



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/10170

Date and time of decision: 11 February 2022 11:26:00
D Power, 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 Sunni Pashtun from Afghanistan. On 17 May 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 19 November 2021, a delegate of the Minister for Immigration (the delegate) made a decision to refuse to grant the applicant a protection visa. The delegate did not accept the applicant's claim that he was an Afghani national, concluding instead that he was a citizen of Pakistan. The delegate found that the applicant did not face a real chance or real risk of serious or significant harm in Pakistan, noting that the applicant was part of the Sunni majority in Pakistan and that he had not previously been targeted or harmed prior to his departure. The delegate also found that he would not face a real chance or real risk of serious or significant harm due to his illegal departure, or as returning asylum seeker from a western country.

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. On 17 December 2021, the IAA received a submission from the applicant's migration agent which addresses a number of the delegate's findings. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates claims made to the delegate.
5. The submission also includes new information.
6. The applicant had previously stated that he had never had a taskera or any other form of identity document. He subsequently presented a taskera on the day of his protection visa interview on 2 June 2021.
7. In the submission to the IAA, the applicant's agent states that when the applicant was asked about the taskera in his arrival interview, he misunderstood the question. The agent states that the applicant thought he was being asked whether he had the taskera on him which is why he responded that he did not have a taskera.
8. However, the applicant gave an entirely different response at his protection interview, intimating that he had been warned or threatened by others when he was first placed in detention not to put forward any documentation as it would cause him problems. The alternative explanation about a misunderstood question also deals only with the applicant's purported understanding at the time of his arrival interview. It does not explain why he did not seek to obtain his taskera in the years following his release from detention and include it with his protection visa application (or seek to provide it sometime in the four years that passed between his application and his protection interview).
9. The agent has also not explained why this explanation was not put to the delegate, either at interview or in his previous agent's email responses to the delegate. Given the delegate did not accept the applicant's previous explanation for failing to provide the taskera, I am not satisfied that this alternative and equally problematic explanation for failing to obtain the taskera earlier would have affected the consideration of the applicant's claim.

10. The applicant's agent has also stated that the applicant has been unable to get his taskera verified or obtain a passport because "the change of regime" in Afghanistan means the Afghan Embassy is closed. The agent has not explained why this explanation was not put before the delegate prior to a decision being made. More to the point, the applicant's purported taskera was allegedly issued in 2007 and that applicant has not explained why he did not attempt to 'verify' the taskera or obtain an Afghani passport much earlier, if that was his intention.
11. I do not consider that either of these explanations are capable of being believed, given that they are only now being put forward by the applicant, his previous contradictory responses on the subject of his taskera, and other issues with his account of obtaining the taskera in Afghanistan in 2007 (set out in further detail in the decision below). Given all of the above, I am not satisfied that the s.473DD(b) is met or that there are exceptional circumstances to justify considering the new information in the applicant's statement.
12. The delegate made a decision on the applicant's case on 19 November 2021. Subsequent to the delegate's decision, on 25 January 2022, the Department of Foreign Affairs and Trade (DFAT) released a new country information report on Pakistan¹.
13. Given that the previous DFAT report is more than two years old, I have exercised my discretion to obtain the 25 January 2022 DFAT Pakistan country report under s.473DC(1). The delegate took into account the previous 2019 DFAT country information report for Pakistan². However, the 2022 DFAT Pakistan report was not available to the delegate at the time their decision was made, and I consider that this information is relevant to the current review. It also provides much more recent information from a competent and authoritative source (that was not available to the delegate) on a range of matters directly relevant to the review and I consider that there are exceptional circumstances to justify considering this information. Where relevant, this information has been noted in the body of the review.

Applicant's claims for protection

14. The applicant's written claims can be summarised as follows:
 - The applicant is a Sunni Muslim of Pashto ethnicity. He was born in [Village 1] in Kandahar, Afghanistan.
 - The applicant lived in Afghanistan until he was about [age] years of age.
 - The applicant's family departed Afghanistan for Pakistan after the applicant's father was killed in January 2005 when the Taliban bombed a government building in Kandahar. Their uncle helped the family flee Afghanistan.
 - The family resided in Pakistan as illegal refugees. For about a month in 2008, the applicant worked in his brother's [specified] shop. The applicant also worked at a [different] shop and at [another workplace]. He worked at the [workplace] until February 2013.
 - In about May 2011, the applicant's brother was killed by Baloch militia in the Panjgur area of Pakistan. He was killed because he was a [Occupation 1] and had [provided services to the American army]. For about a month, the applicant assisted his brother in this work and now fears the Taliban will also target him.

¹ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

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

- When the applicant worked in the [workplace] there was a Hazara protest. The Taliban shot at the Hazaras and shot at the [workplace] as well. The applicant was lucky to survive. There were explosions also, including an explosion in [location].
- [In] May 2016, the applicant's mother passed away from natural causes. The applicant's sisters reside with their Pakistani husbands and therefore are legally permitted to remain in Pakistan.
- If returned to Afghanistan, the applicant fears he will be tortured and killed by the Taliban and extremists because of the time he has spent in a western country.
- The Afghan authorities are unable to protect the applicant because they are under attack by the Taliban and the applicant cannot relocate because the Taliban have connections throughout the country. The Taliban believe that anyone who leaves Afghanistan is no longer a Muslim but an infidel who should be killed.
- The applicant also has no friends or family in Afghanistan. It would be hard for him to survive.
- The Taliban have been responsible for ongoing violence, including targeted attacks and suicide bombings resulting in kidnappings and death. There is nowhere safe for him in Afghanistan because the Taliban have networks everywhere. The government of Afghanistan itself is attacked and threatened by the Taliban and could not protect him from harm.
- Afghan refugees in Pakistan have been sent back to Afghanistan. The Pakistan government began a campaign to send back illegal Afghan refugees living in Quetta and those that do not have Pakistani documents are detained, arrested or deported.
- The applicant was provided with a Pakistani passport by an agent en-route to Australia. The applicant disposed of the passport on the advice of a people smuggler. The applicant has never been issued with a Taskera or an Afghan passport.

Refugee assessment

15. 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

16. 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.
17. The applicant is a Sunni Pashtun. He claims that his family lived as undocumented refugees in Pakistan after fleeing Afghanistan. His written claims state that his father was killed in Afghanistan in 2005 during an explosion at a government building in that year, and that the family fled to Pakistan shortly after.
 18. He claims the entire family resided in Pakistan illegally after their arrival and remain only citizens of Afghanistan. The applicant claims that he is also not a citizen of Pakistan and stated in his written claims that he has no identity documentation. However, at his interview with the Department on 2 June 2021 he submitted a taskera as evidence of his Afghani nationality.
 19. Despite the applicant's claim to be an Afghani citizen and an illegal refugee in Pakistan, I consider that the preponderance of evidence indicates that the applicant is a Pakistani citizen.
 20. The applicant also claimed in his written application lodged on 17 May 2017 that he had never held a taskera. However, as noted above, at interview that applicant presented the delegate with a copy and an English translation of his purported taskera. The date of issue on the taskera is [dated in] 2007.
 21. The applicant claimed that he did not mention the taskera earlier because he after he had arrived in Australia by boat, he was threatened or warned against showing any documents by some Hazara people and unspecified others.
 22. However, by the time the applicant lodged a protection visa application in May 2017, he was out of detention and had been in the country for four years. He nonetheless stated in his application that he "was never issued with a Taskera or any other form of identity documentation". A further four years passed after the lodging of his application during which the applicant failed to obtain the taskera he originally said was somewhere back in Pakistan. The applicant only presented the taskera at his interview on 2 June 2021.
 23. The description of his claimed trip back to Afghanistan to acquire the taskera was also inconsistent. The applicant initially stated that they had gone to Afghanistan in 2007 for the express purpose of obtaining some ID. The applicant described how he was allegedly stopped by the police in Pakistan on a regular basis and asked for ID. He claimed that people could be jailed if they had no ID to present, and often had to offer bribes even if they did.
 24. However, later in the interview the delegate asked the applicant why he did not simply get an Afghan refugee card in Quetta. The applicant then stated that they had not originally gone to Afghanistan to get a taskera and that the decision to get a taskera was made after they had arrived in Afghanistan. He claimed that his brother had originally gone to Afghanistan for some other purpose but was unable to state what it was. The applicant was not able to provide any specifics about the process he went through to obtain his taskera. He also claimed to be unsure if his brother also had a taskera made or already had one. He said that because he was completely illiterate, he was not familiar with the formalities involved.

25. The delegate asked the applicant why his taskera described him as a student, given that he had stated that he was illiterate. The applicant then claimed for the first time that he had in fact studied for three or four years at a madrassa in Afghanistan. He said that he was probably [age range] when he was studying at the madrassa.
26. The delegate asked the applicant how he studied the Koran if he was illiterate. The applicant stated that before starting or reading the Koran there were basic studies – Arabic alphabets and small suras from the Koran. Then they would go on to the next stage of learning the Koran. It is difficult to see how several years of this type of study accords with the applicant's description of himself at interview as 'totally' illiterate.
27. The delegate asked the applicant if his father or grandfather had a taskera. The applicant again said that he was unaware whether they had taskeras but that he would ask his maternal uncle if their taskeras were available. To date, the applicant has not submitted any other documentary evidence of his family's claimed Afghani origins other than the taskera he provided at interview. DFAT and other sources have noted the prevalence of fraudulent taskeras³. The taskera document provided by the applicant lacks robust security features. Given the applicant's repeated insistence that he was without any documentation, the inconsistencies in his account regarding the acquisition of the taskera, and the significant delay in providing the document to the Department, I place little weight on the taskera submitted by the applicant.
28. Earlier in the interview, the delegate asked the applicant to describe the different types of documents available to refugees in Pakistan. The applicant appeared to show little awareness of the documents that might be available to refugees, stating that if you were considered a refugee by the UNHCR (United Nations High Commissioner for Refugees) you would be issued a card, but otherwise you would be considered an illegal entrant. The applicant was asked whether his family ever applied to the Pakistani authorities or the UNHCR, and the applicant said that they had not. He claimed that they were not aware of these forms of documentation and that they had never thought about it.
29. It is difficult to believe that the family never considered obtaining such documentation as was available in Pakistan considering the difficulties (repeated bribes, fear of detention) that he claims he faced as an undocumented refugee and his claim that he was so keen to get some form of ID that he and his brother were willing to travel back to Afghanistan just two years after they claimed to have fled that country in fear of their lives.
30. It is also very difficult to accept that the applicant and his family could have lived in Pakistan for almost a decade prior to the applicant's departure and be unaware of the sorts of documentation available to refugees. DFAT has previously indicated that 2.2 million refugees have been issued Proof of Registration cards (PORs)⁴. Even if the family were reluctant to avail themselves of this documentation, it is difficult to believe that the applicant could have been unaware of the existence of such cards. While there still exist large numbers of undocumented Afghan refugees in Pakistan, the applicant was nonetheless unable to provide any documentary evidence of his family's refugee status in Pakistan despite having lived there for almost a decade prior the applicant coming to Australia.

³ Department of Foreign Affairs and Trade, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409; Country of Origin Information Section (COIS), "Afghanistan: AFG42354 – Registration of Tazkiras – Process for Registering a Tazkira – Fraudulent Tazkiras", 12 June 2013, CRAD8155056

⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

31. The applicant claimed that his brother was killed in Pakistan in 2011 by “Baloch militia” in the Panjgur region of Pakistan. At interview, the applicant claimed that his brother was killed in Pakistan because of his previous work with the Afghan National Army, notwithstanding that the family had departed Afghanistan around six years earlier. He further claims that his life continues to be in danger because he worked previously with his brother. Given this, it is unclear why both applicants would risk journeying back to Afghanistan in 2007 to procure taskeras rather than avail themselves of some form of documentation in Pakistan. It is difficult to see the value in obtaining a taskera in any case, since producing a taskera to the Pakistani authorities would only underline their status as undocumented refugees.
32. The applicant’s family lived in Quetta, rented a house for years, were all employed, and his brother was able to operate a business and save a considerable sum of money – enough for brother to give the applicant’s mother the many thousands of USD that were used to send the applicant abroad. At interview, the applicant stated that the family had paid between \$12,000 – \$13,000 USD back in 2013 (over \$20,000 AUD today).
33. DFAT currently confirms its previous assessments that undocumented refugees face a high risk of official and societal discrimination, and harassment by security services⁵. However, the applicant’s family appear to have had a stable accommodation situation since allegedly arriving in Pakistan more than fifteen years ago, found employment for their children, seen their daughters marry Pakistani citizens, and managed to finance the applicant’s very expensive journey to Australia. In the applicant’s description of his time in Pakistan, there was a notable absence of specific instances in which his family were subject to sanction or discrimination or examples where they encountered difficulty going about their daily lives due to their alleged undocumented status. Even where applicant claimed that he sought a taskera because police would stop and bribe people, jailing those without ID, he spoke of this in the abstract and did not provide any personal or detailed accounts where this had happened to him specifically or any member of his family.
34. The applicant referred in his written claims to an attack on a Hazara protest by the Taliban. He claims that the [workplace] where he worked in Pakistan was fired upon during this protest and he was lucky to escape. There were also other bombings and explosions during this time. However, the applicant confirmed at interview that he had never been personally harmed or targeted during his time in Pakistan.
35. As noted above, the applicant claimed that his brother was killed in Pakistan because of his previous work with the Afghan National Army, prior to arriving in Pakistan in 2005. The applicant claims that he would also be targeted on return because of the brief period he spent working in his brother’s [specified] business in 2008.
36. In his written claims the applicant states only that the brother killed by “Baloch militia” because he [had provided services to the American army]. The delegate asked the applicant how his brother was able to work with the Pakistan army, given that he was undocumented. It was only then that the applicant specified that his brother had worked with the Afghan National Army, clarifying that his brother had never worked for the Pakistan Armed forces.
37. It is not immediately obvious why the brother’s work with the army in Afghanistan sometime prior to the family’s departure in 2005 would somehow result in the brother’s targeted killing in Pakistan in 2011. Although the applicant states in his written claims that the brother was

⁵ DFAT, “DFAT Country Report: Pakistan”, 25 January 2022, 20220125094359

killed by Baloch militia, he did not indicate how he knew this to be the case or why he was sure that the brother had been killed by the Taliban.

38. The applicant claims that he will also be targeted because he briefly assisted with his brother's [specified] business. However, the applicant only worked at his brother's shop for a month in early 2008. It is very difficult to believe that he would be targeted by the Taliban on the basis of that brief association with the brother's business almost fifteen years ago. The applicant also stayed a further two years in Pakistan after his brother's death. By his own admission, the applicant was not targeted or harmed prior to departing Pakistan in 2013.
39. The country information indicates that there are continuing attacks in Quetta. However, the preponderance of attacks in Quetta and Balochistan as a whole appear to directly target the Hazara minority (see further discussion below). The applicant is a Sunni Pashtun. Further, although the applicant claimed the [workplace] where he worked was fired upon during a protest, he did not indicate any instances in which he was personally targeted or harmed in Pakistan prior to his departure. Although the applicant claimed that his brother was attacked in a remote region of Balochistan, he was unable to supply any details regarding this attack. The applicant's remaining family all continue to reside in Pakistan. His mother passed away due to natural causes. His uncle remains in Quetta and his sisters reside in Balochistan with their Pakistani husbands. He did not indicate any instances in which the other members of his family had been targeted or harmed during his time in Pakistan or since his departure.
40. Given all of the above, I do not accept that the applicant and his family are (or were) stateless and find instead that he is a citizen of Pakistan. I also do not accept that the applicant's brother was targeted by militant or extremist elements or that the applicant would be targeted by those elements on return to Pakistan.
41. As I have found the applicant to be a citizen of Pakistan, I will not examine the applicant's claims to fear harm if returned to Afghanistan.
42. While I do not accept that the applicant has a profile with any militant or extremist group or would be targeted on that basis, Quetta has been the scene of a number of serious terrorist attacks in the past. However, as noted above, the vast majority of these have targeted (and continue to target) the Shia minority, most especially Hazaras.
43. In 2019, the Pakistan Institute for Peace Studies (PIPS) recorded 22 attacks in Quetta resulting in 56 deaths⁶. However, there were just two attacks listed as targeting Sunni religious leaders or the Sunni community, resulting in three deaths.
44. In its most recent report, PIPS noted that there were seven sectarian attacks in Quetta in 2020, all but one of them targeting the Shia Hazara minority⁷. There was just one attack on the Sunni community, although it resulted in nine fatalities⁸.
45. Sectarian attacks continued in 2021. In its most recent report, DFAT notes an attack on Hazara miners in January 2021 in Baluchistan⁹. However, there is no evidence of Sunni Pashtuns of the applicant's profile being targeted in Quetta.

⁶ PIPS, "Pakistan Security Report 2019", 5 January 2020, p.21, 20200114102703

⁷ PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526

⁸ Ibid

⁹ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

46. As noted above, the applicant is a Sunni and a Pashtun. DFAT states that Sunnis make up approximately 85% - 90% of the Pakistani population¹⁰. Pashtuns are Pakistan's second largest ethnic group, comprising just over 15 per cent of the population¹¹. Pashtuns are heavily involved in the transport sector, but also well-represented in the security forces¹². The applicant has not indicated any instances where he was targeted or harmed due to his Pashtun ethnicity per se, nor has he put forward any instances in which he was targeted due to his faith.
47. As noted above, the applicant's remaining family all continue to reside in Pakistan. His mother passed away due to natural causes. His uncle remains in Quetta and his sisters reside in Balochistan with their Pakistani husbands. He did not put forward any instances in which members of his family had been targeted or harmed during his time in Pakistan or since his departure. For the reasons set out above, I do not accept that the applicant's brother was targeted by militants or extremists. Although the applicant claimed that his [workplace] had once been struck with bullets during an attack on a Hazara protest, the applicant did not indicate any instances in which he had been personally harmed or targeted during his time in Pakistan.
48. The applicant would be returning to Pakistan after nine years away from the country. It is possible that he may be identified as a former asylum seeker or returnee from a western country. In his written claims, the applicant stated that the Taliban hate western countries. He also feared being deported back to Afghanistan.
49. As noted above, I do not accept that the applicant and his family were illegal undocumented refugees and have found that the applicant is a citizen of Pakistan. I do not accept that the applicant would face deportation back to Afghanistan.
50. DFAT notes that 'genuine returnees' are issued temporary documents on arrival in Pakistan and specifically notes that "a genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered their destination country"¹³. As set out above, I am satisfied that the applicant is a Pakistani citizen. The applicant was able to depart Karachi without incident. The applicant claimed at interview that he did not know what name was on the passport and knew only that it was a 'green' passport. It is difficult to believe that if the applicant had to travel alone on an allegedly false passport that he would not have checked the basic details of the passport such as the photo appearing in the passport or the name in which it was issued. The delegate also noted that the applicant was able to transit successfully through [Country 1], [Country 2] and [Country 3], facts not disputed by the applicant. I am satisfied that he did not require a fraudulently obtained passport and left Karachi on a valid passport in his own name.
51. In its most recent report, DFAT confirmed its advice that those returning involuntarily to Pakistan are usually questioned on arrival but released after a couple of hours¹⁴. Islamabad airport generally has the best standard of processing, but even if the applicant re-entered through Karachi airport, he would be detained for no more than a few hours¹⁵. The country information does not support the view that persons returning to Pakistan after departing the

¹⁰ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

¹¹ Ibid

¹² Ibid

¹³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁴ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

¹⁵ Ibid

country legally (even when returning after an extended absence) would be subject to any sanction on that account alone.

52. Even if it were not the case that the applicant deported on his own passport, in the unlikely event the applicant was detained for a brief period because he was found to have left on a fraudulent (or fraudulently obtained travel document, I am not satisfied that the applicant would face serious harm on this account.
53. There is nothing in the information before me to suggest that those who have departed Pakistan illegally are subject to serious sanction. DFAT notes that those who are detained for breaching immigration laws are usually released a few days later after paying a fine or being bailed by their family¹⁶. There is no evidence that he has committed any criminal offence in Pakistan or Australia, nor that there is anything else which would bring him to the adverse attention of authorities. There is nothing in the information before me to suggest that detainees are mistreated while briefly detained on this type of immigration offence.
54. In any event, I am also not satisfied that the treatment the applicant may experience as a consequence of any immigration breach is systematic and discriminatory conduct. It is common for countries to enforce immigration laws that regulate the use of travel documents and the manner in which people depart the country. These are measures aimed at controlling and regulating the flow of people across the border, and especially irregular migration. There is nothing in the information before me to suggest that Pakistani immigration laws relating to travel documents are applied selectively or enforced in a discriminatory manner against persons of the applicant's profile.
55. Having travelled to or resided in a western country is hardly uncommon in Pakistan. Many wealthier families opt to educate their children in western countries¹⁷. The Minister for Overseas Pakistanis and Human Resources Development estimated that approximately 2.5 million Pakistanis travelled overseas for employment between 2015 and 2018¹⁸. DFAT has said that returnees are typically able to reintegrate "without repercussions from their migration attempt"¹⁹. DFAT reported that the influence of western culture is widespread in Pakistan²⁰. In its most recent country report, DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination purely as a result of their attempt to migrate, or purely because they have lived in a Western country²¹.
56. I do not accept that the applicant was threatened or targeted by extremists prior to his departure from Pakistan. The information before me does not support the view that returnees, including Sunni Pashtun asylum seekers or former asylum seekers more generally, are targeted by militant or extremist elements on return to Pakistan due to their having spent time or sought asylum abroad. DFAT notes NGOs as reporting that just a small percentage of returnees do not reintegrate and seek to go abroad again to seek asylum²².
57. The applicant spoke apparently fluent Pashto at interview and confirmed that he also speaks some Urdu. Given the evident western influences already present in Pakistan society, a lack of any country information to indicate that returnees are targeted, and taking into account

¹⁶ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

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

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

²² Ibid

the applicant's personal circumstances, I do not accept that there is a real chance that he would be targeted as a returnee from a western country.

58. DFAT has previously reported that the road from Quetta airport to the city is dangerous for all travellers²³. However, I note that the applicant has previously safely made the journey from Quetta to Karachi airport when originally departing Pakistan. The security situation in Quetta also improved after a series of attacks in 2017, and those attacks that did occur still predominantly target Hazaras and Shia pilgrims²⁴. The applicant would be making a one-off trip to return to Quetta and would not be using the road habitually. In its most recent country report, DFAT has noted that wealthier Hazaras send their children to study in Lahore and Islamabad, indicating that there is some movement out of the enclaves for those who can afford to do so²⁵.
59. I am not satisfied that there is a real chance the applicant would face any harm whether from the Taliban, other extremist elements, or anyone else. I am also not satisfied that he would face any harm on account of his religion, ethnicity, or the general security situation. I am also not satisfied that there is a real chance the applicant, with his profile and background would face any harm as a returnee from a western country or former asylum seeker, whether from the Pakistani authorities, extremist groups such as the Taliban, or on any other account.
60. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

61. 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

62. 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

63. 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.

²³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²⁴ Ibid

²⁵ DFAT, "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

64. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
65. I have concluded that the applicant is not of adverse interest to any militant or extremist elements in Pakistan, nor is there a real chance the applicant would face any harm for any of the reasons put forward. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm on return to Pakistan in connection with those claims.

Complementary protection: conclusion

66. 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.