Pakistan, "Main Ashura procession culminates peacefully in Lahore", 12 October 2016, CX6A26A6E11788; Express Tribune (Pakistan), "Amid tight security: Muharram 9 procession culminates peacefully", 12 October 2016, CX6A26A6E10800

²² DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.106

²³ Dawn, "Security should be for everyone, not just Islamabad", 10 October 2017, CXC90406616511

²⁴ DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, 3.8 and 5.16

²⁵ Ibid, 5.16

²⁶ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 2.97

Islamabad, nor has it been for a sustained period of time. The information before me does not indicate that Shias or Shia Hazaras have been targeted or impacted by these issues in Islamabad, or that there is a real chance they will be targeted or impacted in the future.

30. The applicant has claimed that Karachi is one of the most dangerous places in terms of terrorist attacks, robberies, thefts and other crimes and that this is a factor in his decision not to relocate. Karachi has historically experienced high levels of violence due to rival ethnic, sectarian, political, business and criminal interests. However, it is reported that since the commencement of operation Zarb-e-Azb in June 2014, security forces have sought to tackle violent and organised crime across the country²⁷. The NAP and the highly visible presence of the paramilitary Rangers, have led to a significant decrease in violence, including sectarian violence in Karachi. Sunnis and Shias are reported to live throughout the city, although concentrations of Shia, particularly Hazaras can be found in Abbas Town, Hussain Hazara Goth, Mughal Hazara Goth, Rizvia, Ancholi, DHA Gizri, Pak Colony and Manghopir. According to the SATP²⁸, at least two sectarian attacks targeted Shias in Sindh province in 2017, resulting in at least 90 deaths, while one attack causing one death occurred between 1 January and 6 May 2018. DFAT understands serious crime across Pakistan, especially in Karachi, has reduced significantly since operations Zarb-e-Azb and Radd-ul-Fasaad, and the NAP.
31. Given the large populations of cities like Lahore, Karachi and Islamabad, the improved security situation, lack of reported incidents and the applicant's lack of profile, I am satisfied based on the preponderance of country information that Hazaras are safe in Islamabad, Lahore and Karachi and find that risk for Hazara Shias absent of any other profile does not rise to the level of real chance.
32. I have also considered whether the applicant would face harm as a result of discrimination if he relocated within Pakistan as a Hazara Shia. The Government recognised the Hazara tribe as 'local' in 1962 and Hazara residents at that time became citizens of Pakistan²⁹. The applicant has indicated that he faced discrimination and harassment in Loralai on the basis of being a Hazara Shia and he decided to not continue his education beyond year six. He claims that as a school student in Loralai he was called names in class and bullied badly by some Pashtuns, they always said things like 'Hazaras are infidels.' The students were trying to humiliate and insult him all the time. He also claims that the teachers would do nothing about the insults directed at him by the other students and they would always position him and the few other Shia Hazara students at the back and to the sides of the classroom as an indication that they were inferior to the Pashtuns and Punjabis students. He was also required to be educated in Urdu. In light of the conflict in Balochistan and the targeting of Hazaras by Pashtun Sunni groups I accept that this harassment and discrimination occurred and had made the applicant feel disappointed and distressed attending school. However, I also note that the applicant did not face official discrimination, he has not claimed that he was ever denied the right to attend school and obtain an education, to undertake employment or to access healthcare. The applicant has not claimed that he was denied the opportunity to practise his religion.
33. DFAT reports that with respect to health and education services, health care in Pakistan is generally free and accessible to all Pakistanis and Section 25A of the Constitution establishes a basic right to education for children between the ages of 5 and 16³⁰. I do not accept that

²⁷ DFAT, 'DFAT - Thematic report: Shias in Pakistan', 15 January 2016, CIS38A801265, 4.1

²⁸ Quoted in DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.105

²⁹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264

³⁰ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 3.14

the applicant would be discriminated against in terms of accessing health or education services in Pakistan as a result of his ethnicity or religion in Lahore, Karachi or Islamabad.

34. DFAT also reports that Article 20 of Pakistan's Constitution provides for freedom of religion. No laws or government policies discriminate against Shias on the basis of religion. Broadly speaking, there is also little community prejudice against Shias: societal discrimination is largely confined to local nepotism, favouritism or patronage. The greatest threats for Shias in Pakistan are from militant groups and, at times, sectarian violence³¹. The Pakistani military provides escort services for Shia pilgrims to protect them from attacks, significantly mitigating the risk of violence³². I am satisfied that the applicant would be able to freely practise his Shia Muslim religion in Lahore, Karachi or Islamabad.
35. DFAT notes that outside the Hazara enclaves in Quetta, Hazaras face a moderate risk of societal discrimination, including by government officials and security forces, in the form of obstruction at checkpoints, denial of or delay in access to identity documentation, employment and services. DFAT assesses that this reflects individual prejudice rather than systematic and/or formal official discrimination³³. I note that the applicant has not claimed that he has faced discrimination in the past in terms of obtaining documentation such as his NIC and passport and he was able to travel to Karachi and out of Karachi without hindrance. I also note that as the applicant has previously held a NIC, DFAT indicates that he would be eligible to renew his NIC online before returning to Pakistan using the NADRA website. Based on his past experience, including his ability to access employment and services and country information about current conditions in Pakistan, I accept that the applicant may face some discrimination or harassment from individuals on the basis of his ethnicity but not official discrimination or treatment that would amount to serious harm as anticipated by section 5J(5) of the Act.
36. Having regard to all of the above, I am not satisfied that the applicant faces a real chance of harm from generalised or sectarian violence or serious harm from discrimination as a Shia, a Hazara, or a Shia Hazara from state and non-state actors in Lahore, Karachi or Islamabad. The applicant has not claimed to fear harm on any other basis.
37. I am not satisfied that the applicant has a well-founded fear of persecution from anyone in in Lahore, Karachi or Islamabad on the basis of his Hazara ethnicity and Shia faith or for any other reason.

Refugee: conclusion

38. The 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

39. 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

³¹ Ibid, 3.1

³² DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.103 and 3.46; News International-Pakistan, "Ashura observed across the country peacefully", 12 October 2016, CX6A26A6E10809; Associated Press of Pakistan, "Main Ashura procession culminates peacefully in Lahore", 12 October 2016, CX6A26A6E11788; Express Tribune (Pakistan), "Amid tight security: Muharram 9 procession culminates peacefully", 12 October 2016, CX6A26A6E10800

³³ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 3.45

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

40. 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.
41. I have found above that the applicant faces a real chance of being seriously harmed because of being a Shia and a Hazara in Quetta. This serious harm includes serious mistreatment or death which also amounts to significant harm. As 'real chance' and 'real risk' equate to the same threshold³⁴ and for the same reasons as given above, I am 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 in Quetta.

Qualifications to the real risk threshold

42. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.
43. I have accepted that, on his return to Pakistan, the applicant may face some discrimination from individuals on the basis of his ethnicity and/or religion. I am not satisfied that any such difficulties or treatment would amount to significant harm as defined. I am not satisfied that it amounts to the arbitrary deprivation of life or the death penalty. I am also not satisfied that it amounts to being subject to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment as set out in the Act.
44. I have also found above that the applicant does not face a real chance of harm from Sunni militants, terrorists, criminals or the Pakistani authorities because of his Hazara ethnicity and Shia religion or for any other reason in Lahore, Karachi or Islamabad. As noted above, 'real chance' and 'real risk' equate to the same threshold and for the same reasons as given above

³⁴ *MIAC v SZQRB* (2013) 210 FCR 505

I am not satisfied that the applicant faces a real risk of significant harm for any of those reasons, or any combination of those reasons in Lahore, Karachi or Islamabad. I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lahore, Karachi or Islamabad, there is a real risk he will suffer significant harm. For the following reasons, I am also satisfied that it is reasonable for him to relocate to one of those cities.

45. The applicant has submitted that it is not reasonable for him to relocate to another part of Pakistan because Hazaras are easily recognised by their appearance and because of the language they speak. It is assumed that if they are Hazara, they are also Shia Muslims. They can also be identified by their accent and names on their identity cards. Consequently in Quetta, Hazaras live in an enclave for safety. He submitted that it is dangerous to travel anywhere in Pakistan as a Shia Hazara and that Shia Hazaras are targeted everywhere for death and harassed and discriminated in getting employment anywhere in Pakistan. In addition, he submitted that Karachi is one of the most dangerous places to live in terms of terrorist attacks, robberies, thefts and other crimes. If he somehow manages to avoid being killed, he fears serious harm in the form of economic hardship, an inability to earn a livelihood and constant harassment because he is a Shia Hazara and being separated from his family.
46. I have accepted that the applicant can be identified as a Shia Hazara. DFAT reports that many large urban centres such as Lahore, Karachi and Islamabad are home to mixed ethnic and religious communities and offer greater opportunities for employment, access to services and a higher level of state protection³⁵. They are also home to significant Hazara communities and Hazaras from Quetta are reported to have successfully relocated to those cities³⁶. As such, the fact that the applicant could be identified as Shia and Hazara would not be a barrier to relocation.
47. As noted above there is no information before me to indicate that the applicant would not be safe flying into those cities from Australia and I note that Islamabad has a particularly unblemished security record. As noted above, the government has increased security operations in major centres reducing frequency of sectarian and generalised violence. As such I do not consider that he would face harm travelling into those cities.
48. I am satisfied that the reducing number of incidents of both generalised violence and sectarian violence in those cities, combined with reported increased security measures and the applicant's lack of profile outside of his religion and ethnicity means that the real risk of him being harmed by violence in Lahore, Karachi and Islamabad is no more than remote.
49. I accept that the applicant has concerns about the cost of living in large cities and how he would support himself in terms of finding employment and being separated from his family. He has indicated that he is illiterate and has limited education and skills and has no family support or networks outside of Quetta due in part to his time spent outside of Pakistan and he has little financial means. I am conscious that the applicant has demonstrated that he is

³⁵ DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 2.17, 5.32; DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515; DFAT, "DFAT - Thematic report: Shias in Pakistan", 15 January 2016, CIS38A801265

³⁶ Dawn (Pakistan), "Security should be for everyone, not just Islamabad", 10 October 2017, CXC90406616511; Express Tribune, "Fear and loathing returns for Quetta's Hazara community", 16 October 2017, CISED50AD5957; Express Tribune, The (Pakistan), "Hazara genocide 'We cannot keep the fear of our families out of our work'", 10 March 2013, CX317819; Express Tribune (Pakistan), "The Malalas of Quetta", 12 July 2015, CXBD6A0DE10020; DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019

resourceful and he has successfully lived apart from his family and settled in unfamiliar places for extended periods including moving from Loralai to Quetta and moving around Australia without family support, networks or financial means. He has successfully found accommodation and work in [City 1] and in locations in [State 1] and [City 2]. I am not satisfied that living in a different part of Pakistan separate from most of his immediate family in Lahore, Karachi or Islamabad amounts to harm. Further it would be open to the applicant's family to visit him in those cities, noting that the applicant previously travelled to Karachi with his [Relative A] without harm.

50. I have considered the applicant's ability to gain employment upon return to Pakistan. I am not satisfied that any discrimination against Shia Hazaras in Lahore, Karachi and Islamabad is such that the applicant would be precluded from obtaining work or threaten the applicant's capacity to subsist. It is reported that there are better economic opportunities in large urban centres which encourages internal migration for employment purposes³⁷. In spite of only being educated to primary school level he has variously found work as a [occupation 1] and [occupation 2] and [occupation 3] in Pakistan and [occupation 4] and [occupation 5] in Australia. He has identity documents to support him in obtaining employment and accommodation. He has not raised any health or other considerations that have precluded or will preclude his ability to work. Overall, I do not consider that finding employment would be an impediment for the applicant relocating to Lahore, Karachi or Islamabad.
51. Overall I accept that the applicant would be identified as a Shia Hazara in Lahore, Karachi or Islamabad but I do not accept that it would be unreasonable for him to relocate to one of those cities. Having taken into account available country information and the applicant's individual circumstances, I am satisfied that it would be reasonable the applicant to relocate to Lahore, Karachi or Islamabad, where he does not face a real risk of significant harm.

Complementary protection: conclusion

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

Decision

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

³⁷ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265, 5.4; DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515, 2.14; DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 2.17

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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