



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

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA17/02118

PAKISTAN  
IAA reference: IAA17/02120

PAKISTAN  
IAA reference: IAA17/02119

PAKISTAN  
IAA reference: IAA17/02122

PAKISTAN  
IAA reference: IAA17/02121

Date and time of decision: 31 July 2017 15:03:00  
Rosie Mathlin, Reviewer

## Decision

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In respect of the referred applicant (IAA17/02118) the IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

In respect of the other referred applicants (IAA17/02119; IAA17/02120; IAA17/02121 and IAA17/02122), the IAA remits the decision for reconsideration with the direction that:

- they are members of the same family unit as the above-named applicant (IAA17/02118) and satisfy the criteria in s.36(2)(c)(i) of the *Migration Act 1958*.

*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 applicants (the applicants) are a family of five. They claim to be Shias of the [Ethnic 1] group, from Quetta in Pakistan. They arrived in Australia by boat, undocumented, [in] July 2013.
2. [In] September 2016 they lodged applications for Safe Haven Enterprise visas (the SHEV applications).
3. Only the first applicant, hereafter referred to as the applicant, made his own claims to protection, stating that he faced persecution in Quetta from extremist Sunni militant groups who target Shias. The remaining applicants, who are his wife and three children, made no protection claims of their own but relied on their membership of the applicant's family unit.
4. [In] January 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visas. He accepted that the applicant had a well-founded fear of persecution in Quetta for reason of his religion but was not satisfied that he faced a real chance of persecution or a real risk of significant harm in all areas of Pakistan. The delegate found that it would be reasonable for the applicant to relocate to an area of Pakistan such as Islamabad.

### Information before the IAA

5. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
6. On 21 March 2017 the applicant's representative provided a submission and a number of items of new information to the IAA. The submission addresses and responds to the delegate's findings and contains legal arguments in support of the applicant's claims. To this extent the submission is not new information. The submission also contains references to country information which was not before the delegate. All of the country information predates the delegate's decision and it is not apparent why it could not have been provided before the decision was made. It is not personal to the applicant, but relates more broadly to the issues of security and sectarian violence in Pakistan, and is similar to other information that was considered by the delegate, and which I have considered. I am not satisfied that there are exceptional circumstances which justify considering this information.
7. I have obtained new information about the security situation in Quetta and throughout Pakistan. Given the volatile and frequently changing security conditions which are relevant to an assessment of both the risk of harm to an individual in different areas of the country and to the reasonableness of relocation, I am satisfied that there are exceptional circumstances which justify considering this information. The information is the most recent Pakistan Annual Security prepared by the Centre for Research and Security Studies, covering 2016.<sup>1</sup> The delegate considered the earlier annual report, covering 2015.

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<sup>1</sup> Center for Research and Security Studies (CRSS), "CRSS-Annual-Security-Report-2016-Final", January - December 2016, 21 March 2017, CISED50AD3636

8. I have also obtained and considered additional country information about living and housing costs in Islamabad which is relevant to the issue of relocation.<sup>2</sup> The delegate found that it would be reasonable for the applicant to relocate to Islamabad based on his experience in business and his ability to speak a number of languages. The delegate did not explore the applicant's evidence that he would not be able to afford to live in Islamabad, and gave no indication that he would not accept the applicant's evidence about this. Nor did he take account of the fact that the applicants comprise a family of five when assessing the reasonableness of relocation. The delegate relied on very limited sources of information – only DFAT's report on Shias in Pakistan – in assessing the reasonableness of relocation. I am satisfied that there are exceptional circumstances which justify the consideration of this new information.

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

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9. The applicant's claims are contained in the information referred and subsequently given to the IAA. There are some minor differences in the claims as presented at different times, but I consider that this is because the applicant used interpreters in different languages, including Hazaragi, which he stated at the SHEV interview was not in fact his preferred language, and in any case much of the SHEV interview was conducted in English. It is not clear whether the statement of claims submitted with the SHEV application was prepared with the assistance of an interpreter. The SHEV interview was brief and the applicant's claims and any inconsistencies were not tested. The applicant gave the impression of being a truthful and credible witness who was eager to answer questions and present his story. I am satisfied that any discrepancies in his claims are the result of misunderstandings due to language difficulties. The applicant's claims can be summarised as follows:

- He was born in Pakistan and is a citizen of Pakistan with no right to enter or reside in any other country.
- He is married with three dependent children, and is in his early [age]. He has no immediate family members in Pakistan, but his wife's family all reside in Quetta.
- He attended school for eleven or twelve years and completed his Secondary School Certificate. He speaks, reads and writes a number of languages including Urdu, Dari, Hazaragi, and English, as evidenced at the SHEV interview.
- He came from a wealthy family. The applicant did not have to work for a couple of years after completing school. He then opened [business] which became the biggest in Quetta, located in [a certain] area.
- In 2010 or 2011 he received a written threat warning that he should close his business. After about a month he received a phone call repeating the threat. The applicant said that there were lots of [similar businesses], but his was the only one that belonged to a Shia. He believes that was why his business was targeted. Those responsible did not identify themselves, but he believes they were from Sunni extremist groups such as *Lashkar-e-Janghvi* (LeJ) and *Sipah-e-Sahaba Pakistan* (SSP).

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<sup>2</sup> Sawas, A et al, Urbanization, "Gender and Violence in Rawalpindi and Islamabad: A Scoping Study, Safe and Inclusive Cities", February 2014, CISEFCB23F6979; Zameen.com 2016, Flats for Rent in Islamabad, CIS38A8012586; Zameen.com 2016, Flats for Rent in Lahore, CIS38A8012587; Zameen.com 2016, Flats for Rent in Rawalpindi, CIS38A8012588

- The applicant closed the business and stayed at home for six or seven months, then started a [another business] that he operated by mobile phone, without a business premises.
- In 2012 he received a phone call demanding money. He said that he did not have that money and they said they would kidnap his children. The applicant kept his children home from school for several weeks. The family went to stay at his [relative]'s house in a Shia area of the city for several weeks.
- The applicant looked for a house in a Shia area but could not find anything so he returned to his original house.
- After a month he received a threat by text message. They told him to prepare his grave.
- The applicant's [relative] helped him to find a house in a Shia neighbourhood. The family moved there in November 2012. In [2013] there was a huge bomb blast about [distance] away; [number] Shias were killed.
- The applicant joined a Shia group that was helping the families of those who died in the blast. He was [office holder] of one of the units. He worked with this group [during] 2013. [Details deleted]. The applicant has submitted a copy of this article.
- Forty days later there was a second bombing. As a result of his appearance in the paper, his membership of the aid group and his work in the second blast, the Taliban found him. They called him again and told him that he would be found wherever he went.
- The groups that are targeting Shias are present throughout Pakistan. If the applicant relocated to another city he would need to register his new address with different government authorities, for example, in order to obtain a new National Identity Card, and the extremist groups have contacts within all departments; they would soon learn of his location. He believes that this is what happened when he moved within Quetta, and they found him within two months. He believes that his name was on a "targeting list" and once your name is on such a list they will find you anywhere.
- The groups he fears are LeJ and SSP. He faces harm from these groups throughout Pakistan, as they exist everywhere and are supported by the government. There is nowhere in Pakistan he could be safe. The terrorist groups have carried out attacks everywhere. He is recognisable throughout Pakistan as a Shia.

## Refugee assessment

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10. 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.

## Nationality and identity

11. The applicants presented a range of identity documents and the delegate had no concerns about their identity. Based on the same information I am satisfied that the applicants' identities and nationality are as claimed. I am satisfied that Pakistan is the receiving country for the purposes of the Act.

## Well-founded fear of persecution

12. 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.

13. I accept the applicant’s claims about violence against Shias in Quetta, noting that most of the victims are Hazaras. DFAT assesses that the major threat to Shias in Pakistan comes from anti-Shia militant groups, including LeJ, SSP and *Jundullah*, as well as *Tehreek-e-Taliban Pakistan* (TTP).<sup>3</sup> LeJ has claimed responsibility for a large number of attacks on the Shia community, particularly Hazaras in Quetta. In an open letter in November 2012, LeJ leaders declared their intention to “abolish the impure sect” of “Shias and Hazara Shias”. Other militant groups also express strong anti-Shia sentiments. Country information confirms that numerous shootings and suicide attacks on Shia Hazaras took place in Quetta in the years prior to the applicant’s departure and subsequently. A number of such attacks have been directed at marketplaces, business owners and shopkeepers. In Quetta, Hazara Shias remain segregated in two predominantly Hazara enclaves.<sup>4</sup> I note the applicant’s evidence that following the receipt of the first threat he relocated from a Sunni area into one of the Hazara enclaves.

14. I have taken into account country information indicating that sectarian violence has decreased throughout Pakistan since 2014 following the implementation of a National Action Plan which includes military operations against terrorist and militant groups.<sup>5</sup> Even so, in 2015 there were ten sectarian attacks, seven of which specifically targeted Hazaras and two which targeted Shias in Quetta, as well as a further attempted attack near a Hazara area.<sup>6</sup> In 2016, there were nine fatalities in sectarian attacks in Quetta.<sup>7</sup> In both 2015 and 2016 bomb attacks in Quetta, for which the TTP claimed responsibility, targeted security forces personnel. These figures suggest that Sunni groups which have targeted Shias maintain a presence in Quetta; and it seems that the decrease in Shia fatalities may be the result, at least in part, of the increased

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<sup>3</sup> Department of Foreign Affairs and Trade (DFAT), “DFAT Thematic Report Shias in Pakistan”, 15 January 2016, CIS26834; see also Center for Research & Security Studies, “Annual Security Report January - December 2015”, 1 February 2016, CIS38A80122227; Center for Research and Security Studies (CRSS), “CRSS-Annual-Security-Report-2016-Final”, January - December 2016, 21 March 2017, CISED50AD3636

<sup>4</sup> DFAT, “DFAT Thematic Report Shias in Pakistan”, 15 January 2016, CIS26834

<sup>5</sup> Ibid at 4.1

<sup>6</sup> Ibid at 4.24

<sup>7</sup> Center for Research and Security Studies (CRSS), “CRSS-Annual-Security-Report-2016-Final”, January - December 2016, 21 March 2017, CISED50AD3636

segregation of the Shia Hazara community. In any event, DFAT assesses that there remains a moderate level of sectarian violence in Quetta and that despite a decline in the number of sectarian attacks, Shias remain a key target of Sunni militant groups like LeJ.<sup>8</sup>

15. I accept that the applicant was personally targeted as a Shia business owner, and possibly also initially because he was a Shia living in a Sunni neighbourhood. He has consistently claimed that he received written and verbal threats, and has provided a consistent account of his residential and employment history that fits with receipt of the claimed threats. I accept that he attained some local prominence as a member of a Shia organisation [and] I accept that this may have been a further reason why he was pursued after selling his business and moving house.
16. Based on the credible evidence about the applicant's individual circumstances and the country information about the targeting of Shias in Quetta, and notwithstanding some reduction in the number of attacks in the last two years, I am satisfied that there is a real chance, now and for the reasonably foreseeable future, that the applicant would face serious harm as a result of sectarian violence in Quetta directed against Shias, if he were to return. Notwithstanding that most reports of sectarian violence in Quetta expressly refer to Hazara Shias, I am satisfied that this is because they are the most numerous and most visible Shia community in Quetta. I am satisfied that the applicant, as a Shia from another ethnic minority, is also at risk of harm in Quetta for reason of his religion, and given his personal profile as outlined in the preceding paragraph.
17. For the applicant to have a well-founded fear of persecution within the meaning of s.5J(1), the real chance of persecution must relate to all areas of the country: s.5J(1)(c) of the Act. The delegate found that the applicant did not face a real chance of persecution in all areas of Pakistan. Specifically, he found that the applicant would not face a real chance of harm in Islamabad.
18. While I accept that the particular individuals or group who threatened the applicant may have continued to target him had he remained in Quetta, I do not accept that his profile is such that he would be targeted elsewhere in Pakistan. I am not satisfied that the applicant has, as a result of his association with the Shia group in Quetta, acquired a profile as a leader or prominent person in the Shia community, such that he would be known and/or pursued outside Quetta. Nor do I accept that because he was a well-known businessman in Quetta he would be pursued outside that city. Even if it were the case, as he claims, that he was on a target list, I am not satisfied that his would extend to groups or cells operating outside Quetta. The country information indicates that the extremist Sunni groups who carry out attacks against Shias, among other targets, operate in cells and have a broad agenda which includes mass casualty attacks on security forces and government institutions. I consider the possibility that the particular cell or individuals who targeted the applicant in Quetta would follow him, or pass on his details to other cells in other parts of Pakistan, particularly in a large city such as Islamabad, because of his low level involvement with the Shia group, or because of his prominence as a businessman in Quetta, is remote. I am satisfied that there is no real chance that the applicant faces harm outside Quetta from the group or individuals who threatened him there.
19. When the delegate discussed with the applicant at the SHEV interview whether he would face harm in other areas of Pakistan, he said that there is nowhere in Pakistan that Shias are safe. He said that terrorist groups have contacts within government agencies and that when he

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<sup>8</sup> DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265 at 4.25.

registers his new address for official purposes they will give the information to the groups who will then be able to locate and target him. I consider any suggestion that details of every relocating Shia would be passed by corrupt government officials to militant groups is farfetched and implausible. Even accepting that the applicant had some prominence in Quetta, and even if he was on a "target list" there, I do not consider that his profile would be such that the specific groups that targeted him in Quetta would seek out information about his whereabouts elsewhere in Pakistan, or issue some sort of alert in relation to him; nor do I accept as credible that his personal details would be passed back to militant groups in Quetta by government employees in a distant location, unprompted or as a matter of routine, as his evidence seems to suggest. I do not accept that the militants who threatened the applicant in Quetta would have either the means or the intention to locate and harm him elsewhere in Pakistan.

20. I accept, on the basis of country information considered by the delegate, that a number of extremist and terrorist groups who have targeted Shias have a presence in the Punjab, where Islamabad is situated within the Islamabad Capital Territories (ICT). However, despite this, there are few attacks on Shias in Islamabad. DFAT suggests that security measures such as numerous police checkpoints along highways leading to Islamabad, and paramilitary rangers patrolling some streets, provide a strong deterrent to militant groups planning attacks.<sup>9</sup> DFAT assesses that Islamabad is "relatively safe" for migrant Shia communities, although I note that "relative safety" is not helpful in assessing whether an applicant faces a real chance of serious harm in a particular place: s/he may still face a real chance of harm in a place that is "relatively" safer than another. However, the information about the number of sectarian attacks on Shia in Islamabad in recent years shows a definite and continuing downward trend that started in 2013.<sup>10</sup> Based on the information about measures taken by the Pakistani government since 2014 to reduce militant and terrorist operations within Pakistan, noting that these have had mixed success and that some commentators argue that they have been ineffective to some degree; and also noting that over recent years there have been spikes of terrorist activity within otherwise apparently peaceful periods, nonetheless, on the basis of the statistics about the number of sectarian attacks targeting Shias in Islamabad, particularly since the beginning of 2015 to the present time, I am satisfied that the chance of the applicant being seriously harmed or killed in either a mass casualty attack targeting Shia or a targeted attack against him as a Shia in Islamabad is very small, and does not reach the threshold for a real chance. I am not satisfied that there is a real chance that he would suffer any other form of serious harm for the purposes of the Act in Islamabad for reason of his religion, or for any other reason in s.5J(1).
21. In conclusion, although I am satisfied that the applicant has a well-founded fear of persecution in some areas of Pakistan, including Quetta, his usual place of residence, I am not satisfied that there is a real chance that he will face serious harm in Islamabad. In these circumstances, the real chance of persecution does not relate to all areas of the receiving country and s.5J(1)(c) is not satisfied. The applicant does not have a well-founded fear of persecution within the meaning of s.5J(1).

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<sup>9</sup> DFAT "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264 at 5.20.

<sup>10</sup> Ibid; see also Center for Research & Security Studies, "Annual Security Report January - December 2015", 1 February 2016, CIS38A80122227; Center for Research and Security Studies (CRSS), "CRSS-Annual-Security-Report-2016-Final", January - December 2016, 21 March 2017, CISED50AD3636



## Refugee: conclusion

22. 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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23. 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

24. 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.

25. As discussed above, I have found that the applicant faces a real chance of persecution in Quetta, as the country information indicates that he faces a real chance of being seriously injured or killed in attacks by extremist groups targeted at Shias. As "real chance" and "real risk" involve the same standard, I am also satisfied that there is a real risk that he will suffer significant harm, such as being arbitrarily deprived of life, should he return to Quetta in the reasonably foreseeable future.

## Qualifications to the real risk threshold

26. Section 36(2B) 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
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

## *Risk faced by population generally*

27. I am satisfied that the real risk of harm faced by the applicant in Quetta is one faced by him personally, mainly because he is a Shia, but also because of his past profile as a prominent

businessman and a member of a Shia organisation that provided assistance to the Shia community in the aftermath of bombings in 2013. The risk is therefore not one faced by the population of the country generally.

#### *Protection*

28. The applicant claims that the Pakistani government is unable to protect Shias, and this is consistent with country information. DFAT assesses that the authorities are willing to protect Shias and other minority communities threatened by extremist groups, but “capacity constraints” and other factors limit their ability to do so. On the basis of this information, and the other country information about the continuing attacks on Shias and other targets, which occur in significant numbers despite efforts by the government to stop them, I am not satisfied that the authorities are able to provide protection to Shias in Quetta, and I am not satisfied that the applicant could obtain, from the authorities of Pakistan, protection such that there would not be a real risk that he would suffer significant harm.

#### *Relocation*

29. The delegate refused the grant of the visa on the basis that Islamabad was a place where it would be reasonable for the applicant to relocate, and where there was not a real risk that he would face significant harm. He also discussed with the applicant at the SHEV interview the possibility of relocating to Karachi.
30. As set out above, the country information does indicate that there are areas of Pakistan where the applicant does not face a real chance or a real risk of significant harm as a result of violence targeted at Shias, although the evidence indicates that there is some risk of sectarian violence in most places to which he could reasonably be expected to relocate because of the existence of a Shia community. On the basis of the information referred to, and for the reasons set out above, I am also not satisfied that the applicant faces a real risk of significant harm in Islamabad.
31. The applicant has stated that he could not relocate because Shias are targeted by extremist groups which exist throughout the country. He said that he would be identified as a Shia everywhere, including by extremist spies operating in government departments who would pass on his personal information when he changed his address so that he could be located by the groups who sought to harm him in Quetta. He would also be identified as a Shia when he engaged in activities such as going to the mosque. He said that the chief cleric in one of the biggest mosques in Islamabad has publicly expressed his support for Daesh. He said that he would not be able to afford a place to live; Islamabad is very expensive and he had to sell his house in Quetta at a reduced price in order to travel to Australia; he has no money left.
32. In finding that relocation would be reasonable for the applicant, the delegate relied on general information from DFAT about the situation of Shias generally. He found that the applicant’s history as a business owner indicated that he had skills and attributes that would enable him to relocate. The delegate noted that the applicant has started a business in Australia, but I can find no reference to this in the referred material, including the recording of the SHEV interview.
33. DFAT assesses that Shias can relocate with relative ease and frequency because of family and community networks throughout Pakistan, and states that migrant communities provide a support network. DFAT’s assessment that the broader Shia community is able to relocate easily because of family and tribal networks implies that without these, relocation would be difficult.

DFAT reports, for example, that while some Shia Turis who have relocated to Islamabad live independently, others band together to purchase and occupy a house. I accept that the applicant has no family or support networks anywhere in Pakistan outside Quetta. The necessity of such networks is illustrated by the applicant's evidence that when he sought to relocate within Quetta, his home city, at first he was unable to locate suitable accommodation in one of the Hazara areas, until he enlisted the support of his [relative] in doing so. There is no evidence before me to suggest that the applicant would be able to take advantage of family or tribal ties or support networks in order to access affordable housing for his family of five in Islamabad. The new information I have considered confirms the applicant's claim that housing in Islamabad is more expensive than other cities.<sup>11</sup> The information indicates that the working poor and members of minority groups usually find accommodation in slums on the outskirts of Islamabad, of which only a small number have access to basic utilities, such as town water, sewage and electricity.<sup>12</sup> I accept the applicant's evidence about the lack of affordable housing opportunities in Islamabad. I note that he would be returning not as a single man, but with his wife [and children] and would need to find accommodation for all of them. I accept that he sold his house in Quetta to fund his travel to Australia and would be going back without substantial funds or any means of raising them in the immediate future.

34. The applicant's employment history is in operating his own businesses, and while he has clearly been successful, he has in the past had money behind him; I am satisfied that this would not be the case if he were now to return to Islamabad. Despite having a reasonable education and being fluent in a number of languages, I am not satisfied that the applicant has a work history which would make him readily employable. Country information indicates that in cities such as Islamabad, migrant workers and minority groups tend to undertake daily wage labour, and struggle to attain "livelihood security".<sup>13</sup> Having regard to his age and experience, I am not satisfied that the applicant would be in a position to compete with other low-skilled migrant or newly arrived workers in order to find employment which could sustain him and his family of five in an environment where he has no family or connections. I am satisfied that in these circumstances, the applicant and his family [may] be forced to live for an indefinite period of time in substandard conditions, without basic services. I am not satisfied that in these circumstances, relocation is reasonable.

35. Although the delegate did not ultimately find in his decision that Karachi was a relocation option, he discussed it with the applicant at the SHEV interview, and for completeness I will deal with it here. The country information indicates the existence of a community of some fifteen thousand Hazaras in Karachi, but I do not consider it reasonable for the applicant to relocate there. DFAT assesses that there is a low level of sectarian violence in Karachi relative to the city's large population, but reports that there were large-scale attacks on Shia mosques, religious processions and Shia enclaves in Karachi in 2015. DFAT assesses that Sunni militant groups including LeJ, which have targeted Hazara Shias, maintain a presence in Karachi, where the security situation remains volatile. DFAT also assesses a moderate level of generalised violence, due to ethnic, political, business and criminal rivalries.<sup>14</sup> While I accept that the level of violence directed at Shias in Karachi may not be such that the applicant would face a real risk of significant harm, I do not consider that it is reasonable to require him to relocate to a city where the security situation is described as "volatile", given the information about the

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<sup>11</sup> Rawalpindi and Lahore are the examples cited: Zameen.com 2016, Flats for Rent in Islamabad, CIS38A8012586; Zameen.com 2016, Flats for Rent in Lahore, CIS38A8012587; Zameen.com 2016, Flats for Rent in Rawalpindi, CIS38A8012588

<sup>12</sup> Sawas, A et al, Urbanization, "Gender and Violence in Rawalpindi and Islamabad: A Scoping Study, Safe and Inclusive Cities", February 2014, CISEFCB23F6979

<sup>13</sup> Ibid

<sup>14</sup> DFAT "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264

significant degree of both generalised and sectarian violence there, and having regard to his personal characteristics. The general security situation in the proposed place of relocation is a factor which is relevant to a consideration of whether relocation is reasonable, having regard to all the particular circumstances of an applicant. In this case, having regard to his personal circumstances as the head of a family of five, and having regard to the security situation in Karachi, I am not satisfied that relocation to that city is reasonable.

36. The applicant's evidence, which I accept, is that he has always resided with his family in Quetta. I accept that he has no family network in any other parts of Pakistan. There is no information before me about size of the [Ethnic 1] community, which I understand to be a small minority, or about whether broader Shia communities made up of other ethnic groups would provide the kind of social networks and support that the applicant would need in order to find employment and accommodation. The applicant has been able to survive and apparently thrive in Quetta, despite the minority status of the [Ethnic 1 community] there, and his evidence suggests that he has been able to straddle both the Sunni and Shia communities at least in the past, as his evidence is that prior to the 2012 threats he resided in a Sunni area before moving to a Hazara Shia enclave. As noted above, however, his evidence is that he required the assistance of his [relative] to find accommodation when seeking to relocate even within Quetta; he had previously been forced to return to the area where he was under threat because without that family connection he had been unable to find a place to rent. While the applicant obviously has considerable skills in business, I am not persuaded that these skills would mean that he would be readily employable in the kind of work likely to be open to him in Islamabad. As I accept that he would be returning with no capital resources, I consider it extremely unlikely that the applicant would be able to start another business. He is not a single man, but has a family of five children including [young children]. Overall, in the light of the available information, which is limited as to the real possibilities for Shias to relocate within Pakistan, I am not satisfied that it would be reasonable for the applicant, given his particular circumstances, to relocate to an area of Pakistan where he does not face a real risk of significant harm. Having considered all of the available information about the possibility of relocation for Shias within Pakistan, and specifically Karachi and Islamabad, including the security situation; the personal characteristics and qualifications of the applicant; the fact that he has a wife and three dependent children who would be returning with him; the difficulty in establishing himself, including obtaining employment sufficient to support himself and his family and to find a place to live which would be adequate having regard to the presence of dependent children in his family unit; I am not satisfied that it is reasonable for the applicant to relocate to an area of the country where there would not be a real risk of significant harm.

37. For all of the reasons above, s.36(2B) of the Act does not operate such that the applicant is taken not to have a real risk of significant harm in Pakistan.

### **Complementary protection: conclusion**

38. There are 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.

### **Member of same family unit**

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39. Under s.36(2)(b)(i) or s.36(2)(c)(i) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person mentioned in s.36(2)(a) or (aa) who holds a protection visa of the same class as that applied for by the

applicant. A person is a “member of the same family unit” as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression “member of the family unit” is defined in r.1.12 of the Migration Regulations 1994 to include the applicant’s wife and dependent children.

40. On the basis of the applicants’ evidence and documents provided, I am satisfied that the applicant wife is the spouse of the applicant within the meaning of s.5F the Act. The applicant’s three children (IAA17/02119, IAA17/02120; and IAA17/02122) are under the age of 18 and currently live with the applicant and attend school. I am satisfied that the applicant children are dependent on the applicant. I am satisfied the applicant wife and three dependent children are members of the same family unit as the applicant.

41. As the applicant (IAA17/02118) is a person mentioned in s.36(2)(aa), the other applicants (IAA17/02119; IAA17/02120; IAA17/02121 and IAA17/02122) meet s.36(2)(c)(i).

## Decision

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In respect of the referred applicant (IAA17/02118) the IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

In respect of the other referred applicants (IAA17/02119; IAA17/02120; IAA17/02121 and IAA17/02122), the IAA remits the decision for reconsideration with the direction that:

- they are members of the same family unit as the referred applicant (IAA17/02118) and satisfy the criteria in s.36(2)(c)(i) of the *Migration Act 1958*.

## 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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...