



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA22/10331

Date and time of decision: 23 August 2022 17:34:00
G Ma, 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 Shia, Yousafzay Pashtun from Quetta, Pakistan. On 29 December 2016, he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 17 June 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate found there was a real chance of the applicant facing harm as a Shia in Quetta, but it would be reasonable for him to safely relocate to Karachi or Islamabad. On 16 July 2019, the IAA affirmed the delegate's decision. [In] May 2022, the Federal Court quashed the IAA decision and remitted the matter to the IAA to determine the application for review in accordance with law.

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) (the review material).
4. The review material includes several documents that have been identified as information not provided to the IAA with the original referral in 2019. In response to the IAA's post-referral request, the Department advised on 17 August 2022 that these documents appeared to be records that had been saved in TRIM, and therefore, the information was available to the delegate and could technically be considered to be before the delegate when he made the decision, but it was unable to confirm if the delegate had accessed the information and/or took it into consideration in assessing the case.
5. Some of these documents are administrative in nature and are not relevant to the assessment of the applicant's protection claims. An email titled 'AUSTRAC Report containing a summary of financial transactions' is also included in these documents. I note that this email was sent to the delegate the day before the SHEV interview, and that the delegate discussed some of the transactions in this report with the applicant during the SHEV interview. As such, I am satisfied that this information was before the delegate when he made the decision, and it is not new information. Some of the documents (such as copy of the applicant's Pakistani national identity cards (CNIC), passport, cards and a letter issued by various organisations e.g. the Balochistan Sarrafa and [Occupation 1]s Association Quetta, and the Balochistan Shia Conference organisation (Regd) Quetta etc.) were referred to, and footnoted in the delegate's decision,¹ and I am satisfied that these were before the delegate, and they are also not new information.
6. The documents also include copy of the applicant's Yousafzai welfare organisation membership card, his sports certificates, one of his daughter's birth certificate, and an untranslated document dated 18 October 2002. As I am unable to ascertain the contents or relevance of the untranslated document, I am not satisfied that it is relevant to the assessment of the applicant's claims. Regarding the sports certificates, I note that the applicant has also provided them to the delegate as part of his SHEV application, and I have had regard to all the information before the delegate. Regarding the Yousafzai welfare organisation membership card and his daughter's birth certificate – unlike the other documents, there is no reference to them in the delegate's decision or at the SHEV interview,

¹ See delegate's decision at p.2 and footnote 1.

and they were not given as part of the SHEV application. As such, I am not satisfied that they were before the delegate. Nevertheless, I have considered them as I am satisfied that they meet s.473DD. Because these documents were given to the Department in support of the applicant's claims and contain information pertains to the applicant's claimed Yousafzay ethnicity and family background, and I am satisfied that there are exceptional circumstances to justify considering this information.

7. I have obtained updated country information from the Department of Foreign Affairs and Trade (DFAT) published in January 2022,² the European Asylum Support Office (EASO) published in October 2020 and 2021, the Pakistan Institute for Peace Studies (PIPS) published in June 2021 and 2022, the US Department of State (USDOS) published in April 2022, the UK Home Office published in July 2022, the South Asia Terrorism Portal (SATP) published in August 2022, and an article from CNN published in March 2022. The applicant has also sought to rely on this DFAT report, the USDOS report and the 2022 PIPS report. The applicant made claims about the general security situation in Quetta and Pakistan. The delegate had relied on older versions of most of these reports in the primary decision, and that these older reports are now several years old. These recent, authoritative, and comprehensive reports, especially the PIPS, SATP and EASO reports, give an in-depth statistical analysis on security incidents and provides an update regarding the situation in Quetta and across Pakistan. I am satisfied that there are exceptional circumstances to justify considering this new information.
8. On 16 June 2022, the IAA received submission with various attachments from the applicant's representative (the IAA submission). To the extent that it explains and argues why the applicant disagrees with the delegate's decision by reference to caselaw, or refers to materials before the delegate, or clarifies his language skills and mother tongue by reference to his evidence before the delegate, these aspects are not new information and I have considered them.
9. It is submitted that the Department overlooked a claim that the applicant will face harm because he will be perceived as a Hazara – and this claim was said to be based on his evidence before the delegate that he is a Shia, his wife is a Hazara, he is from Mariabad (a Hazara enclave) Quetta, he speaks the dialect of the Hazaras of Quetta and speaks, reads, and writes like a Hazara, even though he is not a Hazara.
10. The applicant claimed before the delegate that he fears harm as a Shia Muslim, particularly as a person from Quetta, who whilst not a Hazara, communicates like a Hazara of Quetta, has a Hazara wife and lives in the Hazara community, and their children appear and sound like Hazaras. But he did not say he feared harm for being perceived as a Hazara. While the applicant did not express his fear in those terms before the delegate, I accept that he impliedly sought to. As such, it is not new information, and I have had regard to it.

² Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2021", January - June 2022, 20220201113110; PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526; European Asylum Support Office (EASO), "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; EASO, "EASO Pakistan Security Situation – Country of Origin Information Report", 4 October 2020, 20201102100212; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Information Report – Pakistan", 25 January 2022, 20220125094359; US Department of State (USDOS), "2021 Country Reports on Human Rights Practices - Pakistan", 12 April 2022, 20220413104804; UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", 25 July 2022, 20220726103354; South Asia Terrorism Portal (SATP), "Pakistan: Balochistan: Timeline (Terrorist Activities) – 2022", August 2022; SATP, "Pakistan: Karachi (Sindh): Timeline (Terrorist Activities) – 2022", August 2022; and Sophia Saifi and Saleem Mehsud, CNN, "ISIS claims responsibility for blast killing dozens at Shia mosque in Pakistan's Peshawar", 5 March 2022, 20220608124652.

11. In the IAA submission, the applicant also raised new claims to fear harm and discrimination on account of his mental health. He stated that his symptoms persist and have worsened since 2019, he would like to see a psychologist and believes this is necessary but he cannot afford to do so, and that his mental health will deteriorate upon return. He asserts that mental health services are not accessible in Mariabad or Hazara Town, and that even assuming he could afford to access the services, it would be necessary to travel outside this area to obtain them, which would expose him to violence. The IAA submission also attaches a medical certificate dated 16 June 2022 from [Dr A], [a named] Medical Centre, and a prescription dated 16 June 2022. The medical certificate states that the applicant 'has attended for treatment for anxiety/depression and taking medication'. These new claims, and the medical certificate and prescription dated 16 June 2022, were not before the delegate. They are new information.

12. In regard to the claims regarding the applicant's mental health that post-date the delegate's decision, and the medical certificate and prescription dated 16 June 2022, I am satisfied that they could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is met. In regard to the new protection claims based on his mental health, I note that at the arrival interview in 2013, the applicant said that the events in Quetta affected his mental health. As noted in the delegate's decision, even though he submitted a Summary of Psychological Treatment report dated 30 May 2019 from [Mr B], a Direct Services Counsellor (the 2019 treatment report) to the delegate on the day before the SHEV interview, and that at the SHEV interview he displayed prescriptions for medication (which were not submitted in the post-interview submission as requested), at no time during the SHEV interview did the applicant or his former representative indicate that his mental health was a claim for protection, or that it would impact on his ability to participate in the process. The applicant also did not raise any claim to fear harm for reasons relating to his mental health in the post-interview submission, or in the SHEV application. At the SHEV interview, the delegate discussed the applicant's mental health, the prescriptions that were displayed, and the 2019 treatment report with him in some detail and repeatedly invited the applicant to tell him anything about them. The applicant said that his problem has been fully explained in the 2019 treatment report. Basically, his problem was that he had anxiety symptoms where his body would start to shake when he talks about his children as he had not seen them for six to seven years, and that the prescriptions were for tablets for stress, and that his counsellor advised that he should always take the tablets. He said that he started seeing the counsellor in June 2018. He also confirmed that he was feeling well enough to proceed with the interview. I consider that he has had ample opportunities to advance claims for protection for reasons relating to his mental health, however, I consider it is possible that the fear has arisen more recently (after the delegate's decision), and therefore, s.473DD(b)(i) is met. I am also satisfied that the medical certificate, the prescription dated 16 June 2022 and the new protection claims based on his mental health, are prima facie 'credible personal information' that was not previously known, and had it been known, may have affected consideration of the applicant's claims. Section 473DD(b)(ii) is met. The new information goes to the applicant's health conditions, it provides an update to his conditions since the delegate's decision in 2019 and claimed a fear of harm on the basis of his health conditions, and as such, I am satisfied that there are exceptional circumstances to warrant my consideration of it.

13. The IAA submission attaches an article from mdpi.com published on 28 April 2022 and an undated report from ghrd.org. The undated report cites other articles in 2021, and I accept that this report post-dates the delegate's decision. These publications were not before the delegate, and they are new information. The contents of the article concern perception of mental illness in Pakistan, and the report gives an overview of the mental health legal

framework internationally and in Pakistan. This information purports to support the applicant's claimed fear of harm and discrimination because of his mental health. Both publications post-date the delegate's decision and contain information about mental health issues in Pakistan that post-date the delegate's decision. I am satisfied that this information could not have been provided to the delegate before the delegate's decision. Section 473DD(b)(i) is met. The new information can be described as general country information, not personal information, and s.473DD(b)(ii) is not met. There was limited information about healthcare in Pakistan before the delegate. The new information goes to the applicant's recently claimed fear of harm by reason of his mental health and presents a more current picture of the situation in Pakistan. I am satisfied that there are exceptional circumstances to justify considering it.

14. The IAA submission also attaches two news articles from: VOA news published on 30 December 2021, and Reuters published on 4 February 2022. These articles were not before the delegate, and they are new information. This information is said to document instances in which extremist groups have been able to carry out attacks against targets in Quetta and Balochistan at present and is relevant to the applicant's claimed fear of harm from such groups in and around Quetta. These publications post-date the delegate's decision. They contain information about incidents of attacks in Quetta and Balochistan, which are general country information, rather than personal information. I am satisfied that the new information could not have been provided to the delegate before the delegate's decision and meets s.473DD(b)(i), but it does not meet s.473DD(b)(ii). Considering all the relevant matters, I am satisfied that there are exceptional circumstances to justify consideration of it.
15. The IAA submission also contains information regarding the applicant's and his wife's assets and financial situation, and attaches: the applicant's bank statement for the period between January and June 2022; Human Rights Watch (HRW) World Report 2022: Pakistan regarding abuses against women in Pakistan; Poverty and Equity Brief, Pakistan published in April 2020 concerning the poverty rates in Pakistan from 2001 to 2015; an article by Modern Diplomacy published on 19 April 2020 concerning history of nepotism in Pakistan; and two articles by The Express Tribune published on 30 November 2021 and 5 April 2022 about housing affordability in Karachi and house rents in Islamabad and Rawalpindi respectively. They were not before the delegate, and they are new information.
16. This new information purports to support the applicant's arguments that the delegate's relocation finding is incorrect. It is submitted that all this information is relevant to the issue of relocation, in that it is dangerous for his wife and daughters to travel or move outside of Quetta to seek to live with him, and that he and his wife lack financial means and connections to establish themselves outside Quetta, and they will be living in poverty and not able to support themselves outside Quetta given the rate of poverty and the rental costs in Karachi, Islamabad and Rawalpindi. The new information post-dates the delegate's decision and contain information regarding the situation after the delegate's decision. I am satisfied that it could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is met. In relation to the new information about the applicant's and his wife's assets and financial situation and the bank statement, I am satisfied that it is credible personal information that may have affected the consideration of his claims, and s.473DD(b)(ii) is met. In relation to the articles and reports, however, I am not satisfied that s.473DD(b)(ii) is met as it is general country information about the social economic situation and women in Pakistan, rather than personal information. For the reasons discussed below, I do not consider it necessary to consider the issue of relocation. As such, I am not satisfied that the new information, which is said to have been provided in support of the issue of relocation, is of probative value in my assessment. Further, there are a number of

contemporaneous, reputable and comprehensive reports before me regarding the overall situation and general security situation in Quetta and in Pakistan, as well as the applicant's and his representatives' relevant submissions on these issues. The new information adds little, if any value, to the materials before me. Having considered all the relevant matters, including my assessment on s.473DD(b), I am not satisfied that there are exceptional circumstances to justify considering this new information.

17. Part 7AA of the Act compels the IAA to provide a "limited form of review". Generally, the IAA must conduct a review on the papers by considering the review material provided by the Secretary without accepting or requesting new information and without interviewing the applicant (sections 473BA, 473CB, 473DB). The IAA may exercise its discretion to invite a person to give new information at an interview pursuant to s.473DC(3). But there is no obligation to do so. As noted above, the delegate concluded the applicant faced a real chance of harm in Quetta for being a Shia Muslim, but it would be reasonable for him to relocate. However, based on the substance and content of the applicant's own evidence regarding his circumstances that was before the delegate, I have reached a different conclusion about his chance of harm in Quetta. I note that the delegate observed in his decision that the applicant and his former representative did not indicate during the SHEV interview that the applicant had difficulty concentrating, was confused, or felt unwell during that interview, and the delegate considered that he was able to participate effectively at the interview and adequately present his claims, and that he was provided with a real, meaningful and fair opportunity to present his claims. I have listened to the audio recording of the SHEV interview. At the outset of that interview, he confirmed that he was well enough to participate at the interview, despite his health conditions and medication. The applicant was assisted by his former representative and an interpreter in the Hazaragi language at the SHEV interview. As the delegate pointed out at the SHEV interview, the applicant has a reasonable command of the English language, where at times, he answered questions before they were interpreted to him, and sometimes he responded directly in English, and he also assisted the interpreter by clarifying evidence. The delegate was accommodating. He advised the applicant that he would avoid or limit questions about his children after he was informed that this topic was the trigger for his body shaking. The delegate also offered him breaks and water during the interview. The applicant was engaged throughout the interview. It was clear from his oral evidence that he understood the questions and was able to answer them and to present his case. All the relevant issues were discussed during the SHEV interview, including the risk of harm in Quetta. His former representative also made oral submissions towards the end of the SHEV interview. Although the applicant claimed to have mental health issues, neither he nor his representatives suggest that this would impact on his capacity to participate at the SHEV interview or his ability to give evidence. Nor do the medical evidence before me suggests this. I am not satisfied that the applicant has any capacity issues. I am satisfied that he has effectively participated at the SHEV interview. His former representative also provided a post-interview submission, which covered the issue of risk of harm in Quetta and attached supporting documents. Overall, I consider that the applicant was given a real and meaningful interview, and that he has had ample opportunities to provide evidence and to put forward arguments for his case. He has also taken up the opportunity to provide a detailed and comprehensive submission to the IAA of over 350 pages, which not only addressed the relevant issues, including the risk of harm in Quetta, but also attaches various supporting documents, that was prepared with the assistance of his representative. Considering all the relevant matters, I am not satisfied that the circumstances of this case warrant the exercise of discretion under s.473DC(3).

Applicant's claims for protection

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

- The applicant is a Shia Muslim. He is ethnically a Pashtun Yousafzay, who was born and raised in Quetta, Balochistan province. The Yousafzay tribe came from an area that is now part of Pakistan but in the old days the area bordered with Afghanistan and Iran. Most of the Yousafzay tribe in Pakistan are Sunnis, except for those in Quetta. His great grandfather moved from Kandahar to Quetta. His grandfather was a trader, and his father had a shop. The applicant is a [Occupation 1] and he used to own and operate a [shop] in [location] in Quetta from 1994 to 2012. His mother is deceased. His wife is a Hazara Shia. His wife, their two daughters and his father are living at home in Quetta in the Hazara area around [named] Road.
- When he first started working, there was no sectarian problems in Quetta. Since the late 1990s, the problems have slowly deteriorated in Quetta.
- He was injured in an Ashura attack in [location] Quetta.
- From 2003 targeted killing started. In their bazaar the Hazaras started to leave their shops. The situation worsened after the attack on the Shia mosque in 2004. There has been a constant stream of Hazara Shias killed in the city, the threats were continuous against them and he started to feel unsafe as a businessman in the city.
- In 2012, he believed that people on motorcycles were following him with the aim of kidnapping or killing him.
- [In] January 2013, an incident of explosions occurred in Quetta. He was not harmed, but he lost seven cousins in that incident.
- [In] May 2013, he left Pakistan.
- He fears harm from the Lashkar-e-Jhangvi (LeJ), the Sipah-e-Sahaba (SSP) and other Sunni militant groups such as Daesh, and the Baloch insurgent groups by reason of his Shia religion, his profession as a [Occupation 1], his mental health, and for being perceived as a Hazara, and as a returned failed asylum seeker who spent time in Australia.

Refugee assessment

19. 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

20. 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.
21. Based on his Pakistani identity documents, I accept that the applicant was born in [year] in Quetta, Balochistan, and that he is a national of Pakistan. Pakistan is the relevant 'receiving country'.
22. I accept that the applicant is a Shia Muslim and that he was involved in religious activities, such as Ashura procession and poetry recitation. I also accept that he is ethnically Pashtun from the Yousafzay tribe. This is supported by his notarised local certificate and other documents that he has provided. He has also demonstrated knowledge of the Shia faith and practices when asked at the SHEV interview. I also accept that he grew up in Quetta, and that he is a professional [Occupation 1] who used to own a [shop] in Quetta. He gave specific and consistent evidence regarding the area in Quetta in which he grew up, such as the nearby hospitals, markets, mosques, the location of his school, his shop, and that he sourced [materials] from inside Quetta, and that he travelled to Karachi for about 10-20 times by plane to buy tools for [his work], where he would stay in a hotel in Sadr Bazar for two to three days, or up to a week on each occasion. He has also provided sports and school certificates, and various cards such as membership cards issued by the [Organisation 1] and [Organisation 2] in support. His father, his Hazara wife and their two daughters are living at home in Mariabad. His sister and her family, and his uncles are also living in Quetta. His own evidence was that he has lived his whole life in Quetta, where his family, extended family and community live. I consider that if the applicant returns to Pakistan, he is very likely to return to Quetta Balochistan, where he has family ties, community network and support.
23. The applicant claims to have experienced symptoms of PTSD, depression, and anxiety. The 2019 treatment report indicates that from 7 June 2018 to 30 May 2019 the applicant attended 18 out of 22 counselling sessions. One session was cancelled, and three sessions were 'no show'. It relevantly states that he was experiencing PTSD, anxiety and depression symptoms, especially after being separated from his family for six years and the uncertainties in his visa application. The report states that he received treatment which consisted of a variety of clinical intervention, including cognitive behavioural therapy, somatic therapy with controlled exposure, mindfulness and empowerment, and that he requires further engagement in therapy to cope with anxieties and restore safety and purpose of life. At the SHEV interview, the applicant said that he was on medication to help with stress and the counsellor had shown him breathing exercises and advised him to drink water when he felt stressed at work. When asked whether these mitigate the symptoms, the applicant responded that they were helping a bit. When asked whether he has ever engaged the services of a mental health professional before, the applicant replied that that once his GP referred him to a specialist, the specialist gave him an appointment about five months later, and at that time he just forgot and did not go and see him. The medical certificate dated 16 June 2022 from his GP certifies that the applicant "has attended for treatment for

anxiety/depression and taking medication”, and the prescription dated the same day indicates he was prescribed anti-depressant Sertraline tablet 100 mg.

24. Based on the medical evidence, I accept that the applicant experienced symptoms of PTSD, anxiety and depression, and that he attended counselling sessions from 2018 to 2019, and that he also attended his GP in June 2022 for treatment, and he has been prescribed medication to help alleviate symptoms. However, his own evidence was that once his GP referred him to a specialist before, but he did not attend as he had forgotten about it, and I am not satisfied on the evidence that expense is the reason for not attending a psychologist. The 2019 treatment report also notes that there were three ‘no show’ sessions. Moreover, the medical evidence does not indicate, and I am not satisfied that the applicant’s level of symptoms is worse now than in 2019, or that his current medical advice is that he sees a psychologist, or that his mental health will deteriorate upon return. The 2022 medical evidence does not indicate that the applicant requires other kind of treatment apart from medication, or ongoing care. There is no other evidence to show that further counselling sessions have been scheduled or undertaken. I accept that the applicant may need medication, but I am not satisfied that he requires ongoing specialist care in the reasonably foreseeable future.
25. In the SHEV application, the applicant stated that since 1998, things have slowly deteriorated in Quetta. When he first started working (in 1994), there were not sectarian problems. He stated that he was injured in an Ashura attack in [location] Quetta when he was in a procession for the religious celebration, and he went home quickly after the explosion. After that, it was never the same going to his business. The LeJ started target killings of businessmen and professionals and there has been a constant stream of Hazara Shias killed in the city and he started to feel unsafe as a businessman. He stated that over the last years from about 2003, the targeted killings started. In their Bazar the Hazaras started to leave their shops. The situation started to get a lot worse after an attack on the Shia mosque in 2004, and in the last decade or so it has become more dangerous to live in Quetta. He believed that [Occupation 1] shops were targeted because they were mostly Shias running those businesses and they were an easy target for the fundamentalists. The applicant also claimed that [in] January 2013 an explosion occurred in Quetta about 200 meters from his home, and he was in the proximity of the explosion. He was not harmed, but he lost seven cousins in that attack. At the arrival interview, the applicant consistently said that he was in the proximity of an explosion near his home [in] January 2013, nothing happened to him, but he lost seven cousins. He also said that when the bomb attack occurred, everyone protested against the government, and that all his family protested on the street. At the SHEV interview, he said that he took one of his injured cousins to a hospital in Karachi after the explosion in 2013. He also submitted a photo of a burnt corpse as evidence of his best friend and cousin that was killed in the 2013 explosion.
26. Country information³ indicates that since the start of the century, from around 2003, anti-Shia militant groups have been responsible for attacks against Shias, especially against the Hazara community in Quetta, and that Balochistan has historically suffered from violence. Incidents of attacks and violence in Pakistan peaked in around 2013. Although the applicant has not indicated when he was injured in an Ashura attack, I am prepared to accept this incident occurred. Given the applicant’s specific and consistent evidence regarding the 2013 explosion incident, which is also corroborated by the SATP information of bomb blasts [in] January 2013 on [named] Road, Quetta, which killed at least 105 and injured 169 persons, I

³ Ibid. See also SATP, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; and other country information in the review material.

accept that the applicant was nearby when the 2013 explosion incident occurred. I accept he was unharmed but that some of his friends and cousins were injured and killed, and that he took one of his cousins to a hospital in Karachi for treatment.

27. In the SHEV application, the applicant stated that in 2012 he was aware that people on motorcycles were following him and he believed it was with the aim of kidnapping or killing him. At the arrival interview, he said that about eight months previously (in around late 2012) people came to his shop three times to kill him and 'somehow' he was spared. He added that he saw them coming after him three times, he told his cousin, his cousin said they would be coming after him sooner or later but instead his cousin was the one who got killed. In a copy of a letter purportedly from the President of Balochistan Shia Conference (Regd) Quetta dated [in] November 2012, it relevantly states that due to the applicant's active participation (as an active worker/volunteer of their organisation) he "is in the target" of terrorist organizations LeJ and SSP. The letter also refers generally to the security problem of Balochistan and Quetta at the time, the losses of Shias' and their members and workers' lives in target killings and bomb attacks in the last 12 years, and remarks that it has become more dangerous for each Hazara/yousafzai/Shia. I note that in the SHEV application, the applicant referred to this letter in support of his involvement in Shia activities such as organizing processions and reciting of the poetry that accompanies the marches, but he did not say that he was personally targeted because of his involvement with this organisation. When read in context, I observe that the letter indicates that as an active participant in the organisation he is at risk of harm, but it does not refer to him otherwise being singled out. Also as noted in the delegate's decision, despite the seemingly more specific claims in his SHEV application, the applicant confirmed at the SHEV interview that the sole reason that he fears harm from the Sunni militant groups such as LeJ and SSP was because he is a Shia Muslim. He also said that Sunni militant groups do not target him, they target Shias. He has not referred again to him being followed or approached, or otherwise identified any incident of being personally targeted or threatened. I accept his clarification at the SHEV interview that he was never personally targeted by Sunni militant groups. In view of the situation in Quetta and in Pakistan at the time around 2012/2013, which was at the height of the violence, I accept that the applicant felt unsafe as a Shia, and therefore, he gave his shop to his Sunni Pashtun ex-employee. But I am not satisfied that he gave his shop away because he was individually targeted. There is no credible evidence to suggest, and I am not satisfied that [Occupation 1]s or businessmen were or are targeted in Quetta because of their profession as a [Occupation 1] or because they do businesses or are shopkeepers. On the evidence, I am not satisfied that the applicant was followed by people or that people came to his shop with the aim of harming him, or that he was personally targeted or threatened by LeJ, SSP, or any other groups or persons for reasons relating to his profession as a [Occupation 1], a businessman, involvement with the Balochistan Shia Conference organisation, or for any reason. I consider that he has never personally come to the adverse attention of the LeJ, SSP or any other groups or anyone.

28. Country information⁴ indicates that Pakistan is home to the world's second-largest Shia population. An estimated 20-40 million Shias live throughout Pakistan, constituting 10-20

⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016", CIS38A801265; DFAT, "DFAT Country Information Report for Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Country Information Report Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; DFAT, "DFAT Country Report Information Report – Pakistan", 25 January 2022, 20220125094359; PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; PIPS, "Pakistan Security Report 2021", January - June 2022, 20220201113110; PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526; EASO, "EASO Pakistan Security Situation – Country of Origin Information Report", 16 October 2018, CIS7B8394110560; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; EASO, "EASO Pakistan

percent of the population, including in Quetta and other areas in Balochistan. Sunni and Shia communities are generally well integrated. Shias are generally able to establish places of worship and practise their religion. They are well represented in parliament and regularly contest elections for mainstream political parties. Pashtuns are the second largest ethnic group in Pakistan, with an estimated 20-25 million Pashtuns in Pakistan, and some Pashtuns live in Balochistan. Pashtuns are represented at all levels of society in Pakistan. There are an estimated 600,000 to one million Hazaras in Pakistan. Most Hazaras are Shias. The Hazaras community in Quetta live in the two enclaves in Quetta - Mariabad and Hazara town. The government provides security in these communities, including checkpoints and searches on entry and exit, and provides security for Hazara religious processions and Hazarganji market. Hazaras participate in regional politics and there are two MPs from the Hazara Democratic Party in the Balochistan provisional assembly. Except Hazaras, most Pakistani Shias are not physically or linguistically distinguishable from Sunnis.

29. As noted above, the applicant asserts that he will be perceived as a Hazara even though he is not one and does not regard himself as one. I do not accept this assertion. The evidence⁵ is that Hazaras are an ethnic group. They have unique facial features that distinguish them from others, and that they are at a higher risk than other Shias due to their distinctive physical appearance and segregation. Although the applicant may be recognised as a person from Quetta, for instance, by way of his language skills (including his accent and mother tongues), and that he lives in Mariabad and his wife is a Hazara, he himself is ethnically Pashtun Yousafzay. Also, the applicant does not assert that he shares a distinctive ethnic Hazara appearance. The applicant has not faced any past harm for being perceived as a Hazara. Further, the claim that he will be perceived as a Hazara appears at odds with his own evidence that he will immediately be recognised as a Yousafzay Pashtun due to his accent and appearance and name, which could identify him as a Sunni, such that other Shias will not assist him if he were to relocate. Apart from the applicant's assertion, there is no credible evidence to support that Yousafzay (regardless of religion, links to Hazaras of Quetta and/or language skills) are perceived as Hazaras. For these reasons, and in view of the applicant's particular circumstances and the information, I am not satisfied that he will be perceived as a Hazara.
30. The security situation in Pakistan is complex, at times volatile, and varies across the country. Balochistan has historically suffered from ethno-sectarian tensions and politically motivated violence. Shias have historically been targeted by sectarian groups such as the Tehreek-e-Taliban Pakistan (TTP), LeJ and Daesh, where these groups have attacked Shia individuals, places of worship, shrines and religious school. Militants have also targeted Shias travelling through Balochistan to the Iranian border. Some Shias have faced specific and heightened risks, such as Hazaras and Turis. Hazaras have faced violence from militant groups because of their ethnic and sectarian identity.

Security Situation - Country of Origin Information Report", 4 October 2020, 20201102100212; Sophia Saifi and Saleem Mehsud, CNN, "ISIS claims responsibility for blast killing dozens at Shia mosque in Pakistan's Peshawar", 5 March 2022, 20220608124652; International Business Times (IB Times), "The Relentless War Against The Hazara Pawns In a Deadly Game Between Pakistan, Iran, Balochs And Taliban", 23 January 2014, CX318968; Arif Rafiq, Middle East Institute, "Sunni Deobandi Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", 1 December 2014, CIS2F827D91993; USDOS, "Country Report on Human Rights Practices for 2017 – Pakistan", 30 April 2018, OGD95BE927478; USDOS, "2021 Country Reports on Human Rights Practices - Pakistan", 12 April 2022, 20220413104804; SATP, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", 25 July 2022, 20220726103354; SATP, "Pakistan: Karachi (Sindh): Timeline (Terrorist Activities) – 2022", August 2022; and SATP, "Pakistan: Balochistan: Timeline (Terrorist Activities) – 2022", August 2022. See also other information provided by the applicant, and other country information in the review material.

⁵ Ibid.

31. Medical, education and other services inside the Hazara enclaves in Balochistan are basic. According to a 2019 DFAT report, Hazaras reported the security situation in Quetta had become so restrictive and the likelihood of attack so high, that they were reluctant to travel outside of or between the two enclaved areas, including for basic services, such as food, education, health care and employment. Security measures by the Hazara communities and the government, such as maintaining checkpoints and establishing walls around the two Hazara enclaves in Quetta, mitigated the risk of violence in these Hazara enclaves and led to a steady decrease in successful attacks. Hazaras are safe in the Hazara enclaves in Quetta. The 2022 DFAT report notes that Hazaras have previously been targeted in Karachi, Peshawar and elsewhere, but there have been no attacks against Hazaras outside Balochistan since 2014.⁶
32. Shias in Pakistan face a threat from anti-Shia militant groups, including LeJ and SSP, in some areas. In its 2019 report, DFAT assessed that overall, Shias in Pakistan faced a low risk of sectarian violence. In its early 2022 report, DFAT assesses that Shias in Pakistan face a moderate risk of sectarian violence although the situation has improved considerably in recent years. The term 'low risk' is defined as it is 'aware of incidents but has insufficient evidence to conclude they form a pattern', and the term 'moderate risk' is defined as it is 'aware of sufficient incidents to suggest a pattern of behaviour'. In the 2022 report, DFAT also assesses that Shias face a moderate risk of societal discrimination in the form of anti-Shia protests and community violence. However, no detail about the location, the timing, the targets, or the circumstances of violence or protests, or recent examples are referred to, to support the assessments. Despite these assessments, it is plain from the 'Comparison of terrorist attacks and fatalities in Pakistan (Jan 2013 to Aug 2021)' chart in the 2022 DFAT report that was sourced from PIPS, and other authoritative reports before me, such as the latest (2021 and 2022) versions of the PIPS and EASO reports, that there has been a visible trend of decreased reports of violence and attacks across Pakistan from 2014 to the beginning of 2021. After the Taliban seized power in Afghanistan in August 2021, terrorist attacks in Pakistan (207 incidents) did increase as compared with 2020 (146 incidents), but the numbers remained lower than 2019 (229 incidents). Consistently with this, in 2021 there was an uptick in terrorist attacks in Balochistan (81 incidents, including 24 incidents in Quetta) as compared with 2020 (42 incidents in Balochistan, including 9 in Quetta), but the 2021 figures remain roughly the same as those in 2019 (84 incidents in Balochistan, including 22 in Quetta). The emphasis is not about comparisons between the levels of violence and safety relative to an earlier point in time, but rather, the low instances of attacks in the relevant areas with respect to the target groups. The materials clearly demonstrate that there has been a change in the pattern of attacks in terms of targets in recent years, where the militants have made deliberate efforts to specifically target security forces and their installations. In both Balochistan and in Pakistan, the security forces/law enforcement agencies were the main target hits in 2020 (84 incidents in Pakistan, including 24 in Balochistan) and 2021 (137 incidents in Pakistan, including 51 in Balochistan). Out of the total 207 incidents of terrorist attacks recorded in 2021, over 66 per cent (137 incidents) targeted security personnel, vehicles and posts of security and law enforcement agencies. Civilians were hit in 16 incidents (including 10 in Balochistan) in 2021, and in 29 incidents (including 12 in Balochistan) in 2020. Shia religious scholars/community targets hit by terrorists have been very low in recent years (two incidents in Pakistan - one in Balochistan in 2021; and four incidents in Pakistan in 2020 where none were in Balochistan). The trend in the militants specifically targeting security forces, especially in Balochistan, as opposed to other targets such as the Shia community or the Hazaras ethnic group, is also reflected in the 2022 information (such as the information from the Reuters article provided by the applicant which reported attacks on Pakistan military bases in February 2022 that killed 13 insurgents and seven soldiers, and the 2022

⁶ Ibid.

SATP information), where the reported attacks in Balochistan were largely against the security forces and their installations. The 2022 SATP information does not record any specific attacks against the Shia community, or Hazaras Shias in Quetta or Balochistan in 2022. Notably, the overall incidents of violence (including terrorist attacks) across Pakistan plummeted in 2021 (326 incidents) compared with 2020 (373 incidents), and that there has been continuous decreasing trend of overall incidents of violence from 2014 to 2021. Also, the reported increase in fatalities from overall incidents of violence in 2021 as compared with 2020 was marked by an increase in the death of militants and security forces. Fatalities among civilians also decreased in 2021 as compared with 2020. Furthermore, the 2022 PIPS report states that sectarian violence has been on the wane since 2013, only two sectarian-related terrorist attacks took place in Pakistan in 2021 (one targeted a Sunni religious scholar in Karachi, and the other attack targeted an Ashura procession in Punjab), compared to seven sectarian attacks in 2020 and nine attacks in 2019. It also reports only seven incidents of communal or faith-based violence in Pakistan in 2021 (which occurred in Punjab, Khyber Pakhtunkhwa (KP) and Islamabad), compared to eight in 2020. In addition, the UK Home Office assesses that in general, Hazaras are unlikely to be at real risk of persecution or serious harm by non-state actors, overall the number and frequency of incidents relative to the size of the Hazaras population in Pakistan is low, and that each case must be considered on its own merits.⁷

33. In the IAA submission, the applicant says that the recent reports confirm that the security situation in Quetta and Balochistan generally has deteriorated from 2018, and that the 2022 PIPS report raises two concerns, first is the extent to which sectarian violence is taking place in Quetta and Balochistan and second is the statement that “insurgents will certainly draw inspirations from the changing environment in the region and will further increase and intensify attacks”. And that this means the applicant faces a real chance of religiously motivated violence in Balochistan and that this risk is only going to increase.
34. The relevant section of the 2022 PIPS report contains an analysis of the situation in the Balochistan province. It highlights that the main targets were the Pakistani security forces, and PIPS opines that “...it is still too early to establish a link of growing terrorist violence in the province to the Afghan situation”, and notes “but... some experts also underscore that the Baloch insurgents will certainly draw inspiration from the changing environment in the region and will further increase and intensify their attacks.” In my view, the statement quoted from the PIPS report itself does not establish that the applicant faces a real chance of religiously motivated violence, or that the risk is only going to increase, or that the deterioration in the security environment will necessarily lead to an escalation in attacks against the Shia community. The 2022 PIPS report, consistently with the other recent country information above, indicates that the Pakistani security forces have been the targets of the attacks in recent years. As noted above, Shia community targets hit in Balochistan and in Pakistan have remained low in recent years despite the overall uptick in terrorist attacks, and only two incidents of sectarian violence were reported in Pakistan in 2021 by PIPS, and there were no reported attacks that specifically targeted the Shia community or Hazaras in Quetta or Balochistan in 2022 by the SATP. I also do not accept the assertion that the reports confirm that the security situation in Quetta and Balochistan has deteriorated from 2018, as this is not supported by the information. The above information is that while there was an uptick of terrorist attacks in Quetta and in Pakistan in 2021 as compared with 2020, the number of terrorist attacks in 2021 was around the same as 2019, and that terrorist attacks in 2019 decreased when compared with 2018 (there has been a decreasing trend of terrorist attacks in Pakistan every year from 2014 to 2020). The question before me is whether there is a real

⁷ Ibid.

chance of the applicant facing harm in the relevant areas of Pakistan. The 'real chance' test is not a relative one, and it is not determinative whether the risk is more or less severe now than in previous years, and as mentioned above, it is not about comparisons of the level of violence and safety relative to an earlier point in time. Rather, it is an 'absolute' assessment.⁸ Although violence and threats have not been completely eliminated, (for example, as the applicant mentioned at the SHEV interview, there was an explosion in April 2019 in a market in Quetta and an attack on a Shia mosque in Quetta in May 2019, and the Reuters and VOA articles reported an incident of bomb blast in Quetta in December 2021 that killed four people and injured 15 and attacks on Pakistan military bases in February 2022, and the information is that in January 2021 ISIS-K militants attacked a coal mine in Macch, Balochistan killing 11 Hazara Shia coal miners, in June 2021 four Frontier Corps (FC) personnel were killed in an attack in Balochistan, in March 2022 Daesh claimed an attack on a Shia mosque in Pakistan's north-western city of Peshawar that killed 61 people and injured 196, in April 2021 the TTP claimed an attack in the Serena hotel in Quetta where Chinese Ambassador to Pakistan were staying that killed five people and injured 13 others, and that in August 2022 three people including a policeman were injured in a blast that occurred in Hazar Ganji area of Quetta),⁹ and that extremist and insurgent groups maintain a presence in parts of Pakistan, it is abundantly clear from the information before me that the situation in Quetta Balochistan and across Pakistan more generally, has significantly changed since the applicant left Pakistan. On the whole, there has been a pronounced and sustained decreasing trend of overall incidents of violence in Pakistan since 2014, which has continued to date. The authoritative and recent publications before me indicate that despite the incidents of reported violence in Balochistan in 2021 and 2022, the security situation and general situation in Quetta and in Pakistan has substantially improved in recent times. The early 2022 DFAT report provides some useful background information about Shias, Pashtuns and Hazaras, and a broad overview of the security situation. However, the assessments by DFAT are not supported by explanations of the bases for its assessments, or recent examples of the relevant incidents. Nor does it provide specifics, such as the timing, the nature, the frequency, the relevant targets and perpetrators of the incidents, and the circumstances in which the incidents occurred. I have placed appropriate weight on the DFAT information with these observations in mind when evaluating the country information as a whole. The overwhelming weight of the information, and in view of the analysis of the pattern of incidents in recent years, to me, indicates that the general security situation in Quetta Balochistan and across Pakistan has significantly improved.

⁸ See *CJE16 v MICMSMA* [2019] FCA 1663 at [33]-[34].

⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report for Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Country Information Report Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; DFAT, "DFAT Country Report Information Report - Pakistan", 25 January 2022, 20220125094359; PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; PIPS, "Pakistan Security Report 2021", January - June 2022, 20220201113110; PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 16 October 2018, CIS7B8394110560; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 4 October 2020, 20201102100212; Sophia Saifi and Saleem Mehsud, CNN, "ISIS claims responsibility for blast killing dozens at Shia mosque in Pakistan's Peshawar", 5 March 2022, 20220608124652; International Business Times (IB Times), "The Relentless War Against The Hazara Pawns In a Deadly Game Between Pakistan, Iran, Balochs And Taliban", 23 January 2014, CX318968; Arif Rafiq, Middle East Institute, "Sunni Deobandi Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", 1 December 2014, CIS2F827D91993; USDOS, "Country Report on Human Rights Practices for 2017 - Pakistan", 30 April 2018, OGD95BE927478; USDOS, "2021 Country Reports on Human Rights Practices - Pakistan", 12 April 2022, 20220413104804; SATP, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; UK Home Office, "Country Policy and Information Note - Pakistan: Hazaras", 25 July 2022, 20220726103354; SATP, "Pakistan: Karachi (Sindh): Timeline (Terrorist Activities) - 2022", August 2022; and SATP, "Pakistan: Balochistan: Timeline (Terrorist Activities) - 2022", August 2022. See also other information provided by the applicant, and other country information in the review material.

35. At the SHEV interview, the applicant said that when he travelled to Karachi to purchase tools, he was always trying to make sure he was safe by just going straight to the shops, making an offer, and coming back to his room and not to be visible, because there were groups, such as the Mutahidda Qaumi Movement (MQM), that were active there, and if they saw someone coming and going a lot of time, they would recognise and target them. Recent information¹⁰ indicates that MQM's influence has substantially diminished due to the Pakistani authorities' military operations. The recent evidence also does not indicate that commuters are targeted by MQM in Pakistan because of their frequent travels. The latest SATP information also recorded no attacks in Karachi that specifically targeted the Shia community or Hazaras in 2022.
36. The applicant claimed that the Pakistani government is complicit in the killings and the harassment of the Shia community. He has submitted a copy of a photo that shows a group of men. He said at the SHEV interview that he obtained this photo from the internet, the man with a red cap was the head of LeJ named Farouki, and the photo was taken in Punjab, but he did not know when it was taken. He also said that this photo shows that the head of LeJ was talking to a group of police, which indicates that the LeJ has connections and dealings with the police. In the post-interview submission, it was submitted that this photo was taken in 2016 and this illustrates the inadequate protection of Shias in Balochistan. It referred to Wikipedia information and submitted that the sole purpose of terrorists such as SSP is to cleanse Pakistan of Shia Muslims and in 2018 the government lifted ban on the SSP, unfroze its assets and removed its leader from the terrorist watch list. It also quoted extracts from the 2019 DFAT report that despite measures introduced under the National Action Plan (NAP) to curb violence, successful prosecution for politically motivated or sectarian violence is rare, and this is due in part to factors such as ineffective police investigations etc. It states that the measures introduced under the NAP were intended to be temporary, to allow time for reform of the justice system, and that significant reforms to the justice system have not yet occurred.
37. It is far from clear as to when, where and the circumstances in which the photo was taken, who these men were, and what they were doing. I consider it speculative to suggest that this photo indicates that LeJ has connections or dealings with the police, or the government is complicit in killing or harassing Shia community, or that it illustrates inadequate protection of Shias. I do not accept these assertions, and I give this photo no weight. The reliable and authoritative information before me is that the significant decline in violence and attacks in Pakistan since 2014 is due to the continuous operational and surveillance campaigns by the Pakistani security force and the police's counter terrorism departments and the counter-extremism actions taken under the NAP. While violence has not been eliminated, the Pakistani authorities have taken active measures since the introduction of the NAP to address violence, including sectarian violence and this has been reflected in the downturn in incidents over time. The Pakistani authorities also provide enhanced security for Shia religious processions and provide security such as checkpoints in the Hazara communities in Quetta. The EASO report notes that in June 2020, the Pakistani military carried out a military operation named Ground Zero Clearance Operation, which was aimed at destroying the bases of Baloch militant groups in Balochistan. The 2022 DFAT report states that there has been an increase in security operations commensurate with the recent uptick in terrorist attacks. The authorities have also taken concerted action to address terrorist financing and money laundering since 2018. Furthermore, as noted in the latest USDOS report, three days after the January 2021 incident where 11 Hazara Shia coal miners were killed in Macch (Balochistan), former Prime Minister Khan released a statement on social media against

¹⁰ Ibid.

sectarian violence, stating that the government was 'taking steps to prevent such attacks in the future' and travelled to Macch to meet with families who lost loved ones in that attack. Moreover, the July 2022 UK Home Office report notes that special measures taken by the Home Department of Balochistan for the Hazara community include deployment of 19 platoons of security personnel for the security of Hazara community living in Mariabad and Hazara town, establishment of permanent check posts and permanent police escorting of Hazara shopkeepers proceeding to markets for purchase of goods and services etc. Although there are limitations to protection and the measures to curb violence, I am not satisfied on the evidence that the Pakistani government or the authorities have connections or dealings with militant groups such as LeJ or SSP, or that they are unable to protect Shias, or are complicit in harming the Shia communities, or are pleased that Shias are 'being hounded out of Pakistan', or that there is a lack of protection for Shias.

38. The applicant submits that the IAA should accept that he will suffer at least cruel or degrading treatment because of his mental health. He says that people think that those with mental illness are crazy, mad or cursed etc., there is a lot of discrimination against people with mental health problems in Pakistan, and he believes this discrimination will prevent him from securing employment and make him the subject of ridicule, and that all of this will be particularly degrading. He also claims he would like to be able to see a psychologist and believes this is necessary, but he cannot afford to do so. As detailed above, I accept that he has experienced symptoms of PTSD, anxiety and depression in Australia, that he attended counselling sessions in 2018 to 2019, that he also attended his GP in June 2022 for treatment, and that he has been prescribed medication to help alleviate symptoms. However, I do not accept that his level of symptoms is worse now than before, or it is necessary for him to see a psychologist, or that his mental health will deteriorate upon return, or that he will require other forms of treatment, or ongoing specialist care upon return.
39. The information¹¹ indicates that basic health care in Pakistan is free and available, but limited. There is a mix of public and private hospitals, clinics, GPs and a range of spiritual and traditional healers. Mental health issues are reportedly common in Pakistan, and options for treatment are limited. There are four psychiatric hospitals, around 500 psychiatrists and 5,500 psychiatric inpatient beds in Pakistan. Many people in Pakistan with common mental health disorders go untreated, this is partly due to stigma (for instance, lack of knowledge of their mental health needs, and the communities' attitudes) and preference for traditional or spiritual treatment over western treatment. COVID-19 has reportedly worsened the mental health situation in Pakistan, particularly with the lockdowns, social distancing and isolation. A number of organizations have been working with the Pakistani government to improve the mental health situation in Pakistan, and discussions about mental health have been increasing, due to social media and internet access. The applicant has sought medical treatment in Australia. Although health care is more limited in Pakistan, the evidence does not support, and I am not satisfied that the applicant would not be able to access or obtain medication in the reasonably foreseeable future. Also, his own evidence at the SHEV interview was that his father in Mariabad has had a heart operation. For the reasons set out below, I am also satisfied that he would be able to travel in and outside of Quetta without a real chance of harm given the substantial improvement in the general security situation after he left Pakistan. I consider that he will not be prevented from getting medication, or associated health care (in or outside of Quetta) even if he needs it upon return. At the 2013

¹¹ DFAT, "DFAT Country Report Information Report – Pakistan", 25 January 2022, 20220125094359; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Global Human Rights Defence, "Research Report on Mental Illness in Pakistan"; and Salman Shaheen Amad and Stephen W. Koncsol, MDPI, "Cultural Factors Influencing Mental Health Stigma: Perceptions of Mental Illness (POMI) in Pakistani Emerging Adults, 28 April 2022.

arrival interview, the applicant said that things that happened in Quetta had affected his mental health. The 2019 treatment report and the applicant's evidence at the SHEV interview was that he was working full time in a [Occupation 1] shop in Australia for about three and a half years, notwithstanding his mental health issues. I do not accept that his mental health worsened since 2019, or that his health will deteriorate further upon return. The medical evidence does not suggest, and I do not accept the assertions that he will not be able work full time or that he is now working casual hours due to his mental health. The applicant has not faced past harm or discrimination on account of his mental health. The information¹² indicates that mental illness can be defined as a mental, behavioural, or emotional disorder that often result in the inability to cope with life's ordinary demands and routines. There are more than 200 classified forms of mental illness, and the most common are depression. According to surveys from 2015, depression (6%), schizophrenia (1.5%) and epilepsy (1-2%) are the major mental disorders in Pakistan. As with many other countries, mental health is still stigmatised in Pakistan. More than 14 million people are suffering from mild to moderate psychiatric illness, and the majority of whom are women. Mental health stigma can lead negative outcomes as it can cause discrimination, and females have been reported to be more affected than males. For instance, the information refers to a student artist and author from Karachi explaining how social stigmas affect people in Pakistan, and women more specifically, leading them to fragile mental conditions – she points out that young women often have to give up their careers and quitting their studies or practice when they get married, because “everyone wants to show off that their daughter-in-law is a doctor but no one wants to actually support the woman professionally”. This and other situations were said to contribute to a woman experiencing a feeling of failure and regret regarding her career and a sense of dependence on her husband, which could lead to depression, anxiety and more mental struggles. Because of the several myths regarding mentally ill persons, families often hide mental illness to prevent the patient from adverse stereotyping. Such beliefs are strengthened by mass media where spiritual healers exaggerate the problems in the treatment of mental disorders in live telecasts. The applicant claims that his mental health manifests as having trouble sleeping, irritable, crying a lot, having difficulty concentrating, and spending a lot of time thinking about his family. The 2019 treatment summary notes that he reported very demotivated and spent most of his time at home and trying to isolate from others to avoid any unpleasant discussion about his family and visa application, and that there was no suicidal ideation during the period of treatment. Having considered the applicant's particular circumstances and the materials, I am prepared to accept that he may face verbal ridicule and social stigma on account of his mental health, but I am not satisfied that this would be particularly degrading, nor am I satisfied that this would give rise to the level of serious harm, or cruel or degrading treatment. I am also not satisfied on the evidence that there is a real chance of him being denied employment, or otherwise harmed or discriminated by anyone due to his mental health upon return.

40. I accept that some years ago the applicant was injured in an Ashura attack in Quetta, and that in the 2013 explosion incident he was unharmed but lost some friends and cousins. However, I am not satisfied that he faces a real chance of harm based on these past incidents. Further, there has been a lengthy passage of time of some nine years since he left Pakistan in 2013, and that the situation in Pakistan has dramatically changed. For the reason given above, I do not accept that the applicant was followed, approached, threatened or that he was ever personally targeted, or came to the adverse attention of the Sunni militant groups or anyone for reasons relating to his profession, business, involvement with the Balochistan Shia Conference organisation or for any other reasons. I accept that the applicant is a Shia Pashtun Yousafzai, and that his mother tongues are Hazaragi and Farsi, he and his family are

¹² Ibid.

from Mariabad, he can communicate like a Hazara of Quetta, his wife is a Hazara Shia, and it is possible that his children may appear and sound like Hazaras. But for reasons discussed above, I do not accept that the applicant himself will be perceived as a Hazara. There is no credible evidence to suggest that the applicant faced past harm for being associated with his Hazara wife or their children, or his language skills and/or origin from Quetta. The evidence also does not indicate that his Hazara wife or children faced past harm by reason of his wife's Hazara ethnicity, their appearance, background, or association with Hazaras of Quetta. Moreover, the above recent information is that generally Hazaras are unlikely to be at risk of harm by non-state armed groups. While there was an attack in early 2021 against Hazara coal miners in Macch, there are no recorded attacks where Hazaras were targets hit by militants in Quetta or Balochistan in 2022. There are also no reports of targeted attacks on Hazaras outside Balochistan since 2014. In view of the applicant's particular circumstances, together with the information indicating the pronounced improvement in the overall general security situation in Balochistan and in Pakistan in recent years, I am not satisfied that there is a real chance of the applicant facing harm for being perceived as a Hazara, or his real or imputed association with his Hazara wife, their children, Hazaras of Quetta, or his language skills and/or his origin or background. The above information indicates that security forces and law enforcement agencies are increasingly targeted by militants in Balochistan and in Pakistan, but the applicant does not fall within this profile. Considering all the materials, the applicant's unique circumstances and the overall improvement in the general security situation in Quetta and in Pakistan more generally in recent years, and notwithstanding the recent uptick in terrorist attacks, I am not satisfied that the chance of the applicant facing harm by anyone to be any more than remote. I consider the chance of him being caught up in violence to be remote. I am not satisfied that he will face a real chance of harm while travelling on the road to and from the airport to Mariabad, or in and outside of Quetta, including through the check-posts. The applicant says that Shias never feel safe on buses when travelling between cities as their identity cards are checked to see if they are Shia. But the information¹³ is that Pakistani CNICs do not identify a cardholder's religion, and passports do not distinguish between Shias and Sunnis. I also note that the applicant's CNIC and his and his wife's and daughters' passports do not identify their Shia religion. The evidence does not indicate that frequent commuters are targeted by MQM. The weight of the information above indicates that the general security situation in Quetta Balochistan, Karachi and across Pakistan has substantially improved, and I am not satisfied that the applicant faces a real chance of harm while travelling (such as by car or by plane) in or outside of Mariabad, Quetta, Balochistan, Karachi or in Pakistan. I am also satisfied on the information that on his return, he would be able to safely enter Pakistan via an international airport, such as the Islamabad airport where he departed from, and to travel home from the airport without a real chance of harm. Also, the applicant was able to travel from Mariabad to Karachi around 10 to 20 times over the years by plane or by bus to purchase [Occupation 1] tools without problems, and he took his cousin to Karachi for hospital treatment in 2013. His evidence was that he also had the option to source tools for his shop from Karachi by ordering them and had them sent to his shop, rather than travelling to Karachi. He also said at the SHEV interview that his shop still exists and is operated by his ex-employee. He completed nine years of education in a government school on [named] Road Quetta. He ran his own [Occupation 1] shop from 1994 to 2012. He also worked in a [Occupation 1] shop in Australia. He described himself as a professional [Occupation 1] with 20 years' experience. He also completed a course in Australia and obtained a national licence to perform high risk work that is unrelated to his [Occupation 1] work. He speaks the Urdu, Pashto, Hazaragi, Dari, Farsi

¹³ DFAT, "DFAT Country Report Information Report – Pakistan", 25 January 2022, 20220125094359; and DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

and English languages, and can read and write the Hazaragi, Dari and Farsi languages. I do not accept that he will not be able to work full time or would be denied employment due to his mental health. There is no credible evidence to support, and I am not satisfied that [Occupation 1]s or businessmen are now specifically targeted in Pakistan. I consider that the applicant would be able to continue to work in the [Occupation 1] industry or operate his own shop (as he did before) despite his mental health and without a real chance of facing harm if he wishes to do so upon return. His family is living at home in Mariabad. His sister, uncles and in-laws also live in Quetta. I am not satisfied that he would be unable to find accommodation, work, access food and services, or lack family support upon return. His evidence was that there is an Imambargah about five minutes' walk from his home in Mariabad, and he travelled to Iran in 2000 for pilgrimage without problem. I consider that he would continue to be able to freely practise his Shia faith and involve in Shia activities, organisations and travel for pilgrimage in the same way upon return to Quetta, without a real chance of harm. I am not satisfied on the materials that there is a real chance of the applicant facing harm by anyone for reasons relating to his real or perceived familial links, or affiliation with, or because of, his Hazara wife or their children, their families or the Hazara community in Quetta. I am also not satisfied that he faces a real chance of harm by any anti-Shia militant groups, insurgent groups, or anyone for reasons relating to his real or perceived religion, ethnicity, origin, background, language skills, profession, political opinion, or for any other reasons.

41. Country information¹⁴ indicates that returnees who exited Pakistan on valid travel documents do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are typically processed like any other citizens returning to Pakistan. The government issues 'genuine returnees', that is, those who left Pakistan legally, with temporary documents when they arrive. People suspected of, or charged with, criminal offences in Pakistan are likely to face questioning on return. Involuntary returnees may be questioned by the authorities upon return to determine whether they left Pakistan illegally, are wanted for crimes in Pakistan or committed any offences while abroad. Citizens who departed Pakistan on valid travel document and have not committed any other crimes are 'typically released within a couple of hours'. Generally, returnees do not face mistreatment during this process. Returnees are typically able to reintegrate into Pakistan community without repercussions stemming from the migration attempt. Returnees generally do not face a significant risk of discrimination or violence as a result of them having spent time in western countries, or as a result of their attempt to migrate. The materials before me do not support, and I am not satisfied that returning asylum seekers who attempted to migrate and spent time in Australia (including Shia Pashtun Yousafzay [Occupation 1] with Hazara family members from Quetta) would be perceived as wealthy or having anti-Islam sentiment, or prosecuted, imprisoned, subjected to extortion or kidnapping, or otherwise face a real chance of harm or discrimination for these reasons.
42. The applicant left Pakistan legally using his own passport via Islamabad airport without issues. He said that he travelled from Quetta to Islamabad by plane and left the country via Islamabad on that occasion. As noted above, he also previously exited and entered Pakistan in 2000 without apparent problems. He has not committed any criminal offence in Pakistan, and there is no reason to believe he will be perceived as such. I am not satisfied on the evidence that the processing on arrival at the airport would give rise to a real chance of any harm to him. I consider that he would be able to safely and legally access Mariabad, Quetta upon return. I am not satisfied that he would face a real chance of being extorted, kidnapped,

¹⁴ Ibid.

or otherwise harmed or discriminated by anyone for being a returned failed asylum seeker who spent time in Australia.

43. I am not satisfied that there is a real chance of the applicant facing persecution for any reasons now or in the reasonably foreseeable future if he returns to Pakistan.
44. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

45. 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

46. 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

47. 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.
48. 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.
49. I have accepted above that the applicant experienced symptoms of PTSD, anxiety and depression, and that he attended counselling sessions and saw his GP for treatment in Australia, and that he has been prescribed medication. However, I have not accepted that his mental health has deteriorated since 2019, or that the medical evidence indicates that it will deteriorate on return, or that he will need to see a psychologist, or will require other forms of treatment apart from medication, or that he will require ongoing specialist care upon return. I am not satisfied that he would be unable to obtain and access medication upon return. I have not accepted that he would be prevented from working full time or securing employment due to his mental health issues.
50. I have accepted above that it is possible that the applicant may face verbal ridicule and social stigma on account of his mental health, but I have not accepted that the treatment that he may face would be particularly degrading, or would give rise to serious harm or cruel or degrading treatment. In view of the information set out above and having regard to his

particular circumstances, I am not satisfied that there is a real risk of the applicant experiencing such treatment that would give rise to a level that would meet the requisite threshold of pain, suffering or humiliation as defined in the definitions of torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment in s.5(1). I am also not satisfied that there is a real risk such treatment would involve arbitrary deprivation of life (in the relevant sense under the Migration Act), or that death penalty will be carried out.

51. With respect to the other claims, as the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons set out above, I find that the applicant does not face real risk of suffering harm if he were to return to Pakistan for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Pakistan, there is a real risk that the applicant will suffer significant harm for any reasons.

Complementary protection: conclusion

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

Decision

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

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.