



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA17/01944

Date and time of decision: 6 December 2017 22:51:00
Alison Nesbitt, 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 August 2016, he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. [In] February 2017, a delegate of the Minister for Immigration and Border Protection refused the application.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 7 March 2017, the applicant's representative provided a submission to the IAA. The applicant's representative also provided a copy of a document purporting to have been issued by the Pakistani National Database & Registration Authority (NADRA) in relation to the applicant's father's computerised national identity card (CNIC), said to be evidence that the applicant's father's CNIC has been blocked as he is considered an alien, as well as copies of two the applicant's father's CNIC cards, with translations into English. The more recent card appears to have been valid for the period [2001] to [2006]. The older card appears to have been issued [in] 1988, no expiry date is recorded on the card.
5. The submission contains argument addressing the delegate's decision as well as new information in the form of:
 - The new claims that although the applicant's Pakistani computerised national identity card (CNIC) was validly issued, he is not a Pakistani citizen because there is conclusive evidence that his father's CNIC has been blocked and his father is considered an alien. Because the applicant is not a Pakistani citizen, he will be unable to relocate to any other part of Pakistan as he will not be able to enter. The Pakistani government is likely to attempt to repatriate the applicant and his family to Afghanistan.
 - References to two news articles (published in 2015) and one editorial (published in 2016) from Pakistani news websites about the 'blocking' of computerised national identity cards (CNICs) where individuals are suspected not to be citizens of Pakistan.¹
 - A reference to a report published by the European Union Democracy Observatory on Pakistani Citizenship Law in December 2016.
 - A reference to a Human Rights Watch report regarding the forced return of Afghan refugees by the Pakistani Government.² The applicant's representative indicates that this report was published on 13 February 2017, after the delegate's decision of [February] 2017 and asks the IAA to consider this information.

¹ "100,000 Pakistanis lose nationality for being 'suspect aliens'", Dawn News Group - Pakistan, 29 May 2015, CXBD6A0DE7355; "Nadra blocks 40,000 CNICs of suspected foreigners in Quetta", Dawn News Group - Pakistan, 11 February 2015, CXBD6A0DE7130; "No Leave To Remain", The Nation, 12 August 2016.

² Human Rights Watch, "Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees", 1 February 2017, CISED50AD247.

- A reference to a statement extracted from Amnesty International's 2016-17 report on the state of human rights in various countries, published 23 February 2017.³
6. The copy of the document purporting to be from NADRA related to status of the applicant's father's CNIC is new information. The document appears to be a record of the verification of the status of the applicant's father's CNIC conducted [in] February 2017, apparently online. The document indicates that the applicant's father is 'marked in suspect category: Person is Alien confirmed'. I am satisfied that the document was not and could not have been provided to the delegate before he made his decision.
 7. Before the delegate, the applicant stated that his father's CNIC had been blocked since 2009 on the basis that he was said to be an Afghan refugee. It is not clear why a verification of the status of the applicant's father's CNIC could not have been undertaken, and a record of it provided, at an earlier point. The applicant has not provided any explanation, other than indicating that he arranged to have the status of his father's CNIC card checked after receiving the delegate's negative decision. The timing of the provision of this evidence leads me to doubt its authenticity. In all the circumstances, I am not satisfied that exceptional circumstances exist to justify the consideration of this information.
 8. As mentioned, the submission includes the related new claims that the applicant is not a Pakistani citizen because his father's CNIC has been blocked and his father is considered an alien; the applicant will be unable to relocate to any other part of Pakistan as he is not a citizen and will not be able to enter; and the Pakistani government is likely to attempt to repatriate the applicant and his family to Afghanistan.
 9. Other than referring to the receipt of the purported NADRA document discussed, the applicant did not provide any explanation as to why these claims could not have been made at an earlier point. As discussed, he indicated to the delegate that his father's CNIC has been blocked since 2009. The applicant has not satisfied me that these new claims are information that was not and could not have been provided to the delegate before he made his decision. Neither has he satisfied me that that this information is credible personal information. Having regard to all of the circumstances, I am not satisfied that exceptional circumstances exist to justify the consideration of this information.
 10. As discussed, the applicant's representative also provided copies of two national identity cards belonging to his father, issued in 1988 and 2001, with translations of these documents into English. The relevance of these documents to the applicant's claims is unclear. The applicant has not provided any explanation of their relevance or explained why they could not have been provided earlier. The applicant has not satisfied me that these cards are information that was not and could not have been provided to the delegate before he made his decision or that they are credible personal information that was not previously known and, had it been known, may have affected the consideration of the applicant's claims. Having regard to all the circumstances, I am not satisfied that exceptional circumstances exist to justify the consideration of this information.
 11. The applicant's representative provided two news articles and an editorial relating to the 'blocking' of many thousands of Pakistani CNICs on the basis that the holders were suspected not to be citizens of Pakistan. All of these items pre-date the delegate's decision. The applicant did not explain why these items could not have been provided at an earlier point. The applicant has not satisfied me that this information was not and could not have been provided

³ Amnesty International, "Amnesty International, "Amnesty International Report 2016-2017", NG2A465F54 ".

to the delegate before he made his decision. Having regard to the general content of the information, neither am I satisfied that this information is credible personal information that was not previously known and, had it been known, may have affected the consideration of the applicant's claims. As discussed, during the SHEV interview the applicant claimed that his father's CNIC had been blocked since 2009. The applicant's representative provided a comprehensive submission to the delegate following the SHEV interview containing a range of country information. The submission did not contain any country information related to the blocking of CNIC cards by NADRA. In all of the circumstances, I am not satisfied that there are exceptional circumstances to justify the consideration of this information.

12. The applicant's representative refers in his submission to a report by the European Union Democracy Observatory on Pakistani Citizenship Law, published in December 2016.⁴ This report is said to be cited as evidence that children born of Afghan refugees in Pakistan do not become Pakistani citizens despite the fact the Pakistani Citizenship Act 1951 provides that people born in Pakistan after the commencement of the Act are Pakistani citizens.
13. The applicant's representative did not explain why this information could not have been provided at an earlier point or why it may be regarded as credible personal information. The applicant has not satisfied me that this information was not and could not have been provided to the delegate before he made his decision or that it is credible personal information that was not previously known and, had it been known, may have affected the consideration of the applicant's claims. I note that there is other information before me indicating that children born in Pakistan to Afghan refugees are not granted Pakistani citizenship.⁵ Having considered all of the circumstances, I am not satisfied that there are exceptional circumstances to justify the consideration of this information.
14. The submission also refers to a Human Rights Watch report regarding the forced return of Afghan refugees by the Pakistani Government, published on 13 February 2017,⁶ after the delegate's decision of [February] 2017. I am satisfied that this is new information that was not and could not have been provided to the delegate before he made his decision. The report is said to be based on interviews conducted with 115 refugee returnees in Afghanistan, Afghan refugees in Pakistan and undocumented Afghans in Pakistan. It addresses in particular the forced repatriation to Afghanistan of unregistered Afghan refugees and undocumented Afghans in Pakistan. I consider this information has limited relevance to the situation of the applicant, the holder of a current Pakistani CNIC. There is other information before indicating that large numbers of Afghan refugees have been repatriated from Pakistan to Afghanistan.⁷ Considering all of the circumstances, I am not satisfied that there are exceptional circumstances to justify the consideration of this information.
15. The applicant's representative included in the submission a statement extracted from Amnesty International's 2016-17 report on the state of human rights in various countries published on 23 February 2017. The applicant's representative indicates that this report was published after the delegate's decision of [February] 2017 and asks the IAA to consider this information. The excerpted statement indicates that religious minorities in Pakistan face ongoing discrimination

⁴ European University Institute, "REPORT ON CITIZENSHIP LAW:PAKISTAN", Country Report 2016/13, 1 December 2016, CIS38A80125116.

⁵ Immigration and Refugee Board of Canada (IRBC), "Whether an individual can be a citizen of both Pakistan and Afghanistan, particularly in the case of a person who was born in Pakistan to parents who are Afghan citizens (2005)", 28 February 2005, CX214618.

⁶ Human Rights Watch, "Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees", 01 February 2017, CISED50AD247.

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

from state and non-state actors, and that Hazaras are among religious minorities facing restricted access to employment, health care, education and other basic services.⁸ This statement appears to have been cited as evidence in support of the applicant's representative's submission that 'given the discrimination that exists against Hazaras, it is highly probable that the unemployment rate for Hazaras in Lahore is much higher than 6.0 per cent, and probably closer to the unofficial rate of 15 per cent'.

16. The information cited is not specific as to the location or degree of the issues said to affect Hazaras. I am not satisfied that it establishes the fact advanced by the applicant's representative. I note also that there is other information before me regarding the treatment of Shias, including Hazaras, in Pakistan, including in relation to accessing employment.⁹ While I am satisfied that the excerpted statement is information that was not and could not have been provided to the delegate before he made his decision, I am not satisfied that exceptional circumstances exist to justify its consideration.

Applicant's claims for protection

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

- He is a Hazara Shia Muslim. He lived in [a] Hazara community in Quetta in Balochistan province all his life. His family still lives there.
- His parents were born in Afghanistan but moved to Pakistan when they were very small. They obtained Pakistani citizenship before his birth.
- He [worked] at [in] Quetta.
- There is a lot of violence towards Hazaras in Quetta and there are regular reports of Hazaras being targeted and killed.
- Many Hazara shopkeepers in Quetta received written threats, mainly from extremist Sunni group Lashkar-e-Jhangvi (LeJ), over the course of several years. These letters contained words to the effect that Hazaras had no right to run their business or live in the city and should leave or be killed. A man who operated a shop near his own [workplace] received one of these letters and closed his business as a result.
- Neither he nor any member of his family was threatened or harmed in Quetta, but he was nearby when several fatal attacks on Hazaras in Quetta perpetrated by LeJ occurred. One such incident was the shooting of a [worker] at [a location near his workplace]. On another occasion, in 2012, [a number of] Hazaras [travelling] were [shot] while he was nearby. [In] 2013, there were [bombings] at a [location]. [The applicant was in the area] shortly before the bombs exploded. LeJ were responsible for all of these attacks.
- [In] 2014 his [relatives] were killed in [an attack]. LeJ claimed responsibility for this attack.
- He fears he will be killed by one of the militant groups who target Hazaras, including LeJ and Sipah-e-Sahaba (SSP). He is readily identifiable as a Shia Hazara due to his appearance, his name, his dress, the language he speaks, and his manner of praying.
- His life would be in danger if he returned to Pakistan because he has lived in a western country for several years. He would be identified as a person who has lived in a western

⁸ Amnesty International, "Amnesty International, "Amnesty International Report 2016-2017", NG2A465F54.

⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

country because his accent has changed and due to the clothes he wears. People will think he has become an infidel and that he has adopted western values.

- The authorities in Pakistan may send him to prison because he paid a smuggler to get an exit permit to leave Pakistan and because he has sought asylum in Australia.
- He is unable to relocate to another area of Pakistan because the danger to him extends throughout the country. Shia Muslims are killed all over the country.
- He does not have any family outside Quetta.
- His father's national identity card (CNIC) has not been renewed because the Pakistani authorities consider his father to be an Afghan refugee. He may face difficulties because of this when he seeks to renew his CNIC, which expires in [2021]. His own citizenship and that of his siblings is uncertain.

Refugee assessment

18. 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

19. 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.

20. The applicant appeared to provide his original national identity card and a school certificate in support of his claimed identity during the SHEV interview conducted [in] November 2016. He provided copies of a number of other documents, including his Pakistani passport, which he claims was given to a smuggler who arranged his travel en route to Australia. The applicant provided spontaneous and credible oral evidence in relation to his Shia Hazara identity and life in Quetta during the SHEV interview. He relied on a Hazaragi interpreter during the entry and SHEV interviews. I accept that the applicant is a Shia Muslim of Hazara ethnicity who was born in Pakistan as claimed. I accept his claims relating to his education and employment in Quetta.

21. The applicant first mentioned that his father's CNIC had been blocked after a short break shortly before the end of the SHEV interview. He said at that point that his father's CNIC had been blocked since 2009 on the basis that he was said to be an Afghan refugee. He said this could create problems for him and his siblings in future, when they sought to renew their own CNICs. He said their citizenship was unclear.
22. The applicant did not claim that his father's CNIC had been blocked, mention that his father was perceived to be an Afghan refugee, or refer to any concerns related to these matters, in the entry interview conducted shortly after his arrival in Australia, or in his SHEV application. He claimed that he and his parents were citizens of Pakistan in the entry interview and in his SHEV application. He said that he was not a citizen of any other country and did not advance any claims in relation to any other country. At an earlier point in the SHEV interview, the applicant indicated that his parents were both citizens of Pakistan. He said they came from Afghanistan when they were very young and became citizens before his birth, but he did not know precisely when this occurred. He did not assert that their citizenship was improperly obtained. He indicated that his mother's father previously owned a property in Quetta and all of his mother's siblings reside in Quetta. He advised that his father had no siblings and was an orphan.
23. The applicant's representative provided a submission to the delegate following the SHEV interview which did not refer to the claimed blocking of the applicant's father's CNIC by NADRA or to any concerns related to the applicant's own citizenship or CNIC. He has not provided, or sought to provide, any documentary evidence to suggest that his own CNIC has been blocked or that there are any issues with the status of his siblings' CNICs. He has not provided any evidence in relation to any problems experienced by his siblings as a result of the status of their CNICs, or their father's CNIC, other than the suggestion that they may face future difficulties renewing their CNICs.
24. Having regard to the variation in the applicant's evidence regarding his father's status in Pakistan, the timing of the claim that his father's CNIC had been blocked and that this raised issues in relation to his own CNIC and citizenship, the lack of any documentary evidence in relation to the status of the applicant's own CNIC, or any evidence to suggest that the applicant's siblings have experienced any difficulties related to the status of their CNICs or that of their father, I am not satisfied that the applicant's father's CNIC has been blocked. I find that the applicant is a citizen of Pakistan. I find that he has no right to enter or reside in another country.
25. The applicant indicated that although neither he nor any member of his family had been threatened or harmed in Quetta, he has been close to, or witnessed, fatal attacks on Hazaras in Quetta. He claimed also that Hazara shop owners [had] received threatening letters warning them to leave or be killed. Some aspects of the applicant's evidence in relation to these events have varied over time.
26. In the entry interview, when asked whether anything in particular had happened to him to make him want to leave Pakistan, the applicant referred to two incidents, a bomb [in] 2013, which he said narrowly avoided and which killed a friend of his, and the shooting of a Hazara [business owner], which he said he witnessed. He said he did not know who 'was killing us', but indicated that their aim was to kill Shia Muslims. He did not refer to any threats or to any other incidents.
27. In his SHEV application, the applicant referred to these incidents, as well as to written threats he said had been sent to Hazara shopkeepers over the course of several years, the shooting of

a Hazara [worker] in [a location near to the applicant's workplace], and the killing of several Hazara shopkeepers in separate attacks on one, unspecified, day. He claimed that all of the attacks were perpetrated by LeJ, and that LeJ was also mainly responsible for sending the threatening letters.

28. In his SHEV application, the applicant indicated that he was close to the site of the shooting of [a number of] Hazaras who were [travelling]. He said he went to the site of the shooting just after it had occurred. In the SHEV interview, he also appeared to indicate that he was nearby. He said he saw two masked men escaping. This evidence is inconsistent with his evidence in his entry interview that he saw [one of the men] 'get shot in front of' him. The applicant also referred during the SHEV interview to an incident in which [a number of] Hazara people were [shot] near [his workplace while he was nearby]. It is not clear whether this is the same incident referred to in his SHEV application, in which he said that he found out [that] a Hazara [worker] had been shot.
29. The variation in the applicant's evidence about these events leads to me to question his proximity to them, and to doubt whether his friend was killed in [a] 2013 bombing, or [nearby business owners] received any written threats. Nevertheless, country information before me indicates that numerous attacks on Hazaras in Quetta occurred in 2012 and 2013, including the shooting of a Hazara [business man] in Quetta in [2012] and [a particular bombing in] 2013.¹⁰ Country information before me indicates that LeJ is the main perpetrator of anti-Shia violence.¹¹ LeJ is reported to have claimed responsibility for a large number of attacks upon the Shia community, including Hazaras in Quetta.¹²
30. The applicant claimed that his [relatives] were killed by a bomb [in] 2014 while [undertaking a particular activity]. There is information before me confirming that LeJ claimed responsibility for an attack on [individuals undertaking that particular activity in] 2014.¹³ On the limited evidence before me, I am willing to accept that the applicant's [relatives] were killed as claimed.
31. While I consider it likely that the applicant exaggerated the extent of his connection to the events discussed, other than the death of his [relatives], I accept that the Hazara community in Balochistan, and particularly in Quetta, was targeted in numerous attacks, including by LeJ, in the relevant period. However, I do not consider that the applicant was of any specific interest to the LeJ, SSP, or any other anti-Shia group, other than as a Shia Hazara, at the time he left Pakistan.
32. Following the commencement of the major counter-terrorism military operation 'Zarb-e-Azb' in June 2014, the level of generalised and sectarian violence throughout Pakistan has been reported to have substantially reduced.¹⁴ The Center for Research and Security Studies (CRSS) reported that there were 77 per cent less targeted killings and 57 per cent less terrorist attacks in the first six months of 2015 than in the corresponding period in 2014. CRSS and others attribute this decline to operation Zarb-e-Azb, as well as the 20-point 'National Action Plan' on counter-terrorism.¹⁵

¹⁰ [Source deleted].

¹¹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

¹² Ibid.

¹³ [Source deleted].

¹⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

¹⁵ Ibid.

33. The Department of Foreign Affairs and Trade (DFAT) referred to reports from credible sources that sectarian attacks in Balochistan declined in 2015 as a result of the successful targeting of prominent militant leaders by security forces.¹⁶ However, despite the reports of recent reductions in the number of attacks on Hazaras and Shias in Quetta, and the general reports of a reduction in sectarian attacks on Shia Pakistanis as a result of operation Zarb-e-Azb and the 'National Action Plan' on counter-terrorism, DFAT assesses that there remains a moderate level of sectarian violence in Balochistan and reports that Hazara Shias continue to be a key target of militant groups.¹⁷ DFAT also assesses that there is a moderate level of generalised violence in Balochistan. Having regard to the information before me, I am satisfied that the applicant faces a real chance of death or serious injury as a result of sectarian attacks in Balochistan. I am satisfied that there is a real chance of serious harm to the applicant as a Shia Hazara in Balochistan.
34. 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. DFAT reports that sectarian violence occurs in parts of all Pakistan, however the type and intensity of sectarian violence varies between and within provinces. Notwithstanding this variation, the downward trend of violence since 2013, particularly following the commencement of operation Zarb-e-Azb in 2014, has been reported to be evident across all provinces.¹⁸
35. According to DFAT, levels of generalised and sectarian violence are lower in Punjab province than other parts of Pakistan. In 2014, 18 sectarian attacks were reported across Punjab province and in the Islamabad Capital Territory, resulting in 21 deaths. According to the South Asia Terrorism Portal (SATP), a total of 16 Shias died in three attacks across Punjab and the Islamabad Capital Territory in 2015.¹⁹
36. Shia Pakistanis are reported to be dispersed throughout Punjab, including in the capital Lahore.²⁰ Within Punjab province, militant attacks and sectarian tensions are reported to be generally higher in those parts of the province where madrassa and militant networks are strongest and levels of segregation between Shia and Sunni communities are greater. These areas are reported to broadly include Jhang, Multan and Rahim Yar Khan in southern Punjab, as well as Gujranwala and parts of Rawalpindi in northern Punjab. In larger cities such as Lahore, Sunnis and Shias are reported to be generally more integrated.²¹
37. Lahore's population of almost 10 million people is predominantly ethnically Punjabi, although its demographics are reported to be changing, particularly as a result of the influx of a large number of Pashtun immigrants since the 1980's.²² Large Shia communities are also reported to exist in Lahore. According to SATP data, the two most recent mass-casualty attacks on Shia Muslims in Lahore occurred in 2010 and 2011.²³ In the following years, targeted attacks killed three high profile Shias in Lahore in 2012 and 2013. No Shia deaths as a result of sectarian violence were reported in Lahore in 2014, 2015 or in 2016 to 28 August 2016.²⁴

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² DFAT, "Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

²³ SATP, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837.

²⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265; SATP, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837.

38. DFAT reports that 'high-profile' Shias, including doctors, lawyers, teachers, and political and religious leaders, have been targeted in fatal attacks by Sunni extremist groups.²⁵ The applicant does not share these profiles. I have found that he was not of any specific interest to LeJ, SSP, or any other anti-Shia group, other than as a Shia Hazara, at the time he left Pakistan. The applicant is a [occupation] who now works [in another role] in Australia. He has received approximately 11 or 12 years of education. His evidence regarding his family's circumstances does not suggest they are wealthy. There is nothing about the applicant's individual characteristics or circumstances, other than his Hazara ethnicity and Shia faith, to suggest that he would be of any particular adverse interest to anti-Shia groups on his return to Pakistan.
39. The applicant claims that anti-Shia groups such as the LeJ and SSP are based in cities like Lahore and are tolerated by the authorities in those cities. In a submission to the delegate, the applicant's representative referred to some commentators' description of the situation faced by Shias in Lahore as 'extremely serious'. This was one of a number of views expressed by people interviewed by the Immigration Review Board of Canada (IRBC)'s Research Directorate in relation to the treatment of Shias in Multan and Lahore in late 2013 and early 2014.²⁶ Other views obtained by the IRBC's Research Directorate in this context varied widely, with one interviewee saying the situation for Shias in Lahore and Multan was no different to that in other Pakistani cities, another that it was less severe than in other cities, and another that sectarian violence and extremism is not part of the beliefs of mainstream society in these cities. These views pre-date the commencement of operation Zarb-e-Azb in 2014 and the implementation of the National Action Plan, and the resulting reduction in the number of sectarian attacks across Pakistan. I place limited weight on this information given its age and equivocal nature.
40. The applicant's representative referred to a South Asia Terrorism Portal statement suggesting that at least 28 'extremist and terrorist' groups exist in Lahore.²⁷ Nevertheless, the country information before me suggests that the presence of extremist and terrorist in Lahore has not translated into attacks on Shias in Lahore in recent years. There is limited independent evidence before me to suggest that authorities in Lahore tolerate the activities of Sunni extremist groups in Lahore.
41. The applicant claims that he will be readily identified as a Hazara and a Shia due to his physical appearance, his Hazaragi language, his Hazara customs, his manner of dress, his name, and his manner of praying. This increases the chance that he will be targeted in a sectarian attack anywhere in Pakistan. I accept that the applicant may be easily identified as a Hazara and a Shia anywhere in Pakistan as a result of one or more of these factors. However, I note that SATP information about Shia deaths in Pakistan in the period from 2001 until August 2016 does not identify any deaths of Shia Hazaras as a result of sectarian violence in in Lahore.
42. In a submission to the delegate, the applicant's representative referred to reports of limited opportunities for employment and restrictions on movement faced by Hazaras in Quetta. The country information referred to in this context described these problems as the result of Hazaras in Quetta being 'confined' to Hazara neighbourhoods in the city due to attacks on their community.²⁸ Credible human rights groups have told DFAT there is no evidence of discrimination against Shias in gaining employment in the civil service, police, military, or

²⁵ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

²⁶ IRBC, "PAK104713.E - 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, OG61C530237.

²⁷ SATP, "Punjab Assessment 2015", 16 January 2015, CXBD6A0DE1211.

²⁸ Jinnah Institute, "Extremism Watch: Mapping Conflict Trends in Pakistan 2011-2012", 1 January 2013, CIS27234.

private sector in Pakistan.²⁹ DFAT assesses that Shias do not suffer greater economic disadvantage than other groups in Pakistan. It is evident from the context of this discussion that DFAT includes Hazaras in this assessment of the treatment of Shias.

43. The applicant indicated during the SHEV interview that although his grandfather had owned property in Quetta in the past, his father did not own a home. He said that his father was expected to pay more than others to buy property because he was from Afghanistan, even though he had a Pakistani CNIC. The applicant said however, that he had not personally been denied the right to own property or land in Pakistan. The delegate asked the applicant a series of questions about his experience of other discriminatory treatment during the SHEV interview, including his access to employment, education, and medical treatment; and his ability to practise his Shia religion. The applicant indicated that he had not experienced any difficulties in these respects. There is no credible evidence before me to suggest that the applicant will face a real chance of discriminatory treatment on the basis of his Shia Hazara identity in future. I am not satisfied that there is a real chance of harm to the applicant in Pakistan, now or in the foreseeable future, as a result of any discriminatory treatment on the basis of his Shia faith and /or Hazara ethnicity by Pakistani authorities or other members of the community.
44. DFAT reported in 2016 that the security situation in Lahore remains better than many other places in Pakistan, with lower levels of generalised and sectarian violence than many other major population centres. Shias in Lahore have told DFAT that the security situation in the city has improved as a result of operation Zarb-e-Azb.³⁰ DFAT reported in 2016 that, according to credible sources, Lahore had experienced a 20 to 25 per cent reduction in the rates of crimes such as kidnapping since the commencement of operation Zarb-e-Azb and implementation of the National Action Plan.³¹
45. The applicant's representative noted in his post-interview submission to the delegate that Lahore 'had remained free of the sort of terrorist bombings which had occurred in other major cities for some years'. However, he referred to reports of a number of violent incidents in Lahore, other than those targeting Shia Muslims, which he suggested provided an indication of the level of generalised violence in the city. These reports relate to seven incidents in the period from 2013 to 2016.³² Of the three incidents in 2015, two were attacks on Christian churches in Lahore, while the other incident was believed to have targeted a police compound. The 2016 incident was a major attack targeting Christians on Easter Sunday. While I accept that violent incidents occur in Lahore, in the context of Lahore's reported population of almost 10 million,³³ I consider the chance of harm to the applicant as a result of such incidents to be remote.
46. Having carefully considered the applicant's personal characteristics and circumstances, and the range of other evidence before me, I am not satisfied that there is a real chance of harm to the applicant, including as a result of discriminatory treatment, on the basis of his Hazara ethnicity and Shia faith in Lahore, or as a result of the security situation in Lahore.

²⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265

³⁰ Ibid.

³¹ Ibid.

³² "Blast in Lahore's old Anarkali area kills five, 50 injured", Dawn News Group - Pakistan, 7 July 2013, CX310931; "TTP splinter groups claim Wagah attack; 60 dead", Dawn News Group - Pakistan, 3 November 2014; "Pakistan Taliban suicide bombing in Lahore leaves several dead", Guardian (Unlimited) (UK), 17 February 2015, CXBD6A0DE2650; "15 killed in Taliban attack on Lahore churches", Dawn News Group - Pakistan, 16 March 2015, CXBD6A0DE2952; Gabol, I, 'At least 72 killed in suicide blast as terror revisits Lahore', Dawn News Group - Pakistan, 29 March 2016.

³³ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

47. The applicant claims that his life would be in danger if he returned to Pakistan because he has lived in a western country for several years. He would be recognised as a person who has spent time in the west because his accent has changed and due to the clothes he wears. People will think he has become an infidel and that he has adopted western values. He also fears that the authorities in Pakistan will send him to prison because he paid a smuggler to get an exit permit to leave Pakistan and because he has sought asylum in Australia.
48. I am willing to accept that the applicant may be recognised as a person who has spent time in a western country on his return to Pakistan. However, there is no evidence before me to suggest that Sunni extremist groups, any other groups, or the Pakistani authorities, have targeted asylum seekers who return Pakistan after living in western countries for a number of years in violent attacks or in any other way, including on the basis that they are perceived to hold western values. DFAT reports that western influences are pervasive in Pakistan. Many Pakistanis are reported to live abroad and return to Pakistan, or to have relatives who do so.³⁴ DFAT assesses that people who have spent time living in western countries are not subject to discrimination or violence on this basis.
49. DFAT reports that unlawful emigration is an offence in Pakistan, usually punishable by a small fine.³⁵ The applicant claims that he departed Pakistan legally, using his genuine Pakistani passport. There is no evidence before me to suggest that the applicant has committed, or would be suspected of having committed, the offence of illegal emigration. DFAT reports that while there is no evidence that unsuccessful asylum seekers returning to Pakistan are punished on return, returnees may come to the attention of Pakistani authorities at airports, and may be questioned by the Federal Investigating Agency (FIA) or other authorities to check whether they are wanted for committing crimes in Pakistan.³⁶
50. There is no evidence before me to suggest the applicant has committed, or would be suspected of having committed, any crime. I am willing to accept that he may be questioned by the FIA on his return to Pakistan, but I am not satisfied that any brief period of detention for questioning of this type would amount to serious harm.
51. Having carefully considered the range of evidence before me, I am not satisfied that there is a real chance of any other type of harm to the applicant in Lahore, now or in the foreseeable future, on the basis of his Shia Hazara identity, his status as a person returning to Pakistan after living in Australia, a western country, for more than four and a half years, or as a result of the security situation in Lahore. I am not satisfied that any combination of the applicant's circumstances would expose him to a real chance of serious harm in Lahore. I am satisfied that the applicant can safely access Lahore by flying to Lahore international airport.³⁷

Refugee: conclusion

52. 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).

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ UK Home Office, "Country of Origin Information Report Pakistan 2013", 9 August 2013, OGC0D145414.

Complementary protection assessment

53. 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

54. 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.

55. I have accepted that the applicant may be briefly detained by the Federal Investigating Agency or other authorities to check whether he is wanted for committing any crime on his return to Pakistan. I am not satisfied that any harm experienced as a result of any such treatment would constitute significant harm for the purposes of s.36(2A). I am not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm as a result of this treatment, should it occur, on his return to Pakistan.

56. I have found that the applicant faces a real chance of serious harm in Balochistan in the form of death or injury as a result of sectarian attacks on the basis of his Hazara ethnicity and Shia faith. As 'real chance' and 'real risk' involve the same standard, I am satisfied that there is a real risk that he will suffer such harm and that it amounts to significant harm, in Balochistan. Section 36(2B)(a) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm.

57. I have concluded that there would not be a real chance of harm to the applicant in Lahore as a Hazara Shia who will be returning to Pakistan having sought asylum and lived in Australia, a western country, for more than four and a half years, as a result of the security situation in Lahore, or as a result of any combination of these matters. As 'real risk' and 'real chance' involve the application of the same standard,³⁸ I am also satisfied that the applicant would not face a real risk of significant harm in Lahore.

58. According to DFAT, large urban centres such as Lahore are home to mixed ethnic and religious communities and offer a greater degree of anonymity and better opportunities for employment, access to services and state protection than rural or smaller urban areas.³⁹ Lahore is reported to be home to a large Shia community, including a Hazara community.⁴⁰

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

³⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴⁰ *Ibid.*

59. While transportation costs and the higher costs of living in larger cities can operate as a barrier to internal relocation in Pakistan, DFAT reports that these costs can be offset by higher wages typically received in these locations. DFAT reports that there are a range of accommodation options in cities like Karachi, Lahore and Islamabad and no evidence to indicate any accommodation shortages.⁴¹
60. The applicant has completed 11 or 12 years of education. He claims, and I accept, that he speaks Hazaragi, speaks, reads and writes Urdu, speaks some Punjabi, and some English. He [worked] in Pakistan, and in Australia has worked as a [occupation]. He has demonstrated a degree of resourcefulness and adaptability by travelling to, and living and securing employment in Australia.
61. As discussed, credible sources have advised DFAT that Shias do not face discrimination in accessing employment in Pakistan. DFAT assesses that Shia Muslims do not suffer greater economic disadvantage than other groups. As discussed, it is evident from the context of this discussion that DFAT intends to include Hazaras in its discussion of the treatment of Shia Muslims in this respect. Having regard to the applicant's skills and experience, and his evident resourcefulness, I am satisfied that he will be able to find employment and accommodation in Lahore.
62. I accept that that the applicant does not have any family members in Lahore. He is a relatively young man who is currently employed as a [occupation]. He has not claimed that he has any health problems or other characteristics that might render him vulnerable and in particular need of familial or other support in a new city. I am satisfied that the existence of a small community of other Hazaras in Lahore, the potential for interaction with other Shias, and the relative integration of the Sunni and Shia communities in the city, mitigate the risk that the applicant will be socially isolated in Lahore.
63. DFAT identifies Lahore as a potentially viable relocation option for Shia Muslims and reports that the security situation in the city remains better than many other places in Pakistan, with lower levels of generalised and sectarian violence than many other major population centres.⁴² Having regard to the size of the population of Lahore, and to the information about the incidence of violence in the city discussed, I am not satisfied that the security situation in Lahore is such that it would be unreasonable for the applicant to relocate there.
64. The applicant claims that he may face difficulties on the expiration of his CNIC in [2021] due to the 'blocked' status of his father's CNIC. I note that I have not accepted that his father's CNIC is blocked. I consider the assessment of any potential issues associated with the expiration of the applicant's CNIC in more than three years' time to be speculative in nature.
65. Having regard to all of the applicant's circumstances, and to the situation in Lahore, including the security situation in that city, I am satisfied that it would be reasonable for the applicant to relocate to Lahore, where I have found that he would face no real risk of significant harm.

⁴¹ Ibid.

⁴² DFAT, "Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.