



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/10198

Date and time of decision: 9 March 2022 09:40:00
M Currie, 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 an Afghan citizen and an adherent of the Shia faith. He arrived in Australia in December 2012 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in 2017. In December 2021, a delegate of the Minister for Immigration decided under s.65 of the Migration Act 1958 (the Act) to refuse the visa, finding that Australia did not owe protection obligations to the Applicant. On 16 December 2021, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
2. This is a *de novo* decision; my task is to consider the applicants claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the Act. No further information has been obtained or received.
4. As noted earlier, the s.65 Decision was made by the Delegate in December 2021. In the that decision, the Delegate cited information from a report published by Department of Foreign Affairs and Trade (DFAT) in 2019¹. However, in January 2022, DFAT published an updated version of the 2019 report which provides a more recent picture of conditions in Pakistan. Both of these reports were published specifically to assist decision makers who are considering asylum claims from Pakistan. The 2022 report contains relevant, credible and authoritative country information from reliable sources about conditions in Pakistan. The report is not about the applicant specifically, rather it relates to a class of persons of which the applicant claims to be a member. The report was published more recently than the information cited by the delegate, and so this information is more up to date and provides a more accurate picture of conditions in Pakistan. In the circumstances I am satisfied that there are exceptional circumstances to justify considering the 2020 report by DFAT², and I have done so.
5. Somewhat unusually, prior to the s.65 Decision being made this applicant was not interviewed by the Department. The applicant had been invited to attend a Protection Visa Interview in July 2021, and a second interview in November 2021. He failed to attend both interviews and in December 2021, the delegate made the s.65 Decision without further contact with him. After the matter had been referred to the IAA by the Department, IAA staff attempted to establish contact with this applicant using the contact and address details that the applicant had provided to the Department (and which he is obligated to update). These attempts included written correspondence (email and letters) and phone calls during December 2021 and March 2022. All of the IAA's attempts to contact the applicant failed. The IAA also attempted to contact the applicant on another phone number which was found in his Protection Visa Application. These attempts also failed. Given that he was not interviewed by the Department, in my view, it would be preferable to interview the applicant and allow him to provide further evidence and information in support of his claims. However, in the circumstances, that option is not available to me and so I have, reluctantly, proceeded to make this decision without obtaining any further evidence from him.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report: Pakistan", 25 January 2022, 20220125094359

Applicant's claims for protection

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

- He was born in Kandahar City in [Year]. His parents were both Afghan citizens, as was he. He is of Qizilbash ethnicity, and an adherent to the Shia faith. His father was [an Occupation], and in Afghanistan his father worked with the [Country 1 people] during the period they were in Afghanistan. Because of his work with the [Country 1 people], the applicant's father was called a [Word related to Country 1] and was unpopular.
- His uncle was killed in Kandahar, and the people who killed him threatened the rest of the family. He believes his uncle's death was related to his father's work for the [Country 1 people].
- Because of these reasons, when he was around three years of age, his family departed Afghanistan and moved to Quetta in Pakistan. Thereafter his family lived in Quetta. His three younger siblings were all born in Pakistan.
- In Pakistan, his family were at risk, since they were of Qizilbash ethnicity and Shia faith. The Qizilbash people were identified as Yousafzai. In February 2006, his neighbour (also Qizilbash from Afghanistan) was attacked by a Pashtun criminal group led by "[Mr A]", a prominent drug dealer in Quetta, colloquially known as the "[Nickname]". After hearing noises, he went out to see what was happening and the group beating his neighbours with wood. They beat the neighbour's child with a hammer and were beating the adults with the back of their guns. After this event, he gave evidence in court, acting as a witness against the Pashtun criminals who had attacked his neighbours. At the end of the case, he realised that his actions had put him in danger of retaliation from the group.
- On one occasion in 2007, he was beaten by the Pashtun group, and accused of removing the picture of a local Pashtun politician from a wall.
- In 2010, during Ramadan he was on the way home in company with his friend, when he recognised one of the men from the Pashtun group who had attacked his neighbours. The man was distinguishable by a scar on his face and a disease that affected his hand. The man shot at him and his friend. His friend died from the gun shot. After he escaped, he went to the police and informed them about the attack. The Police Officer who dealt with him was unwilling to accept his report and told him they could not do anything about it because the Pashtun group are very powerful people.
- After this event, the applicant was afraid for his life and he fled to [Country 2]. In [Country 2], he sought asylum. He did not tell the [Country 2] authorities that he had lived most of his life in Pakistan as the smuggler in Pakistan told him not to reveal his Pakistani residence. His claim for asylum was rejected by [Country 2], and in January 2011 he was deported to Kabul in Afghanistan. He believes his visa was not granted by the [Country 2] authorities because they believed he had not provided a true account of his life. From Kabul he made his way back to Quetta in Pakistan.
- From Quetta, he travelled to Karachi, and he lived in Karachi from around August 2011, until March 2012. In Karachi he made travel arrangements to come to Australia.
- He believes that he cannot return to Afghanistan and live there safely. He understands that there are problems and conflict everywhere in Afghanistan. He saw many dead bodies when he returned to Pakistan from Afghanistan in 2011. If he returns to Afghanistan, he would be seen as a Pakistani. He has no identity documents from Afghanistan, and because he speaks Urdu he will be recognised as a Pakistani. He says

that Afghan people do not like people from Pakistan and call them Pakistanis. He says that Afghan media that Afghans abuse Pakistani's during a protest. The Afghan Government would not protect him if he returned to Afghanistan, as they cannot even protect themselves.

- He fears the Taliban in Afghanistan, who continue to kill Shia. His family is from Kandahar, an area under Taliban control. His name would identify him there as being his father's son, and would be unable to secure employment, or to marry. He would face risks associated with his father's links to the [Country 1 people].
- He could not live in Kabul. After he was returned to Kabul from [Country 2] he was in fear of his life. He says that when he arrived in Kabul, he was not contacted or directed to any services by the government of Afghanistan, and he did not feel that he belonged in that country. He had no family or friends in Kabul and people looked at him strangely, so within six or seven hours he left Kabul.
- His father is unwell, and his brother is crippled. He provides financial support for the family and believes that if he returned to Afghanistan, he would be unable to earn money to support them. The Taliban and other Pashtuns would prevent him from working. As a consequence, his family would be forced to travel to Afghanistan to join him and they would be at risk, travelling on dangerous roads.
- If he returned to Afghanistan, he would be targeted for having spent time in Australia, a western Country. He has obtained tattoos in Australia, and he fears that this would identify him as a person who spent time in the West.
- In Pakistan, Qizilbash people are targeted because of their religion. Pashtuns would target him because historically the Pashtuns and the Qizilbash have been in conflict. There is no part of Pakistan that is safe for Shia people. The Laskar-e-Jhangi (LeJ) and the Taliban assert that Shia are not true Muslims.
- In 2013 his younger brother was injured in a suicide bombing and he is now totally disabled. He has no movement in his left hand, has metal still in his chest from the bombs. His vision is poor.
- His family moved from Mariabad in Quetta. This is a Shia district and they moved in order to improve their security. However, the people that were targeting his family lived just behind them and now they cannot go to the market in Mariabad because people recognise them. They cannot move anywhere else.
- Though he spent time in Karachi, he has no family in that city, or in Islamabad or any other part of Pakistan. His family only resides in Quetta.
- He believes that if he returns to Pakistan, the Pashtun group will find him and kill him. He says it would be very easy for them to find him anywhere in Pakistan. The Pashtun group run a drug business all over Pakistan, and they have lots of contacts. He asserts that the Pakistan government and police would be able to protect him if he returned to Pakistan.
- Though He has contacted the [Country 2] [Immigration authority] to get a copy of the documents from his claim. He does not have access to them at this stage, but he is happy to provide them if they become available.
- He struggles to get to sleep at night because of all the memories and flashbacks from what he has experienced. In 2015, he was admitted into hospital for two nights to check why he could not sleep. He no longer sees the doctor.

Factual findings

7. Though he lived most of his life in Pakistan, this applicant asserts that he is a citizen of Afghanistan, and that he was born there. He says his family moved to Pakistan when he was a small child, and thereafter, he lived in that country. He says does not possess any documents from Afghanistan, as he left there when he was a child.
8. As part of his SHEV Application, the applicant provided copies of the following documents in order to establish his identity:
 - A copy of the biodata page of an expired Pakistani Passport, which was issued 2007 in his name and which contains his photograph.
 - A copy of the biodata page of an expired Pakistani Passport, which had been issued in his name in 2000 and which contains his photograph.
 - A copy of the biodata page of an expired Pakistani Passport, which had been issued in his name in 1995 and which contains his photograph.
 - A copy of a Pakistani School Leaving Certificate dated August 1999, which was issued the applicant's name, and which indicated he attended [High School] in Quetta, until February 1998.
 - A copy of a Pakistani National Identity Card issued in his name in 2011 and which expired in 2021.
 - A copy of an untranslated, which his SHEV Application describes as a Pakistani Birth Certificate issued in his name.
9. Though he has provided copies of these Pakistani documents, he says he is not a Pakistani citizen. Rather, according to his SHEV Application and the account in the Statement of Claims which accompanied his Protection Visa Application he is a citizen of Afghanistan. He says that sometime after he had arrived in Pakistan as a child, his father paid money to an agent in order to obtain a Pakistani Birth Certificate for him. He says that though the Birth Certificate indicates the applicant was born in Pakistan, this is not correct. Instead, the applicant was born in Kandahar, Afghanistan. He believes his father provided incorrect information in order to allow him to attend school in Pakistan. Having obtained a Pakistani Birth Certificate, the applicant says he was able to access services in Pakistan (such as education), and obtain other Pakistani documents including his National Identity Card and Passports.
10. In the Statement of Claims, the applicant also states that his 2011 deportation from [Country 2], and his subsequent return to Pakistan, he again applied for and obtained a Pakistan passport. That document was taken from him during his journey to Australia. He also asserts that during his journey to [Country 2] in 2010, he transited through [Country 3] and [Country 4]. While he was in [Country 3], the authorities took his then current passport and gave him a new one, with the same photo and a different name. he says that that he used the [Country 3] issued Passport to travel from [Country 3] to [Country 4], and that this document was taken from him in [Country 4].
11. Though he says he is an Afghan citizen, in the s.65 Decision the delegate found that he was a citizen of Pakistan. The document described in his SHEV Application as a birth certificate and his National Identity Card are both untranslated, and I am unable to read them. However, the applicant's three Passports, all indicate his place of birth as Quetta, Pakistan. His School Leaving certificate indicates he lived in Quetta. The applicant has asserted that these documents were only obtained after his father had obtained a Pakistani Birth Certificate issued

in his name which contained false information. The implication of the applicant's claim is that though his other documents may have been genuinely issued by the Pakistani authorities, they cannot be relied upon as evidence of Pakistani citizenship, since they were only obtained by using the Birth Certificate which contained false information.

12. There are around 1.4 million registered Afghan refugees, and an estimated 1 million unregistered Afghans, in Pakistan. Some have been displaced for more than 40 years. Afghan refugees in Pakistan have the right to register and obtain a Proof of Registration Card, identifying them as Afghan refugees eligible for protection and support through UNHCR under Pakistan refugee laws³.
13. According to the Department of Foreign Affairs and Trade (DFAT), children born in Pakistan to Afghan refugee parents receive Pakistan birth certificates with the assistance of UNHCR⁴. There have been around 1.1 million birth certificates to Afghan children born in Pakistan⁵. However, the applicant says that he was born in Afghanistan so he could not obtain one of these documents.
14. Rather the applicant says that his father paid to obtain a Pakistani Birth Certificate which contained false information. DFAT reports that document fraud is widespread for forms of documentation not issued by a competent central authority in Pakistan. Due to the relative ease in acquiring fraudulently obtained genuine documents, such documents are common in Pakistan and are generally preferred over counterfeit documents, as they are difficult to detect⁶. Furthermore, fraudulently obtained genuine documents, such as CNICs and passports, can be obtained with fraudulent (altered or counterfeit) feeder documents. Types of documents historically found to be fraudulent in Pakistan include, but are not limited to, documents regarding academic qualifications such as degrees and transcripts, bank statements, agreements, references, and ownership deeds⁷. However, DFAT also reports that documents, issued by central authorities are less likely to be fraudulent⁸.
15. The applicant says he is a Shia of Qizilbash ethnicity and that in Pakistan he had been identified as a member of the Yousafzai tribe. Country information⁹ cited by the delegate indicates references to so called 'Qandhari Yousafzai', who are a Shia ethnic group located in Quetta. They are said to be a Persian speaking and ethnically originate from Kandahar, Afghanistan and look like Pashtuns or Persians. Country information indicates that the Qandhari Yousafzai, like other Shia, have been the victims of sectarian attacks in Quetta¹⁰.
16. I have considered all of the information before me about the applicant's identity carefully. I have real concerns about his claims. The applicant's three Passports and his Passport were all issued by central authorities in Pakistan. Though he asserts these documents are based upon the false information in his Birth Certificate, I am not persuaded by this line of argument. The applicant has not satisfied me his account is truthful and, other than his assertions, there is no information before me to indicate his documents were fraudulently obtained or contain false

³ Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report Pakistan, 20 February 2019, 20190220093409

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

⁵ DFAT, DFAT Country Information Report Pakistan, 20 February 2019, 20190220093409

⁶ DFAT, DFAT Country Information Report Pakistan, 20 February 2019, 20190220093409

⁷ DFAT, DFAT Country Information Report Pakistan, 20 February 2019, 20190220093409

⁸ DFAT, DFAT Country Information Report Pakistan, 20 February 2019, 20190220093409

⁹ Country of Origin Information Services Section (COISS), 'Pakistan: PAK CI171003111249988 - Yousafzai Tribe in Quetta', 24 October 2017, CR8DFDCEA353

¹⁰ Country of Origin Information Services Section (COISS), 'Pakistan: PAK CI171003111249988 - Yousafzai Tribe in Quetta', 24 October 2017, CR8DFDCEA353

information. The applicant concedes that his attempt to obtain asylum in [Country 2] failed, and that he believes this occurred because he hid his life in Pakistan from [Country 2] authorities. The applicant has not provided any independent corroborative evidence for any of his claims relating to Afghanistan such as a Proof of Registration Card for himself or any family member. Like the delegate, I conclude that the documents he has provided are genuine Pakistani documents, and that they contain genuine information about him. I find that the applicant is a citizen of Pakistan, not Afghanistan. I am willing to accept that the applicant is a Yousafzai and that he the applicant has some historic family links to Afghanistan. I find that he was born in Quetta in Pakistan, and that he lived there throughout his life until 2010, when he travelled to [Country 2]. For the purposes of this decision, I find that Pakistan is his receiving country. I accept that he is an adherent of the Shia faith.

17. Country information before me indicates that the Qizilbash are an Imami Shia group thought to be descended from Persian mercenaries and administrators left behind by the Safavid Emperor Nadir Shah Afshar to govern the Afghan provinces. After the demise of the Safavid Empire in Afghanistan, the Qizilbash, due to their higher levels of education and experience as administrators, remained influential in the Afghan court and government bureaucracies. Their Shia faith combined with their disproportionate political influence often resulted in resentment by large portions of the Sunni majority within Afghanistan. Also, they were used by the shahs as personal bodyguards and assigned to put down uprisings among the populace, which further alienated them from the Pashtun majority. Due to the persecution, religious and political, the Qizilbash frequently resorted to the use of *taqiyya*, the practice of precautionary dissimulation or the adoption of a dual religious identity. In present day Afghanistan, the Qizilbash continue to practice *taqiyya* making it difficult to gain accurate census data¹¹.
18. I have found that this applicant was born in Pakistan, not Afghanistan. He has not provided any independent evidence that he or any of his family is of Qizilbash ethnicity, and in the absence of such evidence, and taking into account my finding about his Pakistani birth and citizenship, I am not satisfied that the applicant is of Qizilbash ethnicity.
19. Having made these findings about the applicant's identity, I conclude that the applicant's protection claims about Afghanistan are of no further relevance in this decision. I will not consider them further.

Health

20. According to the applicant's Protection Visa Application, in 2015 he was admitted to a hospital for 2 nights in order to assess why he could not sleep. He asserts that "*memories and flashbacks*" of his experiences were the cause. The applicant has not provided any evidence about this, or other medical issues as part of his application. His Statement of Claims indicates that after the two days he spent in hospital in 2015, he stopped seeing the Doctor. There is no other medical evidence about this applicant before me. The implication arising from the applicant's inclusion of this issue in his Protection Visa Application is that he intended this issue to be raised as a 'health' claim, though neither his Protection Visa Application, nor his Statement of Claims explicitly refers to such a claim.
21. I have considered this issue, but given the paucity of medical evidence, the lack of clarity about the applicant's brief hospitalisation, or his health more generally, and, taking into account the applicant's written statement which indicates that he stopped seeing the doctor soon after, I

¹¹ Naval Postgraduate School (NPS)- Program for Culture and Conflict Studies, 'Ethnic Identity and Genealogies', 1 March 2017, 20191216152628

am not satisfied that this applicant suffers from any health concerns now, some seven years later. I will not consider this issue further.

Court Appearance & testimony

22. The applicant says that in February 2006, he witnessed the members of a Pashtun criminal gang beating his neighbours. He says that after this event, he volunteered evidence about this case, and testified in court against the criminal gang. He says the gang was led by “[Mr A]”, a prominent drug dealer in Quetta, who was colloquially known as the “[Nickname]”. After his court appearance, the applicant realised that he might be at risk of reprisal attacks from the Gang
23. He says that in the years that followed his court appearance, he had several close calls:
 - In 2007, the Gang beat him very badly with the butt of a gun around his head and face. He asserts that this occurred because a picture of a local politician was torn from a wall and the gang believed that he was responsible.
 - In 2010, around Ramadan, the applicant was riding home with a friend. He saw a man who he recognised as being a member of the Pashtun Gang. The man shot at him and his friend. Though the applicant was unhurt, his friend was killed.
24. In the aftermath of this second attack, the applicant was afraid, and he fled from Pakistan to [Country 2] where he sought asylum.
25. Though these events are the applicant’s central claims in relation to Pakistan, he has not provided any independent supporting evidence for any of these claims, and they are simply assertions on his part. Despite what he says was his direct involvement in Pakistani Court case in 2006, he has not provided any supporting documentary evidence, such as a court notice or other document, for his participation in this trial. He has not provided any supporting evidence that he was beaten in 2007, or that his friend was killed in 2010.
26. The Statement of Claims which accompanied the applicant's Protection Visa Application indicates that this applicant fears the drug gang would find and kill him if he returned to Pakistan. However, even if the events he asserts happened in 2007 and 2010 were true, this claim seems rather doubtful. If the Pashtun gang wanted to kill him in retaliation for his testimony, they could simply have killed him in 2007, when he was clearly in their power. Instead, he asserts that they simply beat him. Furthermore, the applicant’s own account emphasises that he was the neighbour of a man the Pashtun gang already knew (having beaten him in February 2006) and that he went outside of his home and witnessed the beating the gang administered to his neighbour and in these circumstances, it would seem that the Gang would know where the applicant lived. If the gang really wanted to kill him, it seems unlikely that would have waited until 2010, some four years after he gave testimony, or failed to kill him in 2007 or failed to target him at his home.
27. Overall, the applicant’s account about these events has not satisfied me that he has been forthcoming. His account, as written in his SHEV Application, lacks many relevant details which I would expect a participant in these events to know, and to provide. This includes details such as: when he went to Court, what was the outcome of the Court proceedings, when exactly was he beaten, where was he beaten, why did the gang think he was responsible for the removal of the picture, why did this lead to a beating, where did the shooting take place. In my view, the applicant’s failure to mention these details casts some doubt on his claims. He has not persuaded me his account is true.

28. Taking to account all of these factors, like the delegate, I do not accept the applicant has told the truth. I do not accept that he was ever a witness to a beating in 2006, or that he gave evidence in a court case against a criminal gang. I do not accept he was beaten by the gang in 2007 or that the gang attempted to shoot him in 2010. I do not accept that his family was ever threatened.

2013 Bombing

29. The applicant states that in 2013 his brother was injured in a bombing. He says that as a result of his injuries, his brother is “*totally disabled*” and suffered injuries to his chest and impaired vision. The applicant has not provided any further information about this issue. Beyond stating it occurred in 2013 he has not indicated when or where this event happened, or which brother was affected, or whether his brother was deliberately targeted, or was a victim of indiscrete violence. Despite asserting in his Protection Visa Application that he maintains weekly contact with his family in Pakistan. He has not provided any independent supporting evidence for these claims (such as photographs, or news articles or Doctors reports) about the bombing or about his brother’s medical conditions.

30. While country information before me does indicate that Quetta was affected by sectarian violence in the early part of the last decade¹², given the lack of details in the applicant’s claims and the paucity of evidence provided in relation to this issue, I am not persuaded by the applicant’s very limited account of the 2013 bombing in which he says his brother was injured. He has not satisfied me that his brother was injured in a bombing in 2013 and so I do not accept this claim. I will not consider it further.

Refugee assessment

31. 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

32. 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

¹² Centre for Research and Security Studies, 'CRSS Annual Security Report 2020', 10 February 2021, 20210211103243; Pakistan Institute for Conflict and Security Studies, '2019 Annual Security Assessment Report', 9 January 2020, 20200122140652; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409; DFAT, 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359

- 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.

33. I have found that Pakistan is this applicant's receiving country. Except for the period he spent in Karachi in 2011 and 2012, this applicant lived in Quetta throughout the period of his life he was living in Pakistan. According to his Protection Visa Application, his parents and his siblings remain in Quetta. In his Protection Visa Application, he asserts he could not live in Karachi, or Islamabad or any other Pakistani city but in my view, there are reasons to doubt this assertion, since his application indicates he lived in Karachi for between August 2011 and March 2012 and he has not reported any problems during this period. However, taking into account all of his circumstances, I conclude that if returned to Pakistan, the applicant would return and reside with his family in Quetta, as he did previously.

Shia Muslim in Quetta

34. I have accepted that this applicant is a Shia Muslim from Quetta. He says that Shia's are not safe in Quetta, or in any other part of Pakistan. He says that extremists, including the Taliban and LeJ target Shia's and that they would target him upon return. He says that his time living in the west would heighten the risks he would face in Pakistan.

35. Pakistan's population is estimated at nearly 207 million, of whom approximately 96% are Muslim¹³. Sunnis represent about 80-90% of the Muslim population while 10-20% are Shia (i.e. there are somewhere between 30 – 40 million Shia living in Pakistan)¹⁴. After Iran, Pakistan is the second most populous Shia country in the world¹⁵, and there are significant Shia populations living throughout Pakistan including in Karachi, Islamabad, Rawalpindi and Lahore, the major cities on Pakistan¹⁶. Most Pakistani Shia are physically and linguistically indistinguishable from the Sunni population¹⁷.

36. Quetta is a city in Southwestern Pakistan and is the capital of Baluchistan Province¹⁸. There is a large Shia population in Quetta, many of whom are of the Hazara ethnicity¹⁹. There are said to be around 700,000 Hazara Shia residing in and around Quetta²⁰. Large portions of the Shia community in Quetta live in enclaves due to the security situation in Baluchistan²¹. The applicant asserts that his family lives in Mariabad, a Shia enclave in the east of Quetta²². Many, but not all Shia in Quetta reside in these enclaves. The government provides security to these enclaves, including for Shia religious activities²³. According to the applicant, his family still resides in Mariabad.

¹³ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359

¹⁴ DFAT, 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

¹⁵ DFAT, 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359

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

¹⁷ DFAT, 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359

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

¹⁹ DFAT, 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

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

²¹ DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

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

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

37. Article 36 of the Pakistani Constitution of Pakistan provides for the protection of minorities²⁴ and Article 28 provides that ‘any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and, subject to law, establish institutions for that purpose’²⁵. The Constitution of Pakistan guarantees fundamental rights, including freedom of speech, association and assembly, and outlaws discrimination on the basis of race, religion, caste, sex, residence or place of birth²⁶ and Pakistan is party to international human rights instruments. However, in practice, these rights are often not respected²⁷.
38. According to country information before me, the security situation in Pakistan is complex, volatile, and affected by domestic politics, politically motivated violence, ethnic conflicts, sectarian violence, and international disputes²⁸. A variety of insurgent, separatist and sectarian militant groups are responsible for this activity including the Pakistani Taliban and the Lashkar-e-Jhangvi (LeJ). Between 2014 and mid-January 2019, almost 3700 civilians died in terrorism-related violence throughout the country²⁹. Attacks have occurred throughout Pakistan. Between 2010 and 2016, Baluchistan suffered disproportionate rates of violence compared to Sindh and Punjab, the two most populous Provinces of Pakistan. In the last decade, Shia’s have faced militant violence from both extremist groups such as the LeJ, Islamic State and the Taliban³⁰, though there is no evidence before me that Yousafzai Shia face any higher risk than other Shia in Pakistan. These groups have targeted the Shia population due to their Shia faith³¹. Since 2014, the Pakistani Government, has conducted large scale anti-terrorism and security operations in Pakistan in order to combat extremist violence, especially in Khyber Pakhtunkhwa Province and Baluchistan Province³². High rates of violence early in the last decade³³ were followed by implementation of a National Action Plan, which led to substantial security improvements and a broad downward trend in violence³⁴. There was a nine-year downward trend of violence in Pakistan³⁵. Despite these improvements, Pakistan continues to face security threats from insurgent, separatist and sectarian militant groups³⁶ and in 2021, the number of terrorism attacks in Pakistan rose for the first time since 2013³⁷. DFAT reporting has indicated that the underlying conditions for militancy, include a weak executive, judiciary and law enforcement institutions, poor infrastructure and services, extreme religious ideologies and stark sectarian divisions, and lack of economic opportunity³⁸. In addition to

²⁴ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

²⁵ DFAT, ‘DFAT Country Report: Pakistan’, 25 January 2022, 20220125094359

²⁶ DFAT, ‘DFAT Country Report: Pakistan’, 25 January 2022, 20220125094359

²⁷ DFAT, ‘DFAT Country Report: Pakistan’, 25 January 2022, 20220125094359

²⁸ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

²⁹ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

³⁰ Centre for Research and Security Studies, ‘CRSS Annual Security Report 2020’, 10 February 2021, 20210211103243; Pakistan Institute for Conflict and Security Studies, ‘2019 Annual Security Assessment Report’, 9 January 2020, 20200122140652; DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409; DFAT, ‘DFAT Country Report: Pakistan’, 25 January 2022, 20220125094359

³¹ Centre for Research and Security Studies, ‘CRSS Annual Security Report 2020’, 10 February 2021, 20210211103243; Pakistan Institute for Conflict and Security Studies, ‘2019 Annual Security Assessment Report’, 9 January 2020, 20200122140652; DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409; DFAT, ‘DFAT Country Report: Pakistan’, 25 January 2022, 20220125094359

³² DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

³³ Centre for Research and Security Studies, ‘CRSS Annual Security Report 2020’, 10 February 2021, 20210211103243; Pakistan Institute for Conflict and Security Studies, ‘2019 Annual Security Assessment Report’, 9 January 2020, 20200122140652; DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

³⁴ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

³⁵ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

³⁶ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

³⁷ DFAT, ‘DFAT Country Report: Pakistan’, 25 January 2022, 20220125094359

³⁸ DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

sectarian issues, Baluchistan is also beset by separatist violence, particularly in response to the activates China-Pakistan Economic Corridor (CPEC) authority³⁹.

39. The weight of evidence indicates that Life in Baluchistan for Shia can be daunting, with extremist groups in Pakistan targeting Shia in the last decade, including the Taliban, and the LeJ, both of which the applicant claims to fear. The applicant has claimed that he would be unsafe in Quetta, due to the security situation. I have carefully considered this issue. Overall, the evidence before me indicates there was a significant number of serious attacks against the Shia community in Quetta, early in the last decade, with the level of risk faced by that community peaking around 10 years ago. 2019, saw the fewest militant attacks in Pakistan, in more than 15 years⁴⁰ and while the number of attacks has risen since then, they level, lethality and seriousness of attacks has dropped considerably since the peak around a decade ago and in the years since, there has been a substantial reduction in number of sectarian attacks against Shias in Pakistan and the number of casualties has steadily dropped. These improvements are the result of government security enhancements, sustained security operations targeting extremist groups in the country. While occasional attacks still occur, these are now rare⁴¹.
40. Overall, the security measures implemented by the community and general improvements in the security situation, led by considerable Government commitment to security operations have led to a steady decrease in successful terror attacks over the last decade⁴². The two enclaves provide security for residents, though, travel outside them can bring a higher risk of violence. Though there are still occasional spikes in the number of attacks, and some individual incidents can have high death tolls overall, the number and lethality of attacks has decreased in the last decade⁴³. Quetta is safer now that it was at the time the applicant departed.
41. This applicant made his home in Quetta for around 30 years from his birth, until 2010. His family still live in Quetta within one of the safe Shia enclaves. They have continued to reside in the family home throughout the period that this applicant has been in Australia. I have found that if he returns to Pakistan, he will return and reside with his family, as he did previously, mitigating many of the problems he might face upon return, such access to accommodation. Though he has asserted his family fears being attacked, beyond claims I have not accepted, he has not indicated that his family in Quetta has faced the kind of security problems he fears in his absence. Nor has he reported any specific incident which might indicate that his family faced threats in Quetta while he has been in in Australia. I am not satisfied that this applicant would be of any interest to extremist groups in Pakistan.
42. The applicant says his attempt to claim asylum and his time in the West would lead to him facing harm in Pakistan. The applicant has spent most of the last 10 years living in Australia and seeking asylum here. I accept he has spent time in the West. However, on his own evidence, this applicant departed Pakistan legally on a genuine Pakistani Passport. The evidence before me suggests that as a returnee he may come to Government attention upon his return, and he would likely face questions about his departure⁴⁴. Every returnee is interviewed by Pakistani

³⁹ DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

⁴⁰ Pakistan Institute for Conflict and Security Studies, '2019 Annual Security Assessment Report', 9 January 2020, 20200122140652

⁴¹ Centre for Research and Security Studies, 'CRSS Annual Security Report 2020', 10 February 2021, 20210211103243; Pakistan Institute for Conflict and Security Studies, '2019 Annual Security Assessment Report', 9 January 2020, 20200122140652; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409; DFAT, 'DFAT Country Report: Pakistan', 25 January 2022, 20220125094359

⁴² DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

⁴³ DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

⁴⁴ DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

officials upon arrival at the port of entry; however, in general, returnees are considered 'victims' and not offenders. Pakistani citizens turned back because of violating other countries' rules of residence or overstaying or being refused entry are not prosecuted, since there would have been no violation of Pakistani laws. They are interviewed upon arrival and have to fill out a form but, in general, are free to go⁴⁵. Given his legal departure, the applicant has not committed any crime in Pakistan and would not be detained. Returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt. DFAT assesses that returnees to Pakistan 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 country⁴⁶. There is no evidence before met to support his assertion that returning asylum seekers, including those of the applicant's profile, face a real chance of harm for seeking asylum or for their association with the West. I am not satisfied that he would face any harm as a failed asylum seeker in Pakistan.

43. Overall, I am not satisfied that this applicant would face a real chance of harm in Quetta arising from his religion (Shia) or for seeking asylum or for having spent time in the West or from the present security situation. I am not satisfied that any combination of these factors, would lead to him facing a real chance of harm. I am not satisfied he has a well-founded fear of persecution.

Refugee: conclusion

44. 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

45. 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

46. 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.

47. 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.

⁴⁵ DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

⁴⁶ DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

48. I have found that this applicant would not face a real chance of harm arising from any of his claims for protection. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that he would not face a real risk of significant harm for these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

Complementary protection: conclusion

49. 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.