



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA16/01639

Date and time of decision: 22 September 2017 18:00:00
Matthew Tubridy, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan. [In] April 2016 he lodged an application for a Safe Have Enterprise visa (SHEV). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] December 2016, and the Department of Immigration and Border Protection (the Department) referred the matter to the IAA [in] December 2016.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 20 January 2017 the applicant and his representative provided a submission to the IAA. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it. Additionally, the submission refers to a number of pieces of information sourced from country information reports which were not before the delegate and which therefore amount to new information. With regard to some of this new information, specifically that relating to a 2016 by-election, it is submitted that this information became available shortly before the date of the delegate's decision and for this reason it was not provided to the delegate. It is not, however, explained why this mean that the information could not have been provided nor is any information provided about the exact date the publication became available. New information is also provided sourced from the[various websites], and all of this information would appear to have been available prior to the date of the delegate's decision. All of this new information is country information rather than personal information. No reasons have been provided as to why this new information either could not have been provided before the date of the delegate's decision or why it should be considered credible personal information. The applicant has not satisfied me that s.473DD(b) is met with regard to any of the new information provided. Further, the applicant and his representative had already been provided with ample opportunity to provide information on all the matters in question, and had been made aware by the delegate that he would have regard to any information which was provided to him before a decision was made. I am therefore not satisfied that there are exceptional circumstances to justify considering this new information.
4. On 3 February 2017, the applicant and his representative provided a further submission to the IAA. This included an article written by[an activist]. It was submitted that this article was evidence that the applicant would, as an (imputed) Shia Hazara from Pakistan the applicant, be subjected to systematic persecution by the Pakistani government such that his Pakistan Computerised National Identity Card (CNIC) might be blocked or cancelled and as a result, he will not be able to find employment, enrol himself or his children at school and/or universities, and that his movement would become curtailed in Quetta, and that he will thus will be unable to relocate to other part of Pakistan, including Lahore and Islamabad. This is new information. Given that the article in question could not have been provided before the date of the delegate's decision I am satisfied that s.473DD(b)(i) is met and that there are exceptional circumstances for considering this information.
5. On 20 July 2017 he applicant and his representative provided a further submission to the IAA. This included a number of reports, all of which are new information. Given that the news

reports provide updated information on the developing security situation in Pakistan, and given that these reports were published after the date of the delegate's decision and therefore could not have been provided before the date of the delegate's decision, I am satisfied that s.473DD(b)(i) is met and that there are exceptional circumstances for considering this information.

Applicant's claims for protection

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

- He is a national of Pakistan, an ethnic Yousafzai and a Shia Muslim, who originates from Quetta, in Pakistan's Baluchistan Province.
- As a Shia Muslim he never felt safe as Sunni extremists were targeting Shias across Pakistan, particularly in Quetta, and particularly Shias working in a good position or working with the government. In Quetta, he started working as [an Occupation 1] at the family business at around 2008. His family's shop where he was working in was located in [Quetta] CBD. Although their business was very profitable, as a Shia person he never felt safe. Being a Shia and being a businessperson has always been a great security risk in Quetta. Shia businessmen were often targeted by Sunni extremists. He personally knew a few Shias businessmen who were targeted and killed. On October 2012, unidentified armed militants shot dead two brothers belonging to Shia community, Mohammad Ismail and Ishaq, and injured three others in a sectarian attack on Sattar Road in Quetta. This incident happened close to his family's shop. Incidents similar to this were happening almost on a daily bases.
- He was always in fear of being targeted. He was trying to avoid quiet roads, and the roads where most of the Shia target killing had occurred. He would go to the shop late in the day and was coming back home earlier than usual. This way, he managed to survive until he left Pakistan in 2013.
- He also fears that the Taliban, Lashkar Jbangvi and other Sunni extremists would persecute him because of his financial position in Pakistan, as extremists have shown an interest killing Shia businesspersons and those who are in good financial positions in Pakistan.
- In Pakistan, he was also involved in various religious activities. He was actively involved with other Shia Muslims in [Conference 1] between 2010 to 2013 to secure Shia areas during Muharram and other religious seasons. He was involved in checking on unknown people who were entering the area and making sure they did not belong to terrorist groups. Due to his active participation in Shia events in Pakistan he has always been a very good target of terrorist organisations including Sipah-e-Sahaba Pakistan (SSP) and Lashkar-e-Jhangvi (LeJ). He fears that his involvement with [Conference 1] in Quetta puts him at greater risk of being targeted by Sunni extremists.
- He fears harm from Lashkar-e Jhangvi, Sepah-e-Sahab, Jamaat-ul-Ahrar (JuA), the Taliban and other religious extremists. He fears that such other Sunni extremists would persecute him as an imputed Hazara. Although he is himself a Yousafzai, he lived in a Hazara area and had family relationships with Shia Hazaras, and extremists would regard him as a Hazara. He also fears harm from Sunni extremists because of his status as failed asylum seeker should he be returned to Pakistan. They would regard him as an infidel and as a person who had sought refuge in a Western country.

- Apart from these extremists, he also fears that other armed groups would kidnap him and harm him for ransom money, as returnees from the West are often regarded to be in a good financial position.
- He cannot relocate within Pakistan as the Taliban and other Sunni extremists would be able to identify him as a Shia and kill him. Shias have been targeted throughout Pakistan including Karachi, Rawalpindi, and other major cities. The way he prays differs from those of Sunnis, and this will make me easily identifiable target for any anti-Shia extremists, and would make him vulnerable to target killings across Pakistan. He has no home or a place to live in any other parts of Pakistan, and he has not lived in any other cities in Pakistan and he would not be able find employment or somewhere to live.
- He fears that as an (imputed) Shia Hazara from Pakistan he will be subjected to systematic persecution by the Pakistani government such that his Pakistan CNIC might be blocked or cancelled and as a result, he will not be able to find employment, enrol himself or his children at school and/or universities, and that his movement would become curtailed in Quetta, and that he will thus will be unable to relocate to other part of Pakistan, including Lahore and Islamabad.

Refugee assessment

7. 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

8. 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.
9. The applicant claims to be a national of Pakistan, and no other country, and this is not in dispute. I accept that the applicant is a national of Pakistan and no other country and I find that Pakistan is the applicant’s receiving country for the purpose of this review.
10. The applicant claims to be an ethnic Yousefzai and a Shia Muslim, who originates from Quetta, in Pakistan’s Baluchistan Province where he had worked, since approximately 2008, at his

father's family [business]. Prior to this he had been financially supported by his parents while completing fulltime study. His parents and [brothers] all remain in Quetta. In his written claims it is submitted that he never felt safe in Pakistan of attacks upon Shias and because Shia businessmen in particular were being targeted by Sunni extremists.

11. At the SHEV interview the applicant was asked where his family had originated from historically, he said Pakistan and that his family had always lived in Pakistan. Asked if he was claiming to belong to the Yousafzai ethnic group known as the Kandahari-Yousafzai (Persian speaking Shia Muslims of Pashtun appearance with historical origins in Kandahar who are considered a distinct group from the Pashtun speaking Yousafzai, who are Sunni Muslim)¹ the applicant said that the mosque that his family attended in Quetta carried the name Hussein Kandahari, and that it carried this name from the past. He said he was not aware if they were from Kandahar but their mosque said this. He estimated that of the 700,000 Shia Muslims in Quetta that some 100,000 were Kandahari-Yousafzai. He said that his family spoke Hazaragi at home and that his own Yousafzai community had had a close relationship with the Hazaras whom they lived among and inter-married with, though none of his own relatives were Hazaras. Asked about his family and their living arrangements the applicant mentioned that one of his brothers had lived for a period in Karachi but was now living in Quetta again, Asked about this, the applicant said that this brother had moved to Karachi for business reasons (and that his brother would buy [goods] in Karachi for their own store and supply to other stores in Quetta) and that his brother had taken his own wife and children there but when the security situation in Karachi became even worse than Quetta his brother had moved with his family back to Quetta. Asked about how the business functioned, the applicant said that they made [goods] and that there were others who would bring [the goods] to them from places like Karachi, Lahore and Dubai, and that they would supply this [good] to other stores. The applicant said that the [business] in Quetta had been doing well but that it was now not doing as well as before because of the worsened security situation. He said that when there is an explosion the business will be closed for two-or-three days and that they can only be open from around noon until around 5pm because if you return home at a later time there is a greater risk of being kidnapped or killed on the way.
12. The applicant was asked if there was a particular incident which made him leave Pakistan. He said there were incidents like target killings happening all the time and he did not know when this would happen to him. Later in the interview he referred to a January 2013 incident in which a bomb had exploded close to a mosque just minutes from his family home and that when he came out of their house there were lots of persons shouting and looking for family members and he decided that he could not continue living in Quetta. Asked if anything ever happened to him personally, he said that there were weird different people coming into the bazaar and their faces were covered and when he saw them he started changing the way he would approach the store, and that these persons would come opposite to the shop and that they were different from the usual commuters [and] he thought that they were related to terrorists groups, and that they were coming into the store and asking weird questions. Earlier in the interview the applicant was asked if any of his brothers had had any problems personally. The applicant said that his brothers had to close the store when someone was targeted and that they did not know when they might themselves be kidnapped. Asked why he, and no other members of his family, had departed Quetta, the applicant said that his brothers are there because they cannot go by themselves because they could not bring their families, and also this was a matter for them, while he himself felt that he would be targeted.

¹ Let Us Build Pakistan (LUBP), "Shia Genocide update: 6 non-Hazara Shias killed in Quetta on 3 June 2012", 3 June 2012, CIS961F9402624.

13. Asked about his activities with [Conference 1] he said that there were many ways he could be involved and that during the commemoration of Moharram there were individuals responsible for security and that he was one of these persons. He said that because he knew people in his locality he was one of the volunteers who could recognise by a person's face whether they were known to him and could be allowed to attend and that in the night when it was crowded they would put two volunteers with police to check people in this way. Asked if he ever experienced any problems as a consequence of this work he said that LeJ and SSP knew who was volunteering and that this could be problem for him. He said that they would know who was involved because the ceremonies were broadcast on television. He said that some of the volunteers had been killed. Asked why he volunteered if this was the case, the applicant said that they were asking for volunteers and that there was a need for individuals to do this and he was Shia and wanted to serve the Shia community. Asked how else he served the Shia community, the applicant said that he had done these volunteer jobs during Moharram and that also [in] January 2013 the Shia community had protested the government's not responding to the attacks and that he had been with protesters who sat with the bodies of the more than one hundred people who had been killed in the Alamdar Road attack which had occurred that month. The applicant also indicated that he had images of these events which had been broadcasted and published, and that he could have been identified from these images. Copies of these were provided in a subsequent submission. The applicant was asked whether, apart from his involvement in [Conference 1], he had been involved in any other way in Shia politics. He said he had not.
14. It is estimated that Quetta, the provincial capital of Balochistan, has a population of some 1.3 million and that around half of the population is Shia Muslim, with most of these persons being of the Hazara ethnicity. Yousafzai-Qandhari Shias area also a part of this community. The remainder of the population is almost entirely Sunni Muslim, largely from the Pashtun, Baluch and Punjabi ethnic groups. From 2010 attacks upon Quetta's Shia Muslim community escalated significantly and there was a spate of attacks upon its members in the form of mass casualty bombings and targeted attacks by motorcycle borne gunmen. Many of the attacks by gunmen targeted prominent figures in Quetta's Shia community such as doctors, bankers, clerics and other community leaders and also Shia members of the security forces. Relatives of prominent individuals have also been targeted and in April 2010 a banker who was also the son of the [chairman] , was killed in such an attack. When a protest was staged at the hospital where his body was taken this two became the target of a suicide bomb attack which caused a number of casualties. Many ordinary persons going about their business were also targeted in such attacks; with a number of shopkeepers and customers being killed in attacks upon small businesses. Bomb attacks targeted a range of Shia community gatherings, including religious observances and political protests. Responsibility for such attacks has typically been claimed by, or attributed to, LeJ or a similarly sectarian Deobandi styled Sunni militant group.²
15. In Pakistan, a minority within the Sunni population adhere to the Deobandi interpretation of Islam which is intolerant of the veneration of saints and shrines, while the great majority of Pakistan's Sunnis adhere to a Barelvi interpretation of Islam which venerates many of the same

² Human Rights Watch, "We are the Walking Dead": Killings of Shia Hazaras in Balochistan, Pakistan, 30 June 2014, CIS28861; Minority Support Pakistan, "The Shia Hazara of Pakistan: A Community Under Siege", 1 April 2012, CIS23474; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; South Asia Terrorism Portal (SATP), "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; Pak Institute For Peace Studies, "Pakistan Security Report 2010", 1 January 2011, CIS20862; Pak Institute for Peace Studies, "Pakistan Security Report 2013", 1 January 2014, CIS27132; Pak Institute for Peace Studies, "Pakistan Security Report: 2015", January 2016, CIS38A80121056; "Bomber blows himself up inside Quetta hospital; 11 killed", Dawn, 16 April 2010; "Eleven martyred including the son of Balochistan Shia Conference in Quetta", Shiite News.com, 16 April 201.

saints and shrines which are also venerated by Pakistan's Shia community. In November 2012 LeJ leaders publicly declared their intention to 'abolish the impure sect' of 'Shias and Hazara Shias'. In the first two months of 2013 there was an unprecedented surge in sectarian violence in Quetta which included two suicide bombings resulting in the death of over 170 Shia Hazara. Some 260 persons were killed and 493 injured in sectarian related terror attacks in Quetta over the course of the year. It is broadly reported that Hazaras in Quetta have found themselves particularly vulnerable to attacks of this kind because their distinctive facial features, and the fact that almost all Hazaras are Shia Muslims, means that they are plainly identifiable as Shias. Even so, attacks upon Quetta's Shia Muslims have not been limited to attacks upon Hazaras alone, and in June 2012 it was reported that six Yousafzai-Qandhari Shias had been killed by four masked militants on two motorcycles who opened fire upon a Quetta shop, and that these persons had been targeted as Shia Muslims notwithstanding the fact that Yousafzai-Qandharis do not have features similar to Hazaras, and looking more look like Pashtuns or Persians.³

16. The Pakistan authorities have been criticised by the Shia community, and a number of credible observers, for not moving strongly enough to curb the activities of groups like LeJ. There has been speculation that elements with Pakistan's security establishment and the government have been reluctant to do so owing to the association of LeJ, the Pakistani Taliban (Tehreek-e Taliban Pakistan or TTP), and other such groups, with other Sunni militant groups like the Afghan Taliban and Lashkar-e-Taiba (LeT) which have often served as strategic assets for the projection of Pakistan's foreign policy in Afghanistan and India. However, recent years have seen a much more aggressive response from Pakistan's security forces and in January 2016 DFAT reported that the number of sectarian attacks in Balochistan had declined in 2015 because of the successful targeting by security forces of prominent militant leaders including, for example, LeJ leaders Usman Saifullah Kurd and Malik Ishaq. Although there were ten sectarian attacks in Balochistan in 2015, resulting in 29 deaths (seven attacks specifically targeted Hazaras, resulting in 16 fatalities, while two attacks targeted Shias in Quetta, resulting in 13 deaths) this represented a significant improvement in the situation in Quetta. The Pakistan Institute for Peace Studies (PIPS) reported similar figures for 2015 and considered that there had been 11 sectarian attacks in Balochistan (34 deaths and 25 injured), of which 11 occurred in Quetta (23 deaths and 13 injured), and that this represented a 20 percent decrease from the preceding year. DFAT reported that Hazaras generally stayed within the two predominantly Hazara enclaves in Quetta, where they enjoy a greater degree of security, and credible sources told DFAT that security forces continued to escort Hazaras travelling to and from their workplaces in Quetta. DFAT assessed that there was a moderate level of sectarian violence in Balochistan but that, despite a decline in the number of sectarian attacks, Hazara Shias remained segregated and are a key target of militant groups.⁴

17. I accept that the applicant is an ethnic Yousafzai and a Shia Muslim, who originates from Quetta, in Pakistan's Baluchistan Province where he had worked, since approximately 2008, at his father's family [business]. I also accept that he has been a member of the [Conference 1] and that he has volunteered and served the Shia Muslim community by assisting with security at Moharram, and that he participated in the January 2013 demonstrations, processions, and

³ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264; Human Rights Watch, "We are the Walking Dead": Killings of Shia Hazaras in Balochistan, Pakistan, 30 June 2014, CIS28861; Minority Support Pakistan, "The Shia Hazara of Pakistan: A Community Under Siege", 1 April 2012, CIS23474; South Asia Terrorism Portal (SATP), "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; Pak Institute for Peace Studies (PIPS), "Pakistan Security Report 2013", 1 January 2014, CIS27132; LUBP, "Shia Genocide update: 6 non-Hazara Shias killed in Quetta on 3 June 2012", 3 June 2012, CIS961F9402624.

⁴ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; PISP, "Pakistan Security Report: 2015", January 2016, CIS38A80121056.

commemorations, which followed the mass casualty attacks upon the Quetta Shia Muslim community that month. The applicant has claimed that, in addition to the risk he would face as a Shia Muslim in Quetta, his past involvement in activities with [Conference 1] will make him a particular target as will his being a Shia businessman. However, and although the son of a [chairman] was killed in April 2010, the evidence does not indicate that there is a broader trend wherein members and/or volunteers [are] being specifically targeted. The applicant could not be described as a leading figure in his community and although his family members have been successful in running a profitable [business] which at one time had several employees in addition to the applicant's family members, on the evidence I am not persuaded that the applicant or his family members could be considered high profile figures. As has been discussed above, there have also been attacks upon low-profile Shia Muslim shopkeepers in Quetta, including Shia Yousafzai, but have the appearance of opportunistic attacks which have taken advantage of the fact that Shia Muslim shopkeepers, and Shia Muslim commuters and pedestrians, have been exposed to attack by way of being in a public place.

18. The applicant has provided images which show him demonstrating in January 2013 in a procession with many other people, and I accept that images of this kind have been published and broadcasted, but the evidence before me does not indicate that militant groups in Pakistan are pursuing specific low-profile individuals such as the applicant on the basis of their past participation in such activities. The applicant has provided a letter from the Quetta [official] of [Conference 1] which attests to the applicant's involvement in [Conference 1] and states that due to this he is the target of LeJ and SSP but no information is provided to indicate that the applicant has been affected by any specific events which would indicate that this is so. At the SHEV interview the applicant was asked if he had had any problems of this kind and he replied that, prior his departing Pakistan, he became fearful after seeing weird different people coming [in] with their faces covered who would come opposite to the shop, and who he thought were related to terrorists groups, and were coming into the store and asking weird questions. Although the applicant's account of these matters was very vague, I am willing to accept that these events occurred prior to his departure. However, the applicant's claim that these persons were related to terrorist groups is too speculative and I am not persuaded that that LeJ, SSP, or any other militant group has ever had an adverse interest in the applicant as an individual.
19. However, it is also the case that were the applicant to return to Quetta he would, in all likelihood, continue to volunteer to assist [Conference 1] with security in his local area, working alongside police, for events like the commemoration of Moharram. At the SHEV interview the applicant said that he felt that it was his duty to help his Shia community in this regard notwithstanding his fear that he was exposing himself to a risk of harm and I have no reason to doubt the sentiments expressed by the applicant were genuine, and that he would volunteer to do such work in Quetta again in the future. The applicant claims that he was able to do this job because of his knowledge of the inhabitants of his local area and his being able to recognise by face whether, or not, a persons was a local resident and should be allowed to pass the security cordon to join the event. Given his ability to perform this task on this basis I accept that he would be appointed to do such work again if he volunteered to so. Performing such a job would, in the event of a future attempted attack upon a Shia mourning procession in Quetta, place the applicant at much greater risk of harm than other volunteers and participants given that it has sometimes been the case that suicide bombers have detonated their devices at the security checkpoint when checkpoint personnel have prevented them from proceeding closer to the event. Further, the applicant had participated in a January 2013 demonstration against the attacks upon Quetta's Shia community and, although he does not claim to have participated in any other such events, I cannot dismiss the possibility that he may

attend some protests of this kind in the future, and such events have until recently in Quetta also been subjected to attack on a number of occasions.

20. As has been discussed above, there has been a notable decline in the number of attacks upon Shia Muslims in Quetta, and in the casualties caused by such attacks, in recent years and on the evidence before me this decline has continued throughout 2016 and 2017. Pakistan's security forces have continued to pursue members of sectarian militant groups like LeJ, affiliates of the TTP, and splinter groups like the Jamaat-ul-Ahrar (JuA) and also Islamic State. Although such groups have, in recent years, perpetrated mass casualty attacks against other targets (such as a Quetta police training centre, a Quetta hospital where lawyers and journalists had gathered, and also a Sufi Shrine in a regional area of Balochistan) recent years have not seen the kind of mass casualty bomb attacks which caused so many casualties among Quetta's Shia Muslim community in 2013. Even so, given the manner in which Quetta continues to see targeted attacks by gunmen upon the Shia Muslim community, and given the until very recently Quetta's Shia Muslims had suffered a sustained campaign of mass casualty attacks, and given the fragile nature of recent security improvements in Quetta, I am satisfied that when the applicant's circumstances in Quetta are considered cumulatively, that he would for the foreseeable future face a small but nonetheless real chance of being killed or seriously injured in Quetta for reason of his being a Shia Muslim.⁵ I am therefore satisfied that the applicant would face a real chance of serious harm in Quetta for reason of his religion.
21. However, pursuant to s.5J(1)(c), in order for the applicant to be found to have a well-founded fear of persecution, the real chance of harm must relate to all areas of Pakistan. At the SHEV interview the delegate put it to the applicant that there were Shia Muslim communities living in other urban centres such as Lahore, Islamabad and Karachi and that the current evidence indicated that attacks upon Shia Muslims in such places were rare. In response, the applicant stated that the accent with which people spoke in such places was different to his own Quetta accent, and that people would realise he was from Quetta and this would place him at risk. He said that it was not safe in these other locations and that recently a religiously celebrated singer had been kidnapped in Lahore, and that a policeman in Karachi had been targeted because he was Shia. He said that he would be easily identifiable as a Shia owing to the manner in which he prayed and that there had been an attack in Lahore on the 21 Ramadan anniversary of Imam Ali, and then it was calm again for a period of five or six months, but that attacks would start again so there was no guarantee of safety. He said that his brother tried to find safety in Karachi but that this did not work and his brother had had to return to Quetta. He said that he was a Shia from the Yousafzai ethnic group and other Shias were not like him and

⁵ "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; Hasan, A.D. "Balochistan: Caught in the Fragility Trap", Peace Brief 207, US Institute of Peace, 1 June 2016, CIS38A80121360; Zahid, F. "Pakistan's LeJ Baluchistan Operations Ready for Resurgence", Terrorism Monitor, Jamestown Foundation, Vol.14, Issue 15, 22 July 2016, CX6A26A6E7297; "Four Hazara women killed as gunmen attack bus in Quetta", Express Tribune, The (Pakistan), 04 October 2016, CX6A26A6E10127; "Footprints: Lost lives", Dawn News Group - Pakistan, 09 October 2016, CX6A26A6E10403; "Two Hazara men shot dead in Quetta", Express Tribune, The (Pakistan), 1 August 2016, CX6A26A6E7112; "Shia Hazara Siblings gunned down in Quetta", Dawn News, 5 June 2017; "Security forces kill four militants in Quetta shootout", Dunya News, 4 June 2016, CX6A26A6E5027; "Security forces kill four militants in Quetta shootout", Dunya News, 4 June 2016, CX6A26A6E5027; "Four FC personnel gunned down in Quetta", Express Tribune, The (Pakistan), 29 June 2016, CX6A26A6E5669; " Four injured as blast rocks Quetta", News International -Pakistan, 6 July 2016, CX6A26A6E5956; "Sectarian outfits on the run in Balochistan", Daily Times (Pakistan), 25 June 2016, CX6A26A6E7116; "70 dead as blast hits Quetta Civil Hospital after lawyer's killing", Dawn News Group - Pakistan, 09 August 2016, CX6A26A6E7460; "Blast in Quetta kills five", Dawn News Group - Pakistan, 25 June 2016, CX6A26A6E; "At least 17 injured as roadside bomb targets judge's police escort in Quetta", Express Tribune, The (Pakistan), 11 August 2016, CX6A26A6E7621; "62 killed in multiple blasts and firing in three Pakistan cities", livemint, 24 June 2017; "ISIL expands in Afghan-Pakistan areas, widening attacks", Al Jazeera, 2 March 2017; "Militants shoot dead four members of Shia family in southwestern Pakistan", Press TV, 19 July 2017; Baloch, S. "Tell-tale signs of IS presence in Balochistan", Express Tribune, 20 July 2017.

he would be at risk. A submission in support of the applicant's claims was provided following the SHEV interview which addressed the claims further.

22. In addition, the applicant now also claims that he may have his CNIC blocked or cancelled and as a result, he will not be able to find employment, enrol himself or his (possible future) children at school and/or universities, and that his movement would become curtailed and he would be unable to relocate to city like Lahore. In support of this claim he provided the IAA with a January 2017 article by a medical doctor and human rights activist from Quetta, in which it is claimed that there has developed a recent issue of revoking or suspending the citizenship of thousands of Hazaras, and that 45,000 CNICs have been blocked in Quetta alone over the past year. It is claimed that Hazaras, and also Pashtun and Bloch, are being identified as fake citizens if they are unable to speak Urdu fluently, and that Hazaras must now pass an oral interview in order to obtain a CNIC and that this sometimes includes questions about Pakistan's history and geography. The authorities require applicants to produce proof of citizenship from before 1979 (the Afghan civil war) to obtain or renew their CNICs. However, in reality it has become very difficult to obtain an identity card or passport if you are a Hazara despite fulfilling these requirements as there are many other unwritten requirements. Discrepancies in the details of a person's family can also lead to a CNIC being automatically blocked. It is reported that Hazara numbers in Pakistan are dwindling due to ongoing attacks from militant groups and pressure from the authorities, and that Hazara officials have been either killed or harassed in order to force them to leave their jobs, and that there are only 65,000 Hazaras left in Pakistan, and that Hazara traders and businessmen have been harassed over selling their properties at throwaway prices. It also reported that the blocking of CNICs of Hazaras and Pashtuns is linked to the deterioration of Pakistan's relations with Afghanistan, and that more and more CNICs were blocked after 2012, the year in which LeJ threatened that Hazaras must leave Pakistan.⁶
23. There have sometimes been allegations from the Hazara community in previous years that government agencies discriminated against Hazaras in issuing identification cards and passports. DFAT has observed that recent Hazara arrivals from Afghanistan are unable to legally acquire CNICs because they are not Pakistani citizens. DFAT is also aware of anecdotal reports of some Pashtun migrants in Lahore experiencing difficulties obtaining CNICs and that Lahore's Pashtun community reported harassment from local police authorities at checkpoints following the implementation of the National Action Plan to counter terrorism in December 2014, with credible sources attributing this to the fact that the TTP's support base is primarily Pashtun, and ethnic Punjabi resentment about the pecuniary success of Pashtun migrants in Lahore, and large influx of Pashtuns to the city. DFAT has also reported that the Pakistan authorities have introduced new CNIC and passport-issuing process, reducing the incidence of CNIC and passport fraud, but that it continues to be the case that genuine documents are sometimes issued under false pretences, and that the authorities have put in place measures to combat fraudulent issuance of CNICs and can cancel CNICs which are bogus.⁷ However, the claim made out by the March 2017 article that thousands of Hazaras and Pashtuns have, since 2012, had their CNICs blocked, suspended, or revoked, is not supported by wider reporting. Nor is the claim that Hazara officials have been harassed by police or any other authorities to leave their jobs and the country. The claim that there is now only 65,000 Hazaras left in Pakistan is likewise not supported by wider reporting and I have serious doubts about the credibility of the March 2017 article provided by the applicant.

⁶ Javed, S. "(Dis)carded", The Friday Times, 27 January 2017.

⁷ US Department of State, "Pakistan 2015 Human Rights Report", 13 April 2016, OGD95BE926173; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264.

24. DFAT has observed that there is generally a low level of official discrimination in Pakistan on the basis of religion. Even so, in the course of combating the fraudulent issuance of CNICs and cancelling CNICs which are bogus, it is not implausible that some ethnic groups closely associated with immigration from Afghanistan, such as Hazaras and Pashtuns, may have experienced difficulties as a consequence of discrimination manifesting itself in the form of an undue level of scrutiny. However, I give no weight to the claim of the March 2017 article that thousands of legitimate Hazara and Pashtun citizens of Pakistan have had their CNICs unjustly blocked, suspended, or revoked. Although the applicant and his family belong to an ethnic group which, like the Hazaras and Pashtuns, is closely associated with Afghanistan, the applicant can speak Urdu, has completed university studies, has parents who have always been citizens of Pakistan, and he has given no indication that he, or any members of his family in Pakistan, have ever experienced any problems in obtaining or renewing their CNICs. While the Kandahari-Yousafzai are of Pashtun appearance, and while some Pashtuns in Lahore have experienced problems on the basis of the association of Pashtuns with Sunni militant groups, the evidence does not indicate that such problems are widespread in Lahore and the possibility of the applicant's experiencing problems of this kind would be further mitigated by his being plainly a Shia Muslim. Although the applicant may also be imputed to be a Hazara on the basis of his preferred language and probable future association with the Hazara community in Lahore, and although he may also be imputed to be a Pashtun on the basis of his appearance, I am not on the evidence satisfied that there is a real chance that the applicant would, on any such basis, face a real chance of having his CNIC blocked, suspended or cancelled, or that he would be subjected to discrimination or harm of any kind by the Pakistan government or its authorities in Quetta, in Lahore or anywhere else in Pakistan.
25. The delegate went on in his decision to consider whether the applicant would face a real chance of harm in Lahore and I have done so also. Lahore is the capital of Punjab Province and is one of the world's largest cities with a population of well over 10 million. Shias in Lahore are thought to constitute 15 to 20% of the population and, although some of Lahore's Shia Muslims live in enclaves, the city's Shia and Sunni communities are reported to be generally well-integrated and according to the Shia community in Lahore up to five per cent of the city's Shia population might marry Sunnis. As will be discussed further below, sectarian militant groups have perpetrated attacks against Shia Muslim in Lahore in past years. However, reports on the state of communal relations in the city between its residents overwhelmingly emphasise the manner in which the city's Sunni and Shia inhabitants live in harmony. The city's population is predominantly ethnically Punjabi but many are migrant families with many of the city's inhabitants tracing their arrival back to the time of partition from India and have their origins in the Indian Punjab and Uttar Pradesh. Lahore is also home to a number of smaller ethnic groups with the Qizalbash featuring prominently (the Qizalbash are the leading patrons of the many mourning processions staged by the city's Shia community). There is no information regarding whether there is a Shia Yousafzai community in Lahore but the city is home to a Shia Hazara community, many of whom have recently migrated to Lahore from Quetta. The exact size of this Shia Hazara community is unclear. In March 2014 DFAT estimated that there were some 15,000 Hazaras living in Karachi with smaller communities in Lahore, Multan, Islamabad and Peshawar. In March 2014 it was reported that around 80,000 people had migrated from Quetta to Islamabad, Rawalpindi, Lahore and Karachi, while in April 2014 it was reported that the Human Rights Commission of Pakistan (HRCP) considered that nearly 30,000 members of the Hazara community had migrated in the last five years. On the evidence,⁸ and although the exact figures are not clear, Lahore is home to a small but

⁸ Rollier, P. "Shias in Pakistan a view from Lahore", Live Encounters, 1 February 2014, CX1B9ECAB11256; "Mourning in the ancient imambargahs of Lahore", Dawn News Group - Pakistan, 23 October 2015, CXBD6A0DE16058; Canadian IRB, "Pakistan: How Shia Muslims differ from Sunnis; treatment of Shias, particularly in Lahore and Multan; government

significant Shia Hazara community, many of whom many have arrived in recent years from Quetta. Anecdotal reports of the experiences of Hazara migrants from Quetta to Lahore make no reference to their being subjected to adverse discrimination when engaging with members of other Lahore communities.

26. It has been submitted that although the applicant has lived with Hazaras in Quetta and has been accepted as part of their community, the situation in Lahore may not be directly comparable to Quetta, and there is no evidence showing a Yousafzai Shia would be accepted into Shia Hazara communities in Lahore, or by Shia communities made up of other ethnic groups. I am not persuaded that there is a real chance that the applicant would be unable to find a Shia community in Lahore who would allow him to worship with their congregation, or that he would otherwise be prevented from practising his religion freely. This noted, and although the applicant has indicated that his family's [business] sourced [goods] from traders in Lahore, I accept that the applicant does not personally know anyone in Lahore who could be described as a relative or a friend or who could be expected on such a basis to provide him with active support in finding accommodation, employment or in establishing a business operation. DFAT has observed that there is a moderate level of societal discrimination in Pakistan and that this typically takes the form of nepotism;⁹ that is, in the form of favouring persons from a person's own family, tribe, or religious or ethnic group. Given that many of the Hazaras living in Lahore have come from Quetta I am not persuaded that they would treat him as an outsider or prevent him from joining their religious community. I do, however, accept that as a Yousafzai Shia with no relatives or friends or tribal connections in Lahore, the applicant would be at a disadvantage in that he would not benefit the favouritism and support that such connections bring in Pakistan society, and that he may face a real chance of experiencing some low level discrimination on this basis. However, given the manner in which Lahore is reported to be a generally well-integrated and harmonious city in terms of its various resident communities I am not, on the evidence, satisfied that the applicant would on this basis, or the basis of his being an imputed Shia Hazara or an imputed Pashtun or any other reason, face discrimination of a level that would threaten his capacity to subsist or which would otherwise amount to serious harm.
27. Lahore has, though to a much lesser degree than Quetta, seen some targeted attacks upon prominent figures in the Shia community. Between 2012 and 2014 a number of high profile figures in Lahore's Shia community were killed in targeted attacks, which in some cases also killed members of the targeted person's family. Those targeted included Shia Muslim doctors, judges, lawyers, political leaders, clerics, teachers, police officers, company CEOs and bankers. In January 2014 some commentators expressed the view that the situation for Shias in Lahore had become "extremely serious" owing to the spate of targeted killings and that Lahore had become a "new flashpoint" for sectarian violence against Shia Muslim. In April 2014 it was reported that the Pakistan police had arrested six men who had subsequently confessed to being members of LeJ and of having perpetrated over 16 of these killings. In October 2015 it was reported that a doctor, who was also a Hazara, had been killed by an unidentified gunmen in Lahore in what was the first documented terrorist attack on a Hazara in Lahore. However,

response to violence against Shia Muslims (2010-December 2013)", 9 January 2014, PAK104713.E; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264; "A tough life for the displaced Hazaras in twin cities", Dawn News Group - Pakistan, 9 March 2014, CX1B9ECAB9297; "Losing ground - 30,000 Hazaras fled Balochistan in five years", Express Tribune, The (Pakistan), 12 April 2014, CX1B9ECAB10800; "Hazara genocide 'We cannot keep the fear of our families out of our work'", Express Tribune, The (Pakistan), 10 March 2013, CX317819.

⁹ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264.

following the 2014 arrests the targeting of high-profile Shia Muslims in Lahore decreased dramatically and has subsequently proven rare, and Lahore did not see the kind of opportunistic targeting of Shia shopkeepers and commuters that has continued to occur in Quetta. As noted by the applicant, a significant attack upon Lahore's Shia community did take place on the occasion of the 21 Ramadan anniversary of Imam Ali. The incident occurred on 1 September 2010 when suicide bombers targeted a Shia procession and caused the death of 43 persons and injury to 233. LeJ claimed responsibility. As noted by the applicant also, a further attack upon Lahore's Shia community occurred some five months later, on 25 January 2011, when a suicide bomber targeted a mourning procession for Imam Hussein causing some 16 deaths and injuring 70 (UNHCR has also noted a 23 January 2012 Reuters report of a blast near a Shia religious procession in Lahore which killed three and injured five though but this is not confirmed by wider reporting). Relevantly, June 2010 saw a major attack upon Lahore's famous Data Ganj Bakhsh (Hazrat Ali Hajveri) shrine by the Punjabi Taliban, causing some 50 deaths and wounding 200 at a site revered by both Barelvi Sunni and Shia Muslims.¹⁰

28. Although recent years have seen no further mass causality attacks upon Lahore's Shia community there have been attacks of this kind upon other religious groups such as Ahmadiyya Muslims and Christians. JuA has been the principal perpetrator of such violence in Lahore and in 2015 terrorist attacks caused some 23 deaths and injuries to 106 persons, with most of these arising from the March 2015 bombing two Christian churches. On 27 March 2016, JuA perpetrated the most significant attack to have affected Lahore in recent years when it bombed a public park on Easter Sunday causing 70 deaths and wounding almost 300, and subsequently stating that Christians were the target (notwithstanding this the victims proved to be predominantly Muslims) and that the attack was a message to Prime Minister Nawaz Sharif that the JuA network had entered Lahore, and that their suicide bombers would continue attacks of this kind. Subsequent reporting observed that Lahore had been attacked because the city is a political stronghold of Prime Minister Nawaz Sharif and one of the most secure in the country, and that the militants were trying to send a strong signal that they can attack anywhere in the country, at any time, and there is nothing the government can do to stop them. Over the following days it was reported that police had arrested several persons suspected of involvement. A further attack was perpetrated by JuA in Lahore on 13 February 2017 in which 14 persons, including eight civilians and six policemen, were killed and another 85 were injured when a suicide bomber blew himself up outside the Punjab Assembly Building. Following this, on 14 February Punjab police launched a province-wide crackdown on militant outfits and on 22 February 2017 Pakistan's security forces launched Operation Raddul Fasaad (elimination of discord), a nationwide effort to eliminate terrorism. Hundreds of arrests followed and in Lahore this included the arrest of persons suspected of involvement in JuA and other Sunni militant groups. A number of suspects were also killed in clashes with security forces. In some cases, such as an operation of 19 April 2017, police claimed that the alleged militants had planned to carry out a major terrorist plan in Lahore in the near future.¹¹

¹⁰ SATP, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837; Roggio, B. "Punjabi Taliban kill 29 in attacks on religious processions in Lahore", The Long War Journal, 1 September 2010; "30 major terror attacks in Lahore since 2004", The News, 18 February 2015; "Pakistan Shia Killings: Shia Banker Martyred in Lahore in a Targeted Attack, 4 Injured", ABNA News, 13 February 2013; Canadian Immigration and Refugee Board (IRB), "Pakistan: How Shia Muslims differ from Sunnis; treatment of Shias, particularly in Lahore and Multan; government response to violence against Shia Muslims (2010-December 2013)", 9 January 2014, PAK104713.E; SATP, Six members of banned organization arrested in Lahore", Dunya News, 21 April 2014, CX1B9ECAB12398; "Murders they wrote", News on Sunday, The, 27 April 2014, CX1B9ECAB12532; "Shia Doctor Killed in Pakistan: 2002-2016", 2016; "Shia cleric Allama Nasir Abbas shot dead in Lahore", Dawn News, 16 December 2013.

¹¹ Pak Institute For Peace Studies, "Pakistan Security Report 2010", 1 January 2011, CIS20862; Pak Institute for Peace Studies, "Pakistan Security Report 2013", 1 January 2014, CIS27132; Pak Institute for Peace Studies, "Pakistan Security Report: 2015", January 2016, CIS38A80121056; "30 major terror attacks in Lahore since 2004", The News, 18 February

29. In January 2016 DFAT assessed that there was a low risk of sectarian violence for most Shias in Pakistan and a moderate threat of sectarian violence for prominent Shias such as high-profile professionals. DFAT also observed that although Shias are more prominent during Ashura processions, heightened state protection measures during these celebrations mitigate the threats associated with this greater exposure. The applicant's representative has submitted that this is contradicted by DFAT's smarttraveller update of 4 November 2016 which referred to an unpredictable security situation, including a high threat of terrorist attack, kidnapping and sectarian violence, and that terrorist attacks can occur anywhere at any time in Pakistan. I am not persuaded that these findings are contradictory given that the smarttraveller advice provides an assessment, for the benefit of Australian travellers, of the extent to which attacks may occur across Pakistan in general rather than an assessment of the extent to which such attacks pose a risk to members of Pakistan's Shia Muslim community.
30. It has also been submitted that DFAT's assessment of the situation in Lahore and Islamabad does not predict the future reliably as experience has shown that sectarian violence in Pakistan has been low some years while peaking years later. It was also submitted that the manner in which known anti-Shia groups had been able to operate and to perpetrate attacks against Shias, not just in Lahore, but in other parts of Punjab more broadly, was significant and that this, along with the JuA attack of March 2016 and JuA's claim that it would continue to perpetrate attacks in Lahore, led to a finding that that the applicant would face a real chance of harm for the foreseeable future. The applicant's representative has also submitted that reference must be had to the extent of sectarian attacks upon Shias, and the occurrence of militancy, across the whole of the province of Punjab, rather than just Lahore. It is true that militant attacks and sectarian tensions are generally higher in those parts of Punjab where madrassa and militant networks are strongest (Jhang, Multan and Rahim Yar Khan in southern Punjab, as well as Gujranwala and parts of Rawalpindi in northern Punjab) and where there are greater levels of segregation between Sunni and Shia communities. In larger cities such as Lahore, however, Sunnis and Shias are generally more integrated,¹² and for this reason the security situation has been far better, for far longer, for Shias in Lahore than has been the case in other areas of the Punjab and places like Quetta. And although anti-Shia groups like the banned Ahl-e-Sunnat Wal Jamaat (ASWJ) have recently staged public rallies in some Pakistan cities, the evidence does not indicate that such groups have a significant level of support in, or that the broadly harmonious atmosphere in Lahore is about to be adversely affected by, such events.
31. Although, as the applicant's representative has noted, there have sometimes been peaceful years followed by violent years in Pakistan, the situation in Lahore specifically has been broadly favourable for a prolonged period, and this would seem to indicate that Lahore enjoys a more permanent level of stability that other parts of Pakistan, such as Quetta, do not. On the evidence, I accept that it is possible that JuA or a similarly styled group may occasionally attempt to perpetrate future attacks in Lahore within the foreseeable future and that it is not impossible that an attempt may be made to target Shia Muslims in Lahore. However, given the large scale crackdown which followed the February 2017 attack on the Punjab Assembly, I am

2015; Bukhari, "Pakistan bomb blast: Women and children among dozens killed in Lahore park explosion", Sydney Morning Herald, 28 March 2016; "Lahore bombing: What's wrong with Pakistan?", DW News, 28 March 2016; SATP, "Pakistan Assessment 2017", February 2017; "62 killed in multiple blasts and bombing in three Pakistan cities", livemint, 24 June 2017; Kugelman, M. "Terror in Lahore: Pakistan's Toughest Test", Foreign Policy, 29 March 2016, CX6A26A6E2604; SATP, "Pakistan Timeline 2017", July 2017; "One Hazara killed in targeted attack in Lahore, Pakistan", Hazara.net, 22 October 2015, CXC28129414759; US Department of State, "Pakistan 2015 Human Rights Report", 13 April 2016, OGD95BE926173; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 1 May 2012, CIS23071.

¹² DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265.

not persuaded that there that a significant deterioration in Lahore's security is foreseeable. I consider that DFAT's January 2016 assessment of the level of risk posed to Shia Muslims remains accurate with regard to the city of Lahore, and that while prominent Shias such as high-profile professionals continue to face a moderate threat of sectarian violence, the risk for most Shia Muslims in Lahore is low.

32. As has already been discussed above, I do not accept that LeJ or any other militant group has ever had an adverse interest in the applicant as an individual. The applicant claims that he would be identifiable as a Shia Muslim in Lahore and, given that he would attend Shia places of worship and processions and mix with other Shia Muslims, I accept that like other Shia Muslims he would be identifiable as a Shia Muslim in Lahore. I accept that the applicant worked for his father's family [business] in Quetta and that this business did well and that the applicant's family were financially comfortable as a result of this. However, on the evidence I do not accept that the applicant's family could be considered high-profile figures in their community, and while even low-profile Shia businessmen have been attacked by gunmen in Quetta, in Lahore such targeted attacks have generally been restricted to high-profile figures and, in recent years, there have been very few occurrences of even these kind of attacks. I accept that upon return to Pakistan, and in establishing himself in Lahore, the applicant may continue to work as a businessman either by sourcing[goods] in Lahore for the family's Quetta business (in the same way that his brother had once done while living in Karachi) or by establishing a business of his own or by finding some other employment. However, the possibility that the applicant would become a high-profile figure within Lahore's Shia Muslim community in the foreseeable future on this or some other basis is too speculative. Given that the applicant has lived among Shia Hazaras in Quetta, and that many of Lahore's Shia Hazaras have come from Quetta, the applicant may establish himself in Lahore among the city's Shia Hazara community. Given this, and given that he would also converse with such persons in Hazaragi, and given that he would speak to others with a Quetta accent even when speaking in Urdu or English, I accept that there is a real chance that the applicant may be perceived by others to be a Shia Hazara. However, and although a Shia Hazara doctor was killed in Lahore in October 2015, the evidence does not indicate that there is trend of attacks upon Shia Hazaras in Lahore, and the argument that such a trend may develop within the foreseeable future if the size of the Hazara community in Lahore were to grow and become more noticeable, is too speculative. There is no evidence that Yousafzai Shia are being specifically targeted in Lahore.
33. Even so, I accept that the ongoing activities of groups like JuA in Lahore are such that, notwithstanding the recent crackdown upon such militant groups in Lahore and more broadly, such a group may attempt to perpetrate further occasional mass casualty attack in Lahore. I accept that it is possible that within the foreseeable future a group like JuA may attempt to perpetrate a major attack against a Shia Muslim gathering, or a Sufi shrine frequented by Barelvi Sunnis and Shias, in Lahore. I accept that the applicant may, as he had previously done in Quetta, volunteer to assist in Shia religious processions and that he may also engage in Shia demonstrations. However, the reason the applicant was able to work as a volunteer with police in the security cordon for Shia processions in Quetta was because he knew all of the residents of his neighbourhood by sight. It seems doubtful that the applicant would be able to perform such a role in Lahore where, at least for the foreseeable future, he would be a new arrival acquainting himself with the residents of his neighbourhood. Further, and even if the applicant was able to play some other volunteer role in facilitating such events, and even if he were to participate in Shia some demonstrations, the size of the Shia population of Lahore (numbering around 2 million) and the scale of its Shia processions and demonstrations, and the level of security provided by the authorities in the city would significantly mitigate against the

risk of harm he would face on such occasions.¹³ I am not satisfied that the applicant would, for the foreseeable future, face a real chance of harm of any kind for reason of his being a Shia Muslim, and/or as a Shia businessman, and/or because of his past [involvement], and/or his past and/or future involvement in volunteering to assist with Shia religious processions and demonstrations, and/or as a Yousafzai Shia Muslim, and/or as an imputed Shia Hazara. Indeed, the possibility of the applicant's suffering any kind of harm from militants or criminals in Lahore is remote, and I am not satisfied that the applicant would face a real chance of harm on any such basis.

34. The applicant also fears harm from Sunni extremists because of his status as failed asylum seeker should he be returned to Pakistan. He fears such groups would regard him as an infidel because he had sought refuge in a Western country. Apart from these extremists, he also fears that other armed groups would kidnap him and harm him for ransom money, as returnees from the West are often regarded as being in a good financial position. DFAT has observed that many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assesses that individuals are not subject to discrimination or violence on the basis of having spent time in the West.¹⁴ Wider reporting before me supports DFAT's assessment and does not indicate that the applicant would face a real chance of being targeted by such groups on this basis.¹⁵ While persons who have travelled to, and returned from, western countries may indeed be regarded as wealthy, and while like all major cities Lahore is affected by a level of crime, the evidence before me does not indicate that there is a trend wherein returnees from western countries are being targeted by either militant or criminal groups on such a basis in Lahore.¹⁶ Given this, and even allowing for manner in which the applicant would arriving in a new city where he is without connections and where his accent and appearance may mark him out as a migrant from Quetta, the possibility that he would be identified as having returned from a western country and targeted on the basis of perceived wealth, and/or because of any business activities he may engage in within Lahore is remote, and I am not satisfied that the applicant would face a real chance of harm on any such basis. Similarly, and although civilian casualties in Lahore have sometimes also been caused by occasional insurgent attacks upon government institutions, security personnel, and public spaces, the size of Lahore and the limited nature of such attacks is such that the possibility of the applicant's suffering any kind of harm from militants or criminals in Lahore is remote, and I am not satisfied that the applicant would face a real chance of harm on any such basis.
35. Lahore has its own international airport and the applicant would be able to access the city directly. I accept that as a Yousafzai Shia with no relatives or friends or tribal connections in Lahore, the applicant may face a real chance of experiencing some low level discrimination from other residents of Lahore which would not amount to serious harm. However, other than this, and considering the applicant's claims and the evidence in its totality, and the extent to which the applicant would only face a remote risk of harm in these various regards, I am not

¹³ "Main Ashura procession culminates peacefully in Lahore", Associated Press of Pakistan (APP), 12 October 2016, CX6A26A6E11788; "Lahore security plan for Ashura perfect: Home Minister Punjab", Dunya News, 02 November 2014, CX1B9ECAB12396; Rollier, P. "Shias in Pakistan a view from Lahore", Live Encounters, 1 February 2014, CX1B9ECAB11256;

¹⁴ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264.

¹⁵ US Department of State, "Pakistan 2015 Human Rights Report", 13 April 2016, OGD95BE926173; PISP, "Pakistan Security Report 2013", 1 January 2014, CIS27132; PISP, "Pakistan Security Report 2013", 1 January 2014, CIS27132; PISP, "Pakistan Security Report: 2015", January 2016, CIS38A80121056.

¹⁶ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264; US Department of State, "Pakistan 2015 Human Rights Report", 13 April 2016, OGD95BE926173; PISP, "Pakistan Security Report 2013", 1 January 2014, CIS27132; PISP, "Pakistan Security Report 2013", 1 January 2014, CIS27132; PISP, "Pakistan Security Report: 2015", January 2016, CIS38A80121056.

satisfied on the evidence before me that the applicant would face a real chance of harm of any other kind from the wider Lahore community, or from the Pakistan government and its authorities, or from Sunni extremists like LeJ, JuA, the Taliban, and Islamic State, or from other armed or criminal groups, for reason of his being a Shia Muslim, and/or as a Shia businessman, and/or because of his past [involvement], and/or his past and/or future involvement in volunteering to assist with Shia religious processions and demonstrations, and/or as a Yousafzai Shia Muslim, and/or as an imputed Shia Hazara, and or as an imputed Pashtun, and/or because of his status as failed asylum seeker, and/or as a returnee from the west where he has sought asylum, and/or as an imputed infidel, and/or as a person seen as being in a good financial position, and/or as a consequence of more generalised violence and criminality. I am therefor not satisfied that the applicant would face a real chance of serious harm in Lahore. I am therefore not satisfied that the applicant would face a real chance of persecution in all areas of the receiving country.

Refugee: conclusion

36. 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

37. 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

38. 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.

39. I am satisfied that the applicant would, if he returned to Quetta, face a real chance, and therefore a real risk, of being killed or seriously injured for reason of his being a Shia Muslim in his home area of Quetta. I am therefore satisfied that the applicant would face a real risk of significant harm in his home area of Quetta.

40. However, pursuant to s.36(2B) of the Act there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if it would be reasonable for the noncitizen to relocate to an area of the country where there would not be a real risk that the noncitizen will suffer significant harm. For the reasons already given above, I accept that in Lahore the applicant may face a real risk of experiencing some low level discrimination from other residents but I am not satisfied that there is a real risk that the applicant would face discrimination of a level that would threaten his capacity to subsist or that would otherwise arbitrarily deprive him of his

life. Nor am I satisfied that such treatment would result in pain or suffering or severe pain or suffering that would amount to cruel or inhuman treatment or punishment, or treatment that would amount to extreme humiliation, or that it would amount to torture or result in his being subject to the death penalty. I am therefore not satisfied that such harm would amount to significant harm. Other than this, and for the reasons already given above, I am not satisfied that the applicant would face a real risk of suffering harm of any other kind in Lahore. I am therefore not satisfied that that the applicant would face a real risk of significant harm in Lahore. I am, moreover, satisfied not only that the applicant would not face a real risk of significant harm in Lahore but that the evidence regarding the overall situation in Lahore with regard to security and law-and-order is such that it would be reasonable for the applicant to reside in Lahore.

41. The applicant has submitted that it would be unreasonable for him to relocate to Lahore because he speaks with a Quetta accent and a language different to that in Lahore. I accept that the applicant speaks with a Quetta accent, and that his preferred language is Hazaragi whereas the preferred language of most inhabitants of Lahore is Punjabi. However, the applicant also speaks the national language of Urdu and also some English (which he studied at both school and university) and Urdu and English both have status as official languages,¹⁷ and I am not persuaded that his accent would prevent him from effectively communicating in Lahore through either Urdu or English. The applicant has also submitted that his brother had tried to move to Karachi but that his brother had found he could not continue there and had moved back to Quetta. However, the reason the applicant gave for his brother's return to Quetta was a worsening security situation, and although Karachi did suffer a drastic deterioration in its security in the years prior to the applicant's departure from Pakistan, I am satisfied on the evidence that the applicant would not only not face a real risk of significant harm in Lahore but that the security and law-and-order situation in the city in general is such that it would be reasonable for the applicant to relocate there. That the applicant's brother was otherwise able to relocate to another of Pakistan's major cities, and find accommodation and earn a livelihood after having worked in Karachi where he was procuring [goods] from distribution to the family business and other businesses in Quetta, suggests that the applicant would be able to do similarly in Lahore given that he has indicated that Lahore is one of the places from which the family business has sourced [goods].
42. The applicant has submitted that it would be unreasonable for him to relocate to Lahore because it is an expensive city, and he has no accommodation there. He would not have a job there and it is not the case that his father could give him a job there and it would be difficult for him to find a job there. The Shia people in Lahore are not like him, and are not Yousafzai, and he does not know the location of the mosque or even if they have Moharram in Lahore. Given the fame of Lahore's Moharram celebrations and the city's many significant Shia mosques, I am not persuaded that the applicant is unaware that Moharram is celebrated in Lahore or that he genuinely believes that he would be unable to find a mosque in a city with one of the world's largest Shia Muslim communities. I also have my doubts about the applicant's claim that that his father could give him a job in Lahore. As noted above, the family business procures [goods] from Lahore and his brother once performed work of this kind for the family in Karachi. However, and even if the applicant's father was unable to assist the applicant in this regard, the applicant is an able-bodied man or working age with experience working in the [business] and with a [degree] who could seek employment of this or another kind with some other employer in Lahore. Following the SHEV interview it was submitted that the applicant's education had not been able to get him a job in his field of study and there is no evidence showing this would not be the case if he is to relocate to other parts of Pakistan. At

¹⁷ DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264.

the SHEV interview the applicant had given no indication that he had tried and failed to obtain employment in an occupation outside his family's [business]. However, and even if the applicant has made some previously unsuccessful attempts to obtain employment of this kind in Pakistan, I am not persuaded that the applicant's experience in business, and his university degree, would not be an advantage to him in seeking employment in either the private or the public sectors.

43. It has also been submitted that it would be hard for the applicant to find employment because employers would be afraid that their workplace might be at risk of being targeted by extremists if the applicant worked there. Given the absence of any campaign of targeted attacks upon Yousafzai Shias, or Shia Hazaras, or Shias from Quetta, and given the applicant's low profile, I am not persuaded that fears of this kind would be widely held amongst prospective employers in Lahore.
44. Although the minimum wage in Punjab Province is lower than that set in Balochistan ([amount of] rupees or \$[amount] per month compared to [amount] rupees or \$[amount] per month), DFAT has observed that higher wages are typically paid in Pakistan's large urban centres, and recent reporting indicates that Lahore is Pakistan's most inexpensive major city in which to live, with a lower inflation rate than even Quetta.¹⁸ I accept that for the applicant living in Lahore would, nonetheless, be more expensive than in Quetta because he would be unable to reside in his family home and would have to make his own accommodation arrangements. However, he will not face the additional expense of accommodating dependants. As has been discussed above, while I think it doubtful that the applicant would not be accepted by the Shia Hazara community which has migrated from Quetta to Lahore, and while I do not accept that the applicant would be prevented from joining a Shia Muslim congregation of worship or that he would be ostracised in some way, I do accept that as a Yousafzai Shia with no relatives or friends or tribal connections in Lahore, the applicant would be at a disadvantage in that he would not benefit from the favouritism and support that such connections bring in Pakistan society, and he may face a real risk of experiencing some low level discrimination on this basis. However, and while credible commentators like DFAT and UNHCR consider connections of this kind to be a significant advantage for persons seeking to relocate in Pakistan, and a relevant consideration on a case-by-case basis, neither commentator states that the absence of such connections makes relocation in Pakistan impracticable in all circumstances.¹⁹ Given the manner in which the applicant has the advantage of a good education and business experience in the [goods] trade, and his family's business contacts if not personal contacts in Lahore, and given that Lahore is reported to be a generally well-integrated and harmonious city in terms of its various resident communities I am, on the evidence, satisfied that the applicant would be able to find employment and accommodation in Lahore.²⁰

¹⁸ US Department of State, "Pakistan 2015 Human Rights Report", 13 April 2016, OGD95BE926173; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; "Karachi costliest, Lahore cheapest city: State Bank of Pakistan", Dawn News Group - Pakistan, 06 August 2016, CX6A26A6E8931.

¹⁹ DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 1 May 2012, CIS23071.

²⁰ Rollier, P. "Shias in Pakistan a view from Lahore", Live Encounters, 1 February 2014, CX1B9ECAB11256; "Mourning in the ancient imambargahs of Lahore", Dawn News Group - Pakistan, 23 October 2015, CXBD6A0DE16058; Canadian IRB, "Pakistan: How Shia Muslims differ from Sunnis; treatment of Shias, particularly in Lahore and Multan; government response to violence against Shia Muslims (2010-December 2013)", 9 January 2014, PAK104713.E; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264; "A tough life for the displaced Hazaras in twin cities", Dawn News Group - Pakistan, 9 March 2014, CX1B9ECAB9297; "Losing ground - 30,000 Hazaras fled Balochistan in five years", Express Tribune, The (Pakistan), 12 April

45. It has been reportedly anecdotally that moving to cities like Lahore is impossible for Quetta's poor and that, even for persons who were able to find jobs with employers like a university, surviving on their incomes has been very difficult for the families.²¹ The applicant is not poor, and he will not face the financial burden of supporting an entire family. Even so, there may be times when establishing himself in Lahore will prove difficult. I am, however, satisfied that the applicant is well positioned to overcome such difficulties. While the population of Lahore has grown in recent years due to the influx of persons displaced by insecurity in other parts of Pakistan, and while poor families fleeing such places have sometimes had no alternative but to reside in informal settlements outside of major cities like Lahore, I am satisfied that that the applicant's circumstances are such that he would be able to earn a livelihood sufficient to reside within the city itself where the kind of essential infrastructure necessary for day-to-day life would be available.²²
46. Having regard to the applicant's overall circumstances and the foreseeable livelihood and security situation in Lahore I am satisfied that it would be reasonable for the applicant to relocate to, and reside in, Lahore, an area of the country where there would not be a real risk that the applicant will suffer significant harm.
47. At the SHEV interview the applicant also submitted that he had become engaged to marry a resident of Australia and that they had become used to each other and that they could not live separately and would be married soon and that he did not want to put her at risk, and that he felt they could not live without each other. In subsequent submissions it was submitted that if the applicant was returned to Pakistan his partner would suffer mentally and emotionally. It is unfortunate that the applicant's return to Pakistan will mean that the applicant and his Australian partner will be separated, and that this will come as a disappointment to them both. However, the applicant has demonstrated in travelling to Australia without his family members that he has the resilience to establish himself in a new location without the support of family or a partner, and although separation from his partner may be difficult for him I am satisfied, on the evidence, that he will have the resilience to undertake the process of establishing himself in a new city even while managing the disappointment of being separated from his Australian partner. Although the applicant has claimed that being separated from his Australian partner will cause him some distress, this does not fall within the exhaustive definition of significant harm in s.36(2A) of the Act, in that it does not amount to being arbitrarily deprived of life; facing the death penalty; torture; cruel or inhuman treatment of punishment; or degrading treatment or punishment.

Complementary protection: conclusion

48. 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.

2014, CX1B9ECAB10800; "Hazara genocide 'We cannot keep the fear of our families out of our work'", Express Tribune, The (Pakistan), 10 March 2013, CX317819.

²¹ "A tough life for the displaced Hazaras in twin cities", Dawn News Group - Pakistan, 9 March 2014, CX1B9ECAB9297; "The Malalas of Quetta", Express Tribune, The (Pakistan), 12 July 2015, CXBD6A0DE10020.

²² US Department of State, "Pakistan 2015 Human Rights Report", 13 April 2016, OGD95BE926173.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.