



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA17/01864

Date and time of decision: 31 October 2017 17:04:00  
Matthew Tubridy, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan. [In] July 2017 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] January 2017, and the Department of Immigration and Border Protection (the Department) referred the matter to the IAA on 30 January 2017.

### 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. The applicant's representative provided a submission to the IAA on 20 February 2017. Insofar as the submission has 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 referred to some country information reports, and an IAA review decision, which were not before the delegate. None of this information amounts to personal information and the applicant has not satisfied me that s.473DD(b)(ii) is met. No reasons have been given as to why this information could not have been provided before the date of the delegate's decision, and I note that at the [November] 2016 SHEV interview it was made plain to the applicant and his representative by the delegate that he would have regard to any information which they might provide before a decision was made and that as part of the fast track process new information could only be considered in exceptional circumstances. Much of this new information was published before the date of the delegate's decision [in] January 2017 and, with regard to this information, the applicant has not satisfied me that s.473DD(b)(i) is met. Further, the new country information referred to (and the country information relied upon in the IAA decision) is not significantly different from the range of information that was already before the delegate. I am therefore, additionally, not satisfied that there are exceptional circumstances for considering this information. However, some of the new information referred to was published after the date of the delegate's decision and I am satisfied that this information could not have been provided before the date of the delegate's decision. Given this, and given that this new information provides information on the developing security situation in Pakistan which post-dates the delegate's decision, I am satisfied that s.473DD(b) is met and that there are also exceptional circumstances to justify considering this information.
4. Additionally, it was submitted that there was nowhere in Pakistan the applicant could reasonably relocate to owing to the fact that in [2019] his Pakistan computerized national identity card (CNIC) will expire, and that owning a current CNIC is imperative for subsistence in Pakistan, and that renewing a CNIC in regions other than the applicant's birthplace was impossible despite the availability of the new electronic lodgement system. As evidence of this, the 20 February 2017 submission referred the IAA to an AAT decision of 3 February 2016. Although a copy of the applicant's Pakistan CNIC, with an expiry date [in] 2019, was before the delegate, the applicant's claim that despite the availability of the new electronic lodgement system he would be unable to renew this document without returning to his area of birth, is new information. The AAT decision which the applicant has referred the IAA to in order to support this claim is also new information. No reasons have been provided as to why the new information in question either could not have been provided before the date of the delegate's decision or why it should be considered credible personal information which was not

previously known and which, had it been known, may have affected the consideration of the applicant's claims. The AAT decision is not about the applicant personally and the applicant has not satisfied me that s.473DD(b)(ii) is met with regard to this new information. The question of whether it would be reasonable for the applicant to relocate to Islamabad was squarely raised at the SHEV interview and given this, and given that the AAT decision was published well before the date of the delegate's decision, the applicant has not satisfied me that s.474DD(b)(i) is met with regard to either the AAT decision or his claim that despite the availability of the new electronic lodgement system he would be unable to renew this document without returning to his area of birth. Further, given that the applicant expressed no concerns of this kind to the delegate before the date of the delegate's decision, I have my doubts about whether the applicant genuinely holds the view that he would have to return to Quetta in order to renew his CNIC and, given this, the applicant has not satisfied me that he really does hold a fear of this kind. As he has not satisfied me that this new claim is credible personal information he has not satisfied me that s.473DD(b)(ii) is met. For the same reasons, and given that the applicant's CNIC will not require renewal until [2019], [before] which electronic CNIC renewal procedures and the conditions in the place of the applicant's birth may change considerably, I am not satisfied that there are exceptional circumstances to justify considering any of this new information.

5. I have also obtained new information on the situation in Pakistan for Shia Hazaras and for Shia Muslims more broadly.<sup>1</sup> Given that this new information post-dates the delegate's decision and addresses the developing security situation in Pakistan I am satisfied that there are exceptional circumstances to justify considering this information.

#### **Applicant's claims for protection**

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6. The applicant's claims can be summarised as follows:
  - He is a national of Pakistan, an ethnic Hazara and a Shia Muslim who originates from Quetta in the Pakistan Province of Baluchistan. The applicant claims that on [date] the [workplace] of his family's Quetta [business] was destroyed by a bomb attack for which he suspects Lashkar-e Jhangvi (LeJ) was responsible. [The] applicant and his family were not at the workplace at the time and were not injured. He became so fearful after this attack that he decided to depart Pakistan for Australia and he travelled to [Country 1] to earn money for this purpose.
  - The applicant fears that as a Shia Hazara he will face discrimination throughout all of Pakistan and there is no safety for him anywhere, and if he moves to another area of Pakistan he can easily be identified as a Shia because of his appearance, language and his name, and it will be easy for his persecutors to target him. Anti-Shia extremist groups exist in all the major cities of Pakistan. In the major cities like Islamabad and Lahore powerful extremist groups such as the Tehrik-e Taliban Pakistan (TTP; the Pakistani Taliban) and Sipah-e-Sahaba Pakistan (SSP, or Ahle Sunnat Wal Jamaat ASWJ) exist and they loathe and target Shia Muslims.
  - The applicant fears being seriously harmed and/or killed by Sunni extremist groups, particularly the Taliban, Tehreek-e Taliban Pakistan (TTP, the Pakistan Taliban), LeJ, and SSP/ASWJ, for reason of being an ethnic Hazara, a Shia Muslim who is perceived as contravening fundamental principles of Islam (as these groups accuse Shia Muslims of being infidels); his actual and imputed political opinion as an opponent of Sunni

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515;

extremist groups, particularly the Taliban, the TTP, LeJ, SSP/ASWJ, Jamaat-ul-Ahrar (JuA) and Islamic State who will impute to him to be their opponent on account of his being a Hazara, a Shia Muslim, a returnee from a western country and a failed asylum seeker.

## **Refugee assessment**

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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, an ethnic Hazara and a Shia Muslim who originates from Quetta in the Pakistan Province of Baluchistan. These claims are not in dispute and I accept that the applicant is a national of Pakistan and I find that Pakistan is the applicant’s receiving country for the purpose of this review.
10. There is no official data on the size of different religious groups in Pakistan, but Muslims are widely thought to make up around 95 per cent of the population, of which approximately 75 to 80 per cent are Sunni Muslims while approximately 15 to 20 per cent are Shia Muslims. Sufism (a more mystical interpretation of Islam that involves saint and shrine devotion) is widespread. Of the Sunni Muslim population, around 60 per cent adhere to the Barelvi school of thought; and many Barelvi Sunnis and Shia Muslims in Pakistan venerate Sufi saints and shrines. Some 35 per cent of Pakistan’s Sunni Muslim population adhere to a more orthodox and conservative interpretation of Islam known as the Deobandi school, and a smaller number of Sunnis (around five per cent) follow the Ahl-e-Hadith (Salafi) school. The majority of violent Sunni sectarian militant groups in Pakistan follow, or claim to follow, a form of Deobandi or Salafi Islam, including groups such as the TTP and LeJ. These groups view as heretical the manner in which Shia Muslims and many Barelvi Muslims practice their faith, and Shia and also

Sufi places of worship frequented by Shia Muslims and Barelvi Sunni Muslims have been common targets for sectarian attacks perpetrated by such groups.<sup>2</sup>

11. In Quetta, a city of over a million persons where the Shia Muslim population is overwhelmingly of the Hazara ethnicity who make up around half the population, there has been a sustained campaign of anti-Shia violence for well over a decade. In addition to attacks on places of worship and religious festivals these attacks have also taken the form of targeted attacks by gunmen upon Shia Hazara pedestrians and commuters going about their day-to-day business in Quetta. The distinct appearance of the Hazara ethnic group, who are almost entirely of the Shia Muslim sect, has enabled sectarian militant groups to opportunistically stage attacks of this kind. Attacks upon Shia Muslims in Quetta (most of which involved the targeting of Shia Hazaras) escalated rapidly in 2010 and reached a peak in 2013. The worst of this violence occurred in the first half of 2013 and included several mass casualty bomb attacks upon areas of Quetta frequented by Shia Hazaras. A series of bombings in January 2013 targeted Hazaras in Quetta and claimed more than 90 lives, and on 17 February 2013 at least 86 people, mostly Hazaras, were killed when a bomb exploded in a Quetta vegetable market. At the end of that year it was estimated that there had been some 240 sectarian violence fatalities in Balochistan over the course of 2013.<sup>3</sup>
12. The applicant claims that on [date] the [workplace] of his family's Quetta [business] was destroyed by a bomb attack. [The] applicant and his family were not at the workplace at the time and were not injured. In a submission to the delegate it was emphasised that the applicant felt that he was a "marked man" by the Taliban and in one of the statements in the applicant's SHEV application's written claims he refers to the [attack] as a targeted attack upon the family [workplace]. However, the written claims otherwise refer to the incident as having been an attempt to target [specified location], with the applicant explaining that the attackers detonated their bomb when they could not make it to the [targeted location]. The applicant described the situation similarly at his SHEV interview, relating that the victims of the attack were Shia Muslims who were in the vicinity of the [targeted location]. Independent reporting on this incident likewise refers to the attack as a [bomb blast] which killed [a number of] Shia persons and injured [a number of] [others] in Quetta.<sup>4</sup> I accept that the applicant's family's [workplace] was destroyed in this attack and that, as per independent reporting and the greater part of the applicant's own evidence, it was a nearby [specified location] and [Shia Muslims] which were the intended targets of the attack. However, the evidence does not indicate that the attack intentionally and specifically targeted the applicant's family's [workplace] or the applicant or his family as individuals, and I do not accept that the applicant is a marked man or that he is of any specific adverse interest to a militant group like LeJ or the Taliban as an individual.
13. As has been noted above, casualties from sectarian attacks upon Shia Hazaras in Quetta reached their peak in 2013 as did casualties among Pakistan's Shia Muslim communities across Pakistan in that year. However, the number of civilian casualties from all types of violence, including sectarian violence, has fallen since the introduction of the government's 20-point National Action Plan (NAP) and Operation Zarb-e-Azb, a major offensive against terrorist groups across the country launched by Pakistan's security forces in June 2014. The operation

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<sup>2</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; Rafiq, A. "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007, Middle East Institute", December 2014, CIS2F827D91993; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264.

<sup>3</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; Rafiq, A. "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007, Middle East Institute", December 2014, CIS2F827D91993; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264.

<sup>4</sup> South Asia Terrorism Portal SATP, "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539.

reportedly resulted in the death of 3,500 suspected terrorists during its first two years. Fatalities from sectarian violence fell by 20 per cent in 2016, following a 28 per cent drop in 2015 and a 32 per cent drop in 2014. Further to this, in 2016 Shia Muslims made up fewer than 15 per cent of those killed in sectarian violence. The two biggest attacks of the year—an attack targeting Christians in Lahore on Easter Sunday and an attack on a Sufi Shrine in Balochistan—did not target Shia Muslims. DFAT assesses that Shia Muslims do not tend to face a higher risk of violence because of their sectarian affiliation, with the exception of the visually distinct and geographically segregated Hazara Shia who face a somewhat higher risk.<sup>5</sup>

14. DFAT has observed that the fact that Hazaras in Pakistan tend to live in isolated communities reduces the opportunities for attacks by sectarian militants. The high levels of security maintained by Hazara communities and the improvement in the general security situation in Pakistan means that successful attacks against Hazaras have been rare in recent years. Even so, recent years have seen continued occasional attacks upon Shia Hazaras in Quetta. On 1 August 2016, TTP-affiliated Jamaat-ul-Ahrar (JuA) militants in Quetta shot dead two men from the Hazara community. On 4 October 2016, gunmen attacked a bus in Quetta, killing at least four Hazara women. On 5 June 2017, suspected militants in Quetta shot dead two Hazaras. In each of these cases, the victims were reportedly targeted because their Hazara ethnicity indicated their Shia Muslim religion. DFAT assesses that Hazaras face a moderate risk of sectarian violence in Pakistan because of their religious beliefs. DFAT assesses that Hazaras face a higher risk than other Shia Muslims due to their distinct appearance. Despite a significant decrease in the number of violent attacks against Hazaras, they remain segregated and are key targets for sectarian militants. DFAT assesses that Hazaras face a moderate risk of sectarian violence in Pakistan because of their religious beliefs.<sup>6</sup>
15. Notwithstanding the recent improvements in security for Shia Hazaras in Quetta and even though I do not accept that the applicant is of any specific adverse interest to a sectarian militant group like LeJ or the Taliban as an individual, Quetta has only recently seen an improvement in what had previously been an escalating campaign of sectarian violence over the preceding years in which even low profile Shia Hazaras were targeted by way of mass casualty bombings and opportunistic attacks by gunmen upon Shia Hazara pedestrians and commuters going about their day-to-day business. Given this, I accept that if the applicant were to return to reside in Quetta he may, for the foreseeable future, face a small but nonetheless real chance of being killed or seriously injured as a consequence of a sectarian attack for reason of his being a Shia Hazara. I am therefore satisfied that the applicant would face a real chance of serious harm in Quetta for reason of his religion and race.
16. 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 it was put to the applicant that Islamabad might be a place where the applicant could reside safely given that there had been no attacks upon Shia Muslims in the area of the capital since some violence which had occurred in neighbouring Rawalpindi in 2015. The applicant responded that not just Islamabad and Rawalpindi but all over Pakistan was unsafe for him because he was easily identifiable as a Hazara. It was put to the applicant that available reporting indicated that there had been Hazaras living Islamabad for some time but that there had been no attacks upon these persons in recent years. The applicant responded that it may be that these Hazaras were highly educated and had family and friends supporting them but that he would not have support of this kind, and that Quetta had been safer for him because

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<sup>5</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515.

<sup>6</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515.

he had a big Hazara community and the support which came from this. Neither would other Shias from different ethnic communities be willing to provide support of this kind.

17. In subsequent submissions it is highlighted that for the year 2015 the Pak Institute for Peace Studies (PIPS) had catalogued a combined number of seven sectarian-related terrorist attacks in Punjab and Islamabad which killed 14 people and injured 24, and that four of these attacks targeted Shia Muslims, with five being concentrated in the twin cities of Rawalpindi-Islamabad. It is also argued that Islamabad and Rawalpindi are neighbouring cities which are essentially only separated by parklands and that any escalation on one region will adversely affect the other. It is also submitted that a significant increase in terrorist attacks was reported in the federal capital during 2014 with 14 reported terrorist attacks, as opposed to 4 in the previous year and that these attacks killed 44 people and wounded 212 others. It was also submitted that the various sectarian and terrorist attacks which have occurred across the surrounding regions of the Punjab Province underlined the extent to which the applicant would not be safe in Islamabad. It was further submitted that the Pakistan government is suspected of having a hand in assisting the Taliban and that the threat of the Taliban and militants will continue to grow in the future. In a submission to the IAA it was submitted that the commitment of militant sectarian groups to undertaking sectarian attacks across the country had recently been illustrated by a 17 February 2017 Islamic State perpetrated attack upon devotees at the Sufi Shrine in Sehwan, in the Sindh Province, and also a 14 February 2017 JuA perpetrated bomb attack in Lahore which caused casualties among a crowd of chemists and pharmaceutical manufacturers protesting outside the Punjab provincial assembly.<sup>7</sup>
18. Islamabad, the capital of Pakistan, has a population of some two million people and is a special Federal Capital Territory (FCT) surrounded by the Punjab Province. Both Islamabad and its neighbouring city of Rawalpindi (a part of the Punjab Province) are home to large Shia Muslim communities which are generally well integrated with the Sunni Muslim population, although some Shia Muslims in these cities do live in enclaves. Islamabad is home to mixed ethnic as well as mixed religious communities and it has a relatively high population of internal migrants. In March 2014 Dawn News reported that some 100,000 Hazaras had fled Quetta and that of these persons some 80,000 Hazaras had reportedly moved to the Rawalpindi-Islamabad area, Karachi, or Lahore. That same month, DFAT reported that although no reliable information was available on the size of particular communities, there were estimated to be some 15,000 Hazaras living in Karachi with smaller communities in Lahore, Multan, Islamabad and Peshawar.<sup>8</sup> On the evidence there is a small but nonetheless significant Shia Hazara community living in Islamabad most of whom have relocated to the capital from Quetta following the 2013 highpoint of sectarian violence in Balochistan.
19. In addition to being a generally harmonious and well integrated city, Islamabad is also one of the most well protected cities in Pakistan. Sectarian violence has proven extremely rare in the capital in the recent decade and, when attempted mass casualty sectarian attacks have occurred, they have produced few or no casualties and have seen a rapid response from security personnel as was the case with the August 2013 Bahra Kahu attack and the February 2015 Qasr-e-Saqina mosque attack in the Shakrial area connecting Islamabad to Rawalpindi. The most significant sectarian attack to have occurred in Islamabad in recent memory which

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<sup>7</sup> Pak Institute for Peace Studies PIPS, "PIPS 2015 Pakistan Security Report ", 5 January 2016, CIS38A80121056; PIPS, "2014 Pakistan Security Report", 1 January 2015, CISEC96CF1254; BBC News, 'Pakistan 'kills 100 militants' after Sufi shrine attack', 17 February 2017; Boone, J. "Lahore blast: several killed as suicide bomb hits Pakistan rally", The Guardian, 14 February 2017.

<sup>8</sup> Rafiq, A. "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007, Middle East Institute", December 2014, CIS2F827D91993; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264.

resulted in a large number of casualties took place over a decade ago in May 2005 when the bombing of the Bari Imam shrine of the Shia sect in the diplomatic enclave caused some 25 deaths and injured around 100 others. Islamabad has seen occasional targeted attacks by suicide bombers or gunmen against leading figures in the Islamabad Shia community such as politicians, clerics and high profile professionals, or who have been involved in security matters or other sensitive positions, but not to the significant degree that has been the case in some other parts of Pakistan, and Islamabad has not seen a trend of the kind of opportunistic targeting of everyday low profile Shia Muslims that has occurred in Quetta (a 2014 report refers to a claim by a Turi tribesman that Turi Shia Muslims were being targeted in Islamabad and elsewhere on the basis of a TTP 'hit list' but such a claim is not substantiated by wider reporting). Neither has there been a trend of attacks upon Shia Hazaras. According to the CRSS, no deaths from sectarian violence occurred in Islamabad in 2016. In January 2016 DFAT reported that some Shia Muslim migrants in Islamabad had reportedly received unspecified threats from sectarian elements, but the evidence before me does not indicate that this has proven an ongoing matter. Further, and although Islamabad has seen some attacks by militant groups, including groups like LeJ, upon court offices and government and security institutions, and its Marriot hotel, such attacks have also been rare and have generally produced few civilian casualties when they have occurred.<sup>9</sup>

20. Notwithstanding the overall decline in sectarian violence in recent years, and as has been noted by the applicant's representative, some significant sectarian attacks upon Shia Muslims and other minority groups have continued to occur in areas of the Punjab Province. These have largely occurred in Punjab's underdeveloped southern districts although some attacks have also occurred in Lahore and Rawalpindi. There have been credible reports that militant sleeper cells remain in many of Pakistan's urban centres. Deobandi institutions like the Lal Masjid (Red Mosque) remain a feature of Islamabad itself. However, and notwithstanding some minor fluctuations, sectarian violence and broader forms of terrorist attack have remained rare events in Islamabad over the recent decade and have produced few casualties. At the SHEV interview the applicant said that in Islamabad he would be unable to safely go to the bazaar and move around but the evidence does not indicate that the situation in Islamabad is such that he would have to restrict his movements in such a manner in order to avoid the a real chance of being harmed.
21. Given the manner in which sectarian attacks in Islamabad have remained rare events over such a prolonged period of time, even at times when neighbouring Rawalpindi and surrounding areas of the Punjab have been affected by outbreaks of sectarian violence, I am not persuaded the security situation in Islamabad will deteriorate significantly within the foreseeable future. The applicant has submitted that owing to his being an ethnic Hazara he would be immediately identifiable as a Shia Muslim in a way that Shia Muslims belonging to other ethnic groups are

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<sup>9</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; Boone, J. "Lahore blast: several killed as suicide bomb hits Pakistan rally", The Guardian, 14 February 2017; BBC News, "Pakistan 'kills 100 militants' after Sufi shrine attack", 17 February 2017; "Deadly attack hits Shia mosque in Islamabad", Aljazeera, 19 February 2015, CXBD6A0DE2281; Mir, A, 'Killing of Usman Kurd a major blow to LeJ', The News International, 17 February 2015, CXBD6A0DE10840; South Asia Terrorism Portal SATP, "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539; South Asia Terrorism Portal SATP, "Incidents and Statements involving TTP: 2016", 1 January 2017, CISED50AD46; PIPS, "PIPS 2015 Pakistan Security Report", 5 January 2016, CIS38A80121056; PIPS, "Pakistan Security Report 2016", 1 January 2017, CISED50AD38; International Crisis Group (ICG), "Pakistan's Jihadist Heartland: Southern Punjab", 30 May 2016, CIS38A80121044; Center for Research and Security Studies (CRSS), "Security Report: April - June 2016", 28 July 2016, CIS38A80121410; CRSS, "Security Report: July-September 2016", 28 October 2016, CIS38A80122494; "Gunmen kill local US Embassy employee in Islamabad: police", Dawn News, 26 July 2015, CXBD6A0DE10711; Centre for International and Strategic Analysis (SISA), "Madrasa Education in Pakistan: Controversies, Challenges and Prospects", SISA Report no. 3 - 2013, 01 March 2013, CIS29139.

not. I accept that the applicant would be immediately identifiable as a Shia Muslim in this way owing to his being an ethnic Hazara. As has been noted above, DFAT assesses that Shia Muslims do not tend to face a higher risk of violence because of their sectarian affiliation, with the exception of the visually distinct and geographically segregated Hazara Shia who face a somewhat higher risk. DFAT assesses that Hazaras face a moderate risk of sectarian violence in Pakistan because of their religious beliefs. However, with specific regard to Islamabad there is no evidence of a trend of attacks upon Shia Hazaras and it is plain that, in the capital, low profile Shia Hazaras face a very low risk of sectarian violence. The applicant has submitted that it may be that the Shia Hazaras who reside in Islamabad are highly educated and can rely on each other for security in a way that he could not because he does not know these persons and they would not provide him with protection as was the case in the Shia enclave in which he resided in Quetta. However, the available evidence indicates that Islamabad sees very little sectarian violence because it is a harmonious and well integrated city with strong state security measures. Even if the applicant were to live in Islamabad apart from the capital's other Shia Hazaras I am not persuaded that there is a real chance that this would expose him to a real chance of being harmed for reason of his Hazara appearance and his being Shia Hazara.

22. The Pakistan authorities have been criticised by the Shia community and also a number of credible observers for not having moved earlier, and more effectively, to curb the activities of groups like LeJ. There has been speculation that elements with Pakistan's security establishment and the government had been reluctant to confront such groups owing to the association of LeJ, the 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 towards combatting groups which perpetrate terrorist attacks in Pakistan, including sectarian attacks, and although the approach of the Pakistan security forces has sometimes been criticised (notably the manner in which it has killed hundreds of suspected militants in recent years) the evidence does not suggest that that this aggressive posture to combatting such groups will change within the foreseeable future.<sup>10</sup>
23. Neither does the evidence indicate that there is a real chance that the applicant would, in Islamabad, face a real chance of experiencing harm of any other kind. DFAT assesses that Hazaras in Pakistan face low-level societal discrimination on a day-to-day basis, in part because they tend to live in isolated communities or enclaves. Islamabad, however, and as has been discussed above, is known for having well-integrated multi-ethnic Sunni Muslim and Shia Muslim populations. DFAT has observed that some typically low-level anti-Shia discrimination does occur in Pakistan and there are perceptions of discrimination against Shia Muslims at higher levels of some organisations. However, DFAT also reports that there is no credible evidence of systemic discrimination against Shia Muslims gaining admission to the public service, police, military or the private sector. In remote areas and poorer cities, such as Quetta, employment opportunities are often limited regardless of ethnic or sectarian identity. However, Islamabad is the nation's capital and Shia Muslim internal migrants have told DFAT that cities like Islamabad provide greater access to employment, education and health care services. Overall, DFAT assesses that Shia Muslims generally do not face significant levels of discrimination when seeking employment based on their religious affiliation. DFAT is aware of

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<sup>10</sup> "Militants not dangerous to Pakistan should not be targeted: Sartaj", Dawn, 18 November 2014; "Deadly attack hits Shia mosque in Islamabad", Aljazeera, 19 February 2015, CXBD6A0DE2281; Mir, A, 'Killing of Usman Kurd a major blow to LeJ', The News International, 17 February 2015, CXBD6A0DE10840; Rafiq, A. "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007, Middle East Institute", December 2014, CIS2F827D91993; ICG, "Pakistan's Jihadist Heartland: Southern Punjab", 30 May 2016, CIS38A80121044; BBC News, 'Pakistan 'kills 100 militants' after Sufi shrine attack', 17 February 2017.

some news reports claiming that Pakistani Hazaras are having their CNICs systematically cancelled, effectively removing their rights to citizenship and residency in Pakistan. DFAT is not aware of any credible evidence to support these claims. This noted, DFAT understands that some low-level societal discrimination against Hazaras does occur. Credible sources have told DFAT that public servants could cause delays for Hazaras applying for official documentation such as CNICs. DFAT assesses that such actions represent individual societal prejudice, rather than systematic discrimination against Hazaras. At the SHEV interview the applicant gave no indication that he had ever had problems of this kind when his personal experience of applying for, and obtaining, his CNIC was discussed, and DFAT's reporting, along with the reporting of other credible commentators, does not indicate that such instances of discrimination are widespread.<sup>11</sup>

24. Overall, DFAT assesses that societal discrimination in Pakistan tends to manifest in the form of positive discrimination (nepotism, patronage, etc.) in favour of one's own family, tribal or social group.<sup>12</sup> The applicant claims to have no relatives, or connections of any other kind, in Islamabad and, given this, he may face a real chance of experiencing some low level discrimination arising from nepotism, even within his own Shia Hazara community, such as being disadvantaged in the employment market by way of preference being given to an employer's relative. However, the evidence before me does not indicate that problems of this kind are so significant and pervasive that the applicant would, on this basis, face a real chance of being denied a livelihood or that such discrimination would threaten his capacity to subsist or would otherwise amount to serious harm.
25. It has also been submitted that the Taliban will consider the applicant to be an infidel and a supporter of western society as he has resided in Australia for many years and hence, is considered to have an alliance with the west. It has been submitted that applicant faces a similar scenario to polio vaccination workers who have been targeted by the Taliban, referring to a report published by the International Crisis Group (ICG). However, while the ICG report does refer to Taliban attacks upon polio vaccination workers being driven by a variety of motives, including community suspicions that the program is a western ploy to sterilise Muslim children or a front for gathering intelligence, the report does not suggest that persons who have resided in, and returned from or sought and/or failed to obtain asylum in, western countries face a similar scenario to the persons involved in polio vaccination programs. DFAT reports that the attacks upon workers in the polio vaccination program are the most prominent example of how human rights organisations face risks of violence from militant groups when their activities threaten the militants' interests or ideologies. Such motives may have also played a role in a July 2015 incident in which a Shia Muslim working for the US Drug Enforcement Administration was shot dead in Islamabad. However, the evidence does not indicate that risks of this kind extend to any Pakistani citizen who has returned from living in a western country, or who has applied for and/or failed to obtain asylum in such a country, or that the applicant would face a real chance of harm of any kind on such a basis in Islamabad. Western influence is pervasive in many parts of Pakistan, particularly in large urban centres. 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 returnees to Pakistan do not face a significant risk of societal violence or discrimination as a

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<sup>11</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265.

<sup>12</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265.

result of their attempt to migrate, or because of having lived in a western country.<sup>13</sup> While I accept that the applicant is opposed to Sunni extremist groups like the Taliban, the TTP and LeJ, the applicant is a low profile figure who is not involved, and who has expressed no interest in being involved in, the kind of organised political activity or human rights work that would raise the risk of his being targeted by a to Sunni extremist groups like the Taliban, the TTP, LeJ, SSP/ASWJ, JuA and Islamic State, for reason of his political opinion.

26. Islamabad has an international airport which would allow the applicant to access the capital directly upon his return to Pakistan. As noted above, I accept that as a person without family connections in Islamabad the applicant would face a real chance of experiencing some low level discrimination arising from nepotism but I am not satisfied that the applicant would face a real chance of serious harm on this basis. Further, on the evidence, and given the remoteness of the applicant's suffering harm of any other kind in Islamabad, including for reason of his being a Shia Hazara and/or his being personally opposed (actual or imputed) to Sunni extremist groups and/or his being associated with the west by way of having returned from Australia, a western country, where he has resided for several years and where he has applied for, and failed to obtain, asylum and/or as a consequence of more generalised violence arising from terrorist attacks and/or criminality, I am not satisfied that the applicant would, even when such risks are considered cumulatively, face a real chance of harm of any kind from Sunni extremist groups or any other actor in Islamabad. I am therefore not satisfied that the applicant would face a real chance of serious harm in Islamabad. I am therefore not satisfied that the applicant would face a real chance of serious harm in all areas of Pakistan.

#### **Refugee: conclusion**

27. 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**

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28. 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**

29. 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.

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<sup>13</sup> ICG, "Winning the War on Polio in Pakistan", 23 October 2015, CISEC96CF13861DFAT; "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265; "Gunmen kill local US Embassy employee in Islamabad: police", Dawn News, 26 July 2015, CXBD6A0DE10711.

30. For the reasons given above, I am satisfied that that the applicant would face a real chance of being killed or seriously injured in Quetta. I am therefore satisfied that the applicant would face a real risk of being killed or seriously injured in Quetta. I am therefore satisfied that the applicant would face a real risk of significant harm in Quetta.
31. 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 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. For the reasons already given above, I accept that as a person without family connections in Islamabad the applicant would face a real risk of experiencing some low level discrimination arising from nepotism, 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 Islamabad. I am therefore not satisfied that that the applicant would face a real risk of significant harm in Islamabad. I am, moreover, satisfied not only that the applicant would not face a real risk of significant harm in Islamabad but that the evidence regarding the overall situation in Islamabad with regard to security and law-and-order is such that it would be reasonable, in terms of his overall safety and security, for the applicant to relocate to Islamabad.
32. The applicant claims that he would be unable to find employment and accommodation in Islamabad because he has no relatives or friends in the capital. It has also been submitted that the applicant as a semi-skilled labourer who does not have any relatives or family in other parts of Pakistan and will face significant hardship in establishing himself and would be unable to relocate to any other part of Pakistan because he is not a highly educated or skilled person who would be able to find a job in modern city of Islamabad, and that his inability to speak fluent Urdu without an accent also increases his inability to relocate to other areas of Pakistan.
33. Islamabad is functioning city which will provide the applicant with access to all the infrastructure and services necessary for subsistence. Islamabad has a population of around two million people, including a large number of internal migrants from all parts of the country. Article 15 of Pakistan's constitution guarantees the right to freedom of movement in Pakistan. The country's last census in 1998 showed the high level of internal migration; almost three million people lived in a different province to the one in which they had been born, and nearly 11 million lived in a different district. DFAT understands that large-scale internal movements have continued since the census in 1998, and as has been noted above the city is home to a mixed ethnic and religious communities and a relatively high number of internal migrants including a large Shia Muslim community and a small but significant community of Shia Hazaras. DFAT has observed that Shias relocate with relative ease and frequency because of family and communal networks throughout Pakistan.<sup>14</sup> The applicant claims, and I accept, that he does not have any networks of this kind in Islamabad. Even so, and although as has been noted above societal discrimination in Pakistan tends to manifest in the form of positive discrimination (nepotism, patronage, etc.) in favour of one's own family, tribal or social group, it is not reported that the situation is such that a person would be unable to find employment without the benefit of such nepotism or patronage, or that relocation without the aid of

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<sup>14</sup> DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265.

relatives is prohibitively difficult. Further, and as has been noted above, DFAT assesses that there is no credible evidence of systemic discrimination against Shia Muslims gaining admission to the public service, police, military or the private sector. In contrast to economically depressed locations like Quetta, cities like Islamabad offer greater access to employment. There are a range of accommodation options in Islamabad and while some accommodation may be more expensive in a city like Islamabad these expenses are offset to some extent by the higher wages paid in large urban centres.<sup>15</sup> The applicant has submitted that many of the Shia Hazaras who have migrated from Quetta to Islamabad may be highly educated persons and, given the manner in which the capital attracts such persons and given the greater expense of living in the capital, many of the Shia Hazaras who have migrated to Islamabad may be highly educated professionals. However, given the range of accommodation options in Islamabad I am satisfied that relocation to the capital is also practical for persons who earn a living in [professions] such as the applicant has.

34. The applicant has claimed that he would be unable to relocate because he would be unable and unwilling to move around in Islamabad owing to fear of being targeted as a Shia Hazara. However, and while I accept that the bomb which destroyed the applicant's family's [workplace] when he was not there in [year] raised his fear of harm, it was also the case that the applicant remained able to travel from Quetta to [Country 1] and back again on [number] occasions following this for the purpose of undertake work abroad and [other purposes], notwithstanding the fact that during this period Shia Hazaras making this journey were occasionally being targeted en route by groups like LeJ.<sup>16</sup> Given the favourable security situation in Islamabad I am not persuaded that the applicant would be affected by a subjective fear of harm to the extent that he would restrict his movements or be unable to go about his business in a normal way within the capital. The applicant is a [age] year old able bodied man who is unmarried and without any dependents. In Australia the applicant has worked as [occupation], and when living in Pakistan he worked [for] his family business and he travelled to [Country 1] to be employed [having] had this employment there arranged for him by friends. It is true that the only employment he has found without assistance from family or friends is the employment he has obtained in Australia and that in Pakistan networks of patronage and nepotism play a greater role in finding employment than in Australia. Even so, and as has been noted above, the evidence does not indicate that the absence of such networks would prevent a person from obtaining employment in Pakistan and the significance of the applicant's demonstrating the capacity to find employment for himself in an entirely different country to his own remains significant evidence of his capacity to establish himself in a new location. The applicant has practical skills in [his profession] and I am satisfied that the applicant would be able to find employment in this, or some other kind, in Islamabad sufficient to pay for his accommodation and other livelihood needs.
35. Having regard to the applicant's overall circumstances and the foreseeable livelihood and security situation in Islamabad I am satisfied that it would be reasonable for the applicant to relocate to, and reside in, Islamabad, an area of the country where there would not be a real risk that the applicant will suffer significant harm.

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<sup>15</sup> DFAT, "DFAT Country Information Report: Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report: Pakistan", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report: Shias in Pakistan", 15 January 2016, CIS38A801265.

<sup>16</sup> South Asia Terrorism Portal SATP, "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### **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.