



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/06637

Date and time of decision: 17 June 2019 11:19:00
S Ryan, 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 national of Pakistan and arrived in Australia [in] March 2013. On 5 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 14 May 2019 and referred the matter to the IAA on 17 May 2019.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He was born and raised in Quetta in the Balochistan province of Pakistan.
 - He is of Pashtun ethnicity and is a Sunni Muslim.
 - He has associations and friendships with people of Hazara ethnicity and Shia Muslims and if he returned to Pakistan he would be killed or harmed by extremist groups because of these associations.
 - Whilst living in Quetta he narrowly avoided a number of terrorist bomb attacks.
 - In 2013 he narrowly avoided a targeted attack by a group of Hazaras who were protesting an earlier bomb blast and were attacking Pashtuns.
 - In 2016 his younger brother in Quetta narrowly escaped an attack on his car by unknown persons.
 - He will be targeted by Islamist militant groups on account of being known to have lived in [Country 1] and Australia as they will perceive that his 'mind has changed'.
 - As a Sunni Pashtun he will be targeted and harmed by Hazaras and Balochis in Quetta and other unspecified people and groups that are in conflict with Pashtuns and Sunni Muslims. He is aware of multiple incidents where his Pashtun Sunni neighbours have been attacked or kidnapped and extorted by Hazaras.
 - Whilst in Australia he has grown a beard and is more closely practicing his Muslim faith and this change in appearance and behaviour may lead to him being perceived as a Sunni extremist in Pakistan.
 - He is unable to relocate to another area of Pakistan as Pashtuns are targeted all over Pakistan.

Refugee assessment

4. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the

country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

5. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

6. Upon arrival in Australia [in] April 2013 the applicant stated his name was [Mr A] and that he was [a Country 2] national. During the Entry Interview held [five] weeks later he stated that this was not his identity, his real name was [applicant name] and he was a national of Pakistan only. He advised that he had provided the Australian government the false identity on the advice of other people who told him that he would be removed if gave his real details and he should claim to be from [Country 2] and to not declare his previous travel to [certain other countries]. The written record from the May 2013 Entry Interview appears to indicate that the applicant had claimed to be a citizen of both Pakistan and [Country 2]. However, having reviewed the audio record of the same interview it appears that he did not make this claim, and had only stating that he had claimed to be [a Country 2] national in [Country 1] and that he had been issued with [a Country 2] passport and travelled under this false identity from [Country 1] to [Country 2] in 2007.

7. Despite having advised the Department in the Entry Interview that his true identity was [applicant name] it appears that the applicant had continued using the [Mr A] identity for a period whilst living in Australia. I accept this likely due to the fact that the Department did not amend his personal biodata until after the 2019 SHEV interview and had issued him with an ImmiCard in the [Mr A] identity after he was released from detention and lived in the Australian community. During the SHEV interview in 2019 he reiterated his true identity was [applicant name] and that, although he had [Country 2] heritage, he was a national of Pakistan and no other country. He also confirmed that, whilst seeking asylum in [Country 1] in 2002, he had falsely claimed to be [a Country 2] national and used the name [Mr B]. He described having sought and obtained [a Country 2] passport in [Country 1] under the false identity [Mr B] as part of arranging his departure from [Country 1]. He claimed he did this as it was easier to obtain a false travel document from the [Country 2] Embassy in [Country 1] than to attempt to obtain legitimate Pakistani travel documents by establishing his true identity as a Pakistani. He stated that in 2007 he was removed from [Country 1] to [Country 2], and then immediately left [Country 2], bypassing formal entry procedures in order to return to his home in Quetta.

8. The applicant has provided copies of documents pertaining to what he states is his true identity [applicant name]; namely his Pakistani passport, Pakistani Identity Card, Pakistani marriage certificate. I consider that, since the second Entry Interview conducted in May 2013 the applicant has presented consistent and reliable evidence in relation to his identity and has provided a range of credible biographical and documentary information that supports this identity. I find, as did the delegate, that the applicant is [applicant name], that he was born in Quetta in Balochistan Province in Pakistan, and is a national of Pakistan. The applicant has spent periods as a temporary resident in a number of countries, however there are no indications the applicant currently has the right to reside in any other country. Accordingly I have assessed him against Pakistan as the receiving country.
9. The applicant was born and lived in [location] and he confirmed during the SHEV interview that his home is in an area of Quetta [where there are] Pashtuns following the Sunni sect of Islam; as does he and his family. The applicant completed secondary school to Year 10 in [year] and until his departure for [other countries] in 2001 he was self-employed; running a [business] in Quetta, importing [goods] to sell to shop keepers in Pakistan. He left [Pakistan] in 2001, transiting a number of [countries] before spending most of the next six years residing in [Country 1]. After having made an unsuccessful application for asylum he returned to Pakistan, via [Country 2], in 2007. He resumed living in his family's home in Quetta from 2007 up until his departure for Australia in 2013. During this time he resumed running his business in Quetta and married his wife in 2007. They have had [children] together, and his wife and children remain in Quetta. He obtained a genuinely issued Pakistani passport in his true identity and departed Pakistan legally, via Karachi in February 2013. He took several months to transit through [several countries] before taking a boat from [location] and arriving in Australia in March 2013. His father has died and his mother and the majority of his [siblings] remain living in Quetta, with one [sibling] living in Karachi and a [sibling] living in Islamabad.
10. The applicant claimed during the SHEV interview that he suffered from 'health issues' and he became upset when describing the impact of his prolonged separation from his wife and children. The applicant provided a medical certificate prepared by a doctor on 9 April 2019 which advised he is suffering from stress and depression due to family separation and that he had reported having low mood. I accept the observations made the doctor in this letter, although I note it does not indicate what assessments were made to make this diagnosis or indicate whether the applicant is being treated for his condition. The letter does not provide any detailed information about the applicant's current mental health condition, or a prognosis for his recovery. The other three documents concern his treatment for various physical ailments in 2016 and 2017, but the evidence does not indicate whether these ailments have been effectively treated or indicate whether or how he continues to be affected by these.
11. During the SHEV interview the applicant did not mention any physical ailments but indicated he was '*under stress*' due to his situation in Australia. It appears he has presented the medical documents as evidence illustrating his fear of returning to Pakistan, given the impact on his health of his prolonged separation from his family. The applicant did not claim, nor is there any other information before me indicating that the applicant's health impacted his ability to participate and provide evidence in the SHEV interview. From my review of the SHEV interview record it appeared to have been conducted in a calm and friendly manner. The delegate asked the applicant at two different points during the SHEV interview whether he felt well enough to continue, or if he needed a break, and on each occasion he indicated that he wished to continue. I am satisfied that the applicant was given notice during the SHEV interview of the key determinative issues in his case, and has had a real and meaningful

opportunity to put forward his claims for protection and respond to the issues raised by the delegate. The applicant has provided limited information concerning his medical circumstances and has not asserted that, if he returned to Pakistan, he will be unable to obtain treatment for his medical condition(s) or that he faces a real chance of persecution or significant harm on this basis, and I am satisfied that is so.

12. The applicant has claimed that he would be personally targeted for harm by extremists militants was on account of his personal and business relationships and association with people of Hazara ethnicity and Shia Muslim religion. He claimed that on three occasions he narrowly avoided violent, targeted attacks, and in one of these incidents he had visited a snooker club with a Hazara friend and left only shortly before it was bombed by a sectarian extremist group. The applicant has consistently claimed to speak Hazaragi and to have narrowly avoided a bomb attack on a Hazara snooker hall in Quetta.
13. The applicant lives in an area of Quetta that is [occupied] by Sunni Pashtuns, an area in which his wife and children, and members of his wider family continue to live. He has indicated he has Shia friends and business associates and that he travelled in and around Hazara areas of Quetta. However his evidence contains few details as to the nature of these relationships, or the extent to which he associates with Shias or is in proximity to areas where sectarian militants are known to target Hazara Shias. I consider it telling that, when asked during the SHEV interview why he feared returning to his home area, he did not mention that he feared being targeted by sectarian militants on account of his friendships or associations with Hazara people. I also note that he did not indicate that his associations with Hazara Shias has ever extended to public activism on their behalf, either in Pakistan or Australia, or that he has or will attend Shia mosques, schools, shrines or processions.
14. I consider the applicant has provided inconsistent evidence concerning his personal experience of the attack on snooker hall in Quetta. During the May 2013 Entry Interview he indicated he had narrowly avoided a bomb attack on a snooker club in January 2013. However in his 2017 written statement in the SHEV application he advised this incident occurred 'in around 2011'. While I take into account the nature and purpose of the Entry Interview, I also note that the applicant was cautioned about the fact that the information he provided in that interview may be compared with information he might give in a future interview, and that if the information he gave was different it could raise doubts about the reliability of what he has said. I also note that the event that the event he was claiming to have personal experience had occurred only two months prior to that interview. I further note that the written statement he later provided with his SHEV application in which he has specified the same event occurred in 2011 was prepared with the assistance of a legal practitioner and an interpreter. The applicant provided little detail concerning this event in the written statement and did not mention this event at all when discussing his protection claims in the SHEV interview. While I am willing to accept that a terrorist attack on a snooker hall frequented by Hazaras may have occurred whilst the applicant was in Quetta, on the inconsistent and scant evidence he has presented, I am not satisfied that he was personally present at that site one hour prior to a bomb attack.
15. On the evidence before me I am not satisfied that the applicant currently has, or would have upon return to Pakistan, a profile with Sunni sectarian militant groups in Quetta as a Shia sympathiser or advocate. I accept that the applicant may have some friendships and associations with Shia Muslims, including Hazaras, however in the absence of any substantial evidence or argument put forward by the applicant I am not satisfied that these associations exist to the extent that he faces an increased chance of harm from Sunni sectarian militant groups in Pakistan as a result.

16. The applicant fears harm from various extremist militant groups in Pakistan owing to his race and religion, being a Pashtun Sunni Muslim. I accept that he, his family and his friends have been affected by sectarian and other forms of violence in Quetta, however the evidence before me does not indicate that the applicant or any member of his family have ever had a personal profile or been personally targeted for attack by either a Sunni or Shia militia group. If returned to Pakistan, I am satisfied the applicant would not have, a personal, adverse profile with any militant group in Pakistan. I accept that, in the context of his personal experiences and the long-term unrest and violence in Quetta, the applicant holds a subjective fear of harm if he were to return to Pakistan. However for the following reasons I am not satisfied that his fear is well founded.
17. Balochistan is located in the North West of Pakistan and is geographically its largest province, but the smallest with respect to population. The majority of the people in Balochistan are ethnic Baloch with estimates ranging between 45-70% of the provincial population. The second largest ethnic group are Pashtun (35-40%) who form a majority in the applicant's home city of Quetta, the provincial capital; a city of one million people that is also the home of a large part of the Hazara community in Pakistan, with Sindhis and Punjabis, amongst others, making up smaller minority communities. DFAT observed in 2019 that Pakistan's security situation is volatile and varies widely across the country. The Pak Institute for Peace Studies (PIPS) describe Balochistan as the most critical of Pakistan's security challenges, where religiously inspired militants and nationalist insurgent militants render the security landscape complex. DFAT reports that the Pakistan federal government has run continuous counter-terrorism operations that commenced in 2014 (Operations 'Zarb-e-Azb', 'Rajgal', and 'Radd-ul-Fassad') and continue to the current day. These operations have been part of a 'National Action Plan' that includes a specific commitment by the Pakistani government to put an end to religious extremism and ensure the protection of religious minorities.
18. DFAT assesses that the capacity of law enforcement agencies in Pakistan is limited by lack of resources, poor training, and competing operational pressures. While this can limit local police forces to a passive 'incident response' and security/guarding role, it is also clear from the country information before me that, at least in recent years, Pakistan's federal armed forces have been and continue to take a far more aggressive and effective role in counterterrorism operations right across Pakistan, including Quetta. These measures have led to a significant and sustained statistical decline in the number of terrorist incidents and the loss of lives across Pakistan, particularly since 2014. Compared to 2017, Balochistan experienced a 30% reduction in the number terrorist incidents in 2018; however a small number of highly lethal, large scale terrorist attacks in the province saw the number of persons killed increase by 23%. Despite the continued improvements in Pakistan's security situation in recent years DFAT observe that the underlying conditions for militancy; including weak executive, judiciary and law enforcement institutions, poor infrastructure and services, extreme religious ideologies and stark sectarian divisions, and lack of economic opportunity; continue in 2019.
19. Balochistan remains the region of Pakistan most affected by terrorism. PIPS reported there were 115 terrorist attacks in Balochistan in 2018, killing 354 people and injuring 589 others. Most fatalities came from attacks made by religiously inspired Sunni militant groups who undertook 35 attacks that killed 261 people and injured 385 others. Baloch nationalist groups accounted for nearly all other terrorist incidents in 2018; responsible for 74 attacks that killed 85 people and injuring 201 others. In the applicant's home district, Quetta there were 38 attacks that killed 111 people and injured 158 others.
20. The applicant has claimed to fear harm from Baloch nationalist separatist groups and both PIPS and DFAT reports confirm these groups remain highly active in Balochistan; escalating their

violent activities in 2018. EASO and PIPS report nearly all Baloch separatist groups have a secular, nationalist agenda and the focus of their attacks has predominantly been on the economic and military infrastructure and personnel of the Pakistan government in Balochistan. I take into account DFAT's observation that the motivations and targets for militant attacks can be ambiguous, and that Baloch groups are known to have targeted non-Baloch civilians in Balochistan as well as Chinese nationals working on natural resource infrastructure projects as part of their campaign for independence. EASO, DFAT and PIPS all report that the Pashtun-dominated areas of Balochistan, including Quetta are largely free of violence relating to Baloch terrorist actions. While I have considered a 2015 incident in which Baloch militants killed 22 unarmed Pashtun civilians in the adjoining Mastung district, it remains that the overwhelming majority of violent attacks perpetrated by Baloch separatist groups do not target Pashtun residents of Balochistan. While I cannot preclude the possibility that some Pashtuns may have been killed or injured in the 74 attacks undertaken by Baloch separatist militants in 2018, few of these occurred in Quetta and it is not evident that any of those attacks were targeted at Pashtuns. The analysis provided by PIPS and EASO clearly shows that the vast majority of militant attacks targeting ordinary civilians in Quetta have been undertaken by religiously motivated Sunni Islamist groups, not Baloch separatists. The information before does not suggest the applicant currently has, or would have upon return to Pakistan, any association with Pakistan's political, military or law enforcement bodies or their installations, or have a personal, adverse profile with Baloch militant groups for any other reason. I am not satisfied that the applicant faces a real chance of harm from Baloch insurgent groups for the reasons of being a Pashtun Sunni living in Quetta.

21. The applicant has claimed to fear being targeted and harmed by religiously motivated Sunni Islamist groups in Quetta. EASO, DFAT and PIPS report the groups responsible for the great majority of the religiously inspired sectarian attacks in Balochistan in recent years are the Tehreek-e Taliban Pakistan (TTP), Lashkar-e-Jhangvi (LeJ), Jamaatul Ahrar, Hizbul Ahrar, and Islamic State (also known as ISIL, ISIS, ISKP and Daesh). The abovementioned sources indicate these are Sunni extremist groups who, whilst hostile to other religious groups and known to attack their places of worship, processions, shrines and schools, are predominantly focussed on Shias, with Hazaras being disproportionately targeted. Islamist militant attacks in Quetta frequently target military, security and law enforcement personnel and installations. They are also known to undertake targeted attacks on prominent individuals they consider to be opposed to them; such as religious and political leaders, and professionals such as doctors, lawyers and teachers. PIPS analysis of terrorist incidents in Balochistan confirms these historical trends continued in 2018.
22. DFAT observed that political parties drawing heavily on Pashtun support, and who have a more pro-government and/or secular political stance (such as The Awami National Party (ANP) and Balochistan Awami Party (BAP) have experienced considerable violence in 2018 on account of their support for security forces and anti-extremist policies. In particular, political rallies held by the ANP in Peshawar and by the BAP in the Mastung district of Balochistan (killing 131 people) were the subject of large scale attacks by Islamist militants, causing mass casualties in the period immediately prior to the 2018 general election in Pakistan. I note DFAT's advice concerning the higher risk of harm from extremists that may be faced by those Pashtuns involved in political parties who are opposed to extremist groups like Islamic State and the TTP. I do not consider the applicant has this profile; he has not indicated he has ever been a member or supporter of any political party in Pakistan or in Australia, and there are no indications that he would seek to be involved in political activities if he were to return to Pakistan. I am satisfied that this would not be due to any fear of harm, but rather a lack of any genuine interest.

23. The applicant gave some examples of past incidences where he or people he knows were attacked in Quetta on account of being Pashtun. He described an attack by Hazaras demonstrating against sectarian violence on Spiney Rd in Hazara Town in early 2013 which he narrowly escaped, an attack by unknown persons on his [sibling]'s car in late 2016, the attack on a neighbour whilst driving through Hazara Town, and the kidnapping and extortion of one of his neighbours by Hazaras. The applicant has been consistent in his description of the 2013 Spiney Rd attack in which he was in a car driving past a Hazara demonstration and then turned back after some demonstrators began firing on cars, however he has provided very limited information concerning these incidents, and no independent evidence such as police reports or media reporting. DFAT note the existence of Shia militant groups in Quetta that have been known to conduct targeted attacks on members of Sunni militant groups, but observed it was unaware of any such attacks by Shia groups in recent years; in line with the overall decline in sectarian violence in recent years.
24. The country information before me does not support the applicant's assertion that ordinary Sunni Pashtun civilians in Quetta are targeted by Shia militants or Hazara groups for either sectarian or criminal reasons. I note the country information describing the prevalence of sectarian violence against Hazaras in Quetta in 2013, referring to self-defence measures taken by the Hazara community to protect itself, as well as the Hazara community's frustration and anger at the apparent impunity with which militants were repeatedly attacking them. Given this context, I am willing to accept that the Spiney Rd incident has occurred, as described by the applicant, and that his vehicle may have been one of a number of vehicles driving through a Hazara enclave that was attacked by Hazaras in the immediate aftermath of a violent sectarian attack on their community. I note that the applicant does not claim he was personally targeted, or that he was harmed in this incident, or that he was personally identified and further harassed or threatened as a result of this incident. On the information before me I am not satisfied that, if he returned to Pakistan, the applicant faces an increased chance of harm as a result of this incident. Considering country information concerning the nature of the violence in Quetta, as well as the scant evidence presented by the applicant, I have serious concerns with the veracity of the other incidents described by the applicant; namely the attack on his [sibling]'s car by unknown persons in 2016, the attack, kidnapping and extortion of his neighbours by Hazara people. Even if I were to accept that these incidents did occur, I am not satisfied on the evidence presented that they were targeted attacks on Sunni Pashtuns.
25. The applicant claimed to fear harm from conservative Islamist groups if he were to return to Pakistan after having lived for a considerable period in Western countries; the UK and Australia. He claimed to have been told 'they say your mind has changed' and that he would be targeted for this reason. The delegate pointed out in the SHEV interview that the applicant had previously returned to Quetta in 2007 after having spent six years in the UK and asked him whether he had experienced in threats or harm upon his return, and the applicant indicated that he had not. The applicant reiterated that he'd been told by other people that this is how he would be perceived. The delegate asked him to confirm that he had not been targeted, persecuted or harassed for having lived in UK and the applicant confirmed that was that was correct. The delegate then referred to country information indicating that many millions of Pakistanis return to Pakistan after living overseas and are not persecuted. The applicant did not directly respond, but later reiterated that he feared harm from Islamist groups on account of having returned from a Western country. As noted by the delegate, DFAT reports that large volumes of Pakistani nationals travel and remain abroad for significant periods of time and assesses that persons returning to Pakistan from a Western country do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a Western country.

26. Taking into account the applicant's circumstances, and the country information concerning the nature of attacks made by religiously motivated militant groups in Quetta, I am not satisfied that the applicant faces a real chance of harm from Sunni Islamist militant groups or Hazara community groups, or other Shia militant groups on account of being a Sunni Pashtun.
27. DFAT assesses that Pashtuns face a medium risk of official discrimination in Pakistan in the form of terrorism-related and racial profiling by security forces in areas where they are a minority, particularly in Punjab province. EASO and DFAT report Pashtun community allegations of security enforcement involvement in the enforced disappearances, extra-judicial arrests and killings, and mistreatment of Pashtuns, particularly in Pakistan's tribal areas (which neighbour Balochistan's eastern border). I note that Islamist extremist groups are widely known to draw significant support from within Sunni Pashtun communities, and I take into account the volatile security situation in Quetta, the large and active presence of security personnel/ I consider it highly likely that, being recognisable as a Pashtun Sunni male, the applicant would face regular scrutiny whilst passing through Quetta's many checkpoints in his daily life. In this context I also take into account the applicant's fear that his increased piousness and his growing of a beard since arriving in Australia may lead him to be suspected to be a 'fanatic' or religious fundamentalist in Pakistan. The applicant's evidence did not suggest that, if he returned, his appearance or manner of practicing religion would be significantly different to that of other religiously observant members of the Sunni Pashtun community in Quetta. The applicant did not suggest that he held views sympathetic to Sunni extremists or that he would associate with such persons or groups upon return to Pakistan. I note Sunni Islam is the majority religion in Balochistan, and DFAT's observation regarding the trend towards increased religious conservatism in Pakistani society. Considering these factors I am not satisfied that the applicant's change in appearance and behaviour; growing a beard and practicing his religion more regularly; would distinguish him from other Pashtun Sunni men, such that he would have an elevated risk of being profiled as a suspected extremist and face an increased risk of arrest or harm as a result. I also note that Quetta is a city in which Pashtuns are a majority and that the applicant would have family and social connections within his community that could assist in the event that he was arrested or detained on suspicion of involvement in a terrorist group. DFAT assess that persons in the circumstances of the applicant face a low risk of official discrimination. Overall, having regard to the circumstances of the applicant and relevant country information, I am not satisfied the applicant faces a real chance of harm from Pakistan authorities on the basis of being a Sunni Pashtun.
28. Despite the sustained decline in terrorist and criminal violence in Pakistan in recent years, the security situation in Quetta remains somewhat volatile and I accept it is possible the applicant may face some risk of harm as a result of the general security situation; either as a victim of crime or as a bystander harmed in a violent incident involving militants and/or criminals and/or government security forces. The evidence before me indicates that the sustained efforts over the past few years made by Pakistan's military and security forces to combat terrorists and other violent crime in urban centres such as Quetta has led to significant improvements in the general security of Pakistan's cities. The evidence suggests that, while violent incidents of this nature can and do occur, the exposure of the general population to harm from these forms of violence is not currently a significant problem in Quetta. I am satisfied that, for the foreseeable future, they do not occur to the extent that the chance of harm faced by the applicant as a result of being a bystander caught up in sectarian, political, criminal or other forms of violence rises to a real one.
29. The applicant did not claim that his risk of harm would be affected by the fact that he had sought asylum in Australia, however the delegate nevertheless considered his claim as a 'failed asylum seeker'. For the reasons given earlier I have found that the applicant does not face a

real chance of harm by sectarian militant groups for the reason of being a Pashtun Sunni who has returned from a Western Country. I further consider it to be a remote possibility that they would discover he had made asylum claims in Australia or [Country 1], or the nature of those claims, and I am not satisfied that he faces a real chance of harm on this basis.

30. DFAT's assessment does not indicate that a person who has resided in or sought asylum in a Western country would be targeted by Pakistani government intelligence or security forces for this reason. The applicant departed Pakistan legally in 2013 on a genuine passport issued in his true identity however that passport has since expired. It is likely that, regardless of whether the applicant would be returned involuntarily or travelled voluntarily, he would do so on a temporary travel document issued by the Pakistan government. DFAT understands that those returned to Pakistan in these circumstances are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. There is no information before me indicating the applicant is wanted for crimes in Pakistan, or committed any offences while abroad, or that he would be suspected of having departed Pakistan illegally or been involved in human trafficking or people smuggling operations.
31. DFAT advise that some returnees to the tribal areas of Pakistan have come to the attention of Pakistani security forces after being identified as "suspects or collaborators" either of sectarian militant or Pashtun nationalist groups. While he is not returning to the tribal areas, the applicant is a Sunni Pashtun man returning to an area of Pakistan where Sunni militants are highly active and where Pakistani security forces have a significant presence. While I take this into account, I note the applicant does not claim to have ever trained or fought with, or otherwise been associated with sectarian militant groups or Pashtun nationalist groups, or claim that he has ever been suspected by authorities of such activity. For the reasons given earlier I do not accept that the applicant's beard or increased commitment to his religious practice would lead to him having an increased risk of being profiled as a Sunni extremist by Pakistani authorities. Given these considerations I am satisfied that, if returned to Quetta, the likelihood of the applicant coming to the adverse attention to Pakistani security forces on this basis is remote. I am not satisfied the applicant faces a real chance of any harm from Pakistani authorities on the basis that he would be returned from a Western country where he has sought asylum.

Refugee: conclusion

32. I am satisfied the applicant does not have a well-founded fear of persecution. 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

33. 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

34. 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.

35. I have concluded above that the applicant does not face a real chance of any harm on any of the bases claimed. As 'real risk' and 'real chance' involve the application of the same standard, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

36. 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.

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.