



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

PAKISTAN  
IAA reference: IAA17/02752

Date and time of decision: 6 February 2018 09:41:00  
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 Christian national of Pakistan. In July 2016, he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. [In] May 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. The applicant's representative provided a submission to the IAA on 15 June 2017. The submission contains argument addressing the delegate's decision including by reference to information that was before the delegate. I have had regard to this aspect of the submission. The submission also includes new information, including new claims.
5. Attached to the submission are certified copies of two identity documents said to be submitted to address concerns expressed by the delegate in relation to the applicant's identity in view of his failure to present any original identity documents. The applicant had previously provided uncertified copies of a number of identity documents to the delegate. For the reasons discussed below, I do not share the delegate's concerns in relation to the applicant's identity. In these circumstances, I am not satisfied that exceptional circumstances exist to justify considering this information.
6. The submission refers to the following items of new information related to the treatment of Christians in Pakistan:
  - a BBC World news item entitled 'Who are Pakistan's Christians?', dated March 2016
  - a CNN news item entitled 'Pakistan Attack: How the Christian minority lives', dated 4 April 2016
  - a Dawn News item entitled '15 killed in Taliban attack on Lahore Churches', dated 17 March 2015.
7. These items of new information pre-date the delegate's decision [in] May 2017. The applicant's representative does not explain why this information could not have been provided at an earlier point, other than referring to the fact that she was not the applicant's representative in the SHEV application process. I note that the applicant provided several other news items relating to the treatment of Christians in Pakistan with his SHEV application of July 2016, and that there is other information before me relating to the treatment of Christians in Pakistan.<sup>1</sup>
8. The applicant has not satisfied me that this new information is information that could not have been provided to the delegate before he made his decision, or in view of its content, that it is credible personal information that was not known at the time the delegate made his decision, and had it been known, may have affected the consideration of the applicant's claims. Having

---

<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15; and SHEV application of July 2016.

considered all of the circumstances, including the other information about this issue before me, I am not satisfied that there are exceptional circumstances to justify considering this new information.

9. The submission includes the new claim that the applicant cannot relocate to the town in which his wife and children now live, which is [a short distance] away from his home village in the same district. This is said to be because some Muslim men in this town worked in [Country 1] and knew the applicant when he lived there. These men believed the applicant was a Muslim in [Country 1] because his employer told other employees that he had converted to Islam. The applicant's employer recorded his religion as 'Islam' when applying for the applicant's [Country 1] residency permit. The Muslim men who knew the applicant in [Country 1] will believe the applicant has converted to Christianity if they encounter him in the town in which the applicant's family now reside and become aware that he is a practising Catholic. They may harm him because the Quran says that if a Muslim changes his religion he has to be killed. The submission refers in this context to an attached certified copy of the applicant's expired residence permit issued by [Country 1], which indicates that the applicant is a Pakistani national and identifies his religion as 'Islam'.
10. The applicant advised the delegate during the SHEV interview that his wife and children had moved from the applicant's home village to a nearby town. When the delegate asked the applicant why he could not also move to this city, the applicant indicated that he would not be able to find employment there. He did not refer to any fear of harm from Pakistani Muslim men who he had known in [Country 1] on the basis that they believed him to have been a Muslim in [Country 1] and may believe him to be a convert from Islam to Christianity.
11. The applicant's representative has not indicated why this information could not have been provided at an earlier point. The applicant has not suggested that the men concerned have only recently moved to the town in which his family is living, or indicated when or how he came to be aware of the presence of these men in this town. I note that the delegate advised the applicant and his representative during the SHEV interview that any information received before he made his decision would be considered. The applicant did not provide any additional information about the reasons he could not move to the town in which his family currently resides following the interview, before the delegate made his decision. The timing of the submission of this information also leads me to question its veracity.
12. The applicant has not satisfied me that he could not have provided a copy of his [Country 1] residency card to the delegate before he made his decision. I am however satisfied that this is credible personal information that was not known at the time the delegate made his decision, and had it been known, may have affected the consideration of the applicant's claims. However, I do not consider that it is corroborative of the claim that the applicant now seeks to advance to any significant extent. In all of the circumstances, I am not satisfied that there are exceptional circumstances to justify considering this new information.
13. The applicant has not satisfied me that the new claim relating to his fear of harm from men he knew in [Country 1] in the town in which his family now lives could not have been made to the delegate before he made his decision, or that it is credible personal information that was not known at the time the delegate made his decision, and had it been known, may have affected the consideration of the applicant's claims. Having considered all of the circumstances, I am not satisfied that there are exceptional circumstances to justify considering this new information.

14. The submission includes the new claim that it would be 'extremely difficult and unlikely' for the applicant to establish a business in another area of Pakistan without assistance of the type he has received in Australia. The applicant's representative states that this claim is advanced in response to the delegate's finding that the applicant could easily find work in another area of Pakistan because he has his own business in Australia.
15. The decision record does not indicate that the delegate said that the applicant could easily find work in another area of Pakistan because he has his own business in Australia, rather, the delegate referred to the applicant's work experience as [Occupation 1] and to his establishment of a [business] in Australia in concluding that the applicant 'has sufficient transferable skills and has demonstrated his ability to diversify in order to gain employment', and that the applicant would be able to find employment in Pakistan. I note that the fact that the applicant had received substantial assistance in the establishment of his business in Australia was already known to the delegate. However, the claim that the lack of similar assistance in Pakistan would represent an impediment to relocation was not previously advanced.
16. As discussed, the applicant was asked during the SHEV interview why he could not relocate to the town where his family now lives, to which he replied that he would not be able to find employment there. As mentioned, the delegate advised the applicant and his representative during the SHEV interview that any information received before he made his decision would be considered. No additional information about the applicant's ability to move to another location was provided to the delegate following the SHEV interview.
17. The applicant has not satisfied me that this new claim could not have been provided to the delegate before he made his decision. I accept that the applicant believes that the lack of the type of assistance he has received in Australia may be an impediment to his establishment of a business in Pakistan, however, I am not satisfied that this information may have affected the consideration of the applicant's claims. Furthermore, for the reasons discussed below, I have not found it necessary to consider whether the applicant could relocate to a different area. In all the circumstances, I am not satisfied that there are exceptional circumstances to justify considering this new information.

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

---

18. The applicant's claims can be summarised as follows:
  - He was born in a village in the Toba Tek Singh District of Punjab province in Pakistan. He lived in this village with his family until he fled to [Country 1] in 1995.
  - He was verbally abused and physically attacked in his home village nearly every day because of his Christian faith. He attended only [number of years] of school because of the abuse he experienced from Muslim students, who considered him to be an infidel.
  - He was told that if he did not convert to Islam he would be killed.
  - He had difficulty finding work in his village due to his religion. He worked on a farm for his family and for himself. He then learned [a particular skill] from his [relative], but still had trouble finding work and continued to experience persecution due to his religion.
  - He could not seek the assistance of the Pakistani authorities because they are Muslim and will not help Christians.

- The church he attended was invaded by people opposed to Christianity. The church was bombed and many people were killed.
- Some of his [siblings] had travelled to [Country 1] looking for work. He and his family decided he should also go to [Country 1]. He worked as [Occupation 1] in [Country 1] from approximately 1995 until 2013, when he left [Country 1] to travel to Australia.
- He held a visa permitting him to work in [Country 1]. While he was in [Country 1], he sometimes returned to visit his family in Pakistan. He lost his job in [Country 1] when he refused to agree to his [employer's] demand that he convert to Islam.
- His children attended a Christian school in his village but were humiliated in the street by Muslim residents. His wife was criticised because she does not wear the burqa.
- He fears that he will be persecuted because of his Christian religion if he returns to Pakistan. He may be arrested, tortured and killed. He fears harm from Sunni extremist groups such as the Taleban and Lashkar-e-Jhangvi (LEJ). He would be arrested at the airport on his return because of his religion.
- Pakistani authorities may harm him because by leaving Pakistan and seeking asylum in another country, he will be seen to have given Pakistan a bad name.
- He cannot move to another place in Pakistan because there are Muslims everywhere and he would face persecution as a Christian wherever he goes.
- His parents, wife and children have moved from his village to a nearby town in Toba Tek Singh District.

## **Refugee assessment**

---

19. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

20. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

21. The applicant provided uncertified copies of his marriage certificate and his children's birth certificates with his SHEV application. These documents refer to the applicant's Catholic faith and to the Catholic faith of his wife and children. During the SHEV interview, the applicant explained that he had disposed of his Pakistani passport en route to Australia on the instruction of the smuggler who arranged his travel. He said that his Pakistani National Identity Card (NIC) and his previous, expired, Pakistani passport were in Pakistan with his family. The delegate requested that the applicant produce his original NIC and previous passport. The applicant subsequently provided uncertified copies of pages, including the biodata pages, from two Pakistani passports (an expired passport and the passport he used to travel to [another country]), and an uncertified copy of his NIC, which expired [in] January, 2011.
22. The delegate found that the copies of the documents provided by the applicant were consistent with the samples of original documents of these types held in departmental systems. He indicated that there was no evidence before him to suggest that the applicant was not a Pakistani national, but he was nevertheless not satisfied that the documents provided were sufficient to support the applicant's claimed identity. He indicated that he held some residual concerns in relation to the applicant's identity given the lack of original documentation.
23. I found the applicant's evidence regarding his nationality and identity, including his oral evidence, to be generally credible. Having considered the applicant's evidence as a whole, I do not share the delegate's concerns in this respect and I accept that the applicant is a national of Pakistan. I accept that he has no right to enter or reside in another country. I find that Pakistan is his country of reference. I further accept that the applicant and his family are Catholic.
24. The applicant claims that he completed [number of years] of school in his home village in Toba Tek Singh District before starting work on the family farm. In approximately 1990, he began to be trained [in Occupation 1] by his [relative] and worked with him until around 1994. In approximately 1995, he moved to [Country 1], where he found employment as [Occupation 1]. He held a visa that entitled him to reside and work in [Country 1]. He lived and worked as [Occupation 1] in [Country 1] for approximately 18 years before travelling from [Country 1] to Australia in approximately March 2013. I accept the applicant's claims relating to the duration of his education in Pakistan, and his employment in Pakistan and [Country 1].
25. In the arrival interview conducted shortly after his arrival in Australia [in] May 2013 the applicant said that he left his country of nationality or residence because 'They don't like Christians. Wherever you go, they discriminate because of your beliefs.' When asked about his reasons for leaving his country of nationality or country of residence in the entry interview conducted [in] May 2013, the applicant said in relation to Pakistan, that '...people don't have a good behaviour toward Christians. For example, if I go to work and a person comes to know I am Christian, they will fire me'. When invited to continue, he said 'That's it'. Asked if there were any other reasons he left Pakistan, he said 'No, that's my main reason'.
26. In his SHEV application, the applicant claimed to have been verbally abused and physically attacked nearly every day in his home village. He said that during his [number of years] at school, other students told him he should convert to Islam and sometimes hit him. They called him an infidel and refused to sit with him. He said that he was threatened that if he did not convert to Islam, he would be killed. He said he approached many potential employers in his village, all of whom refused to offer him employment because of his Christian faith. He claimed that although his children attended a Christian school, they were humiliated in the street by Muslim residents, while his wife was criticised because she did not wear the burqa.

27. During the SHEV interview, the delegate asked the applicant why he was seeking asylum in Australia. The applicant indicated that he had been working in [Country 1] and that people there did not like Christians and he therefore decided to come to Australia. The delegate noted that the applicant's claims for protection related to Pakistan and asked whether he had been threatened as a Christian in Pakistan. The applicant indicated that he had not experienced any threats in Pakistan but said that people in Pakistan hated Christians. Asked whether anything had happened to him in Pakistan because he was a Christian, the applicant said that when he was young and visited a person's house, they would not give him any food. If they gave him food, they would give it to him in a separate dish and make him sit away from any other people eating. He said they didn't like Christians and there was a lot of discrimination. At a later point during the SHEV interview, the delegate asked the applicant to tell him about any incident of persecution related to his Christian religion in Pakistan. The applicant indicated that he could not remember any particular incident but said that when he was younger he had experienced a number of events. He did not elaborate on these events further at this point, but said that even now, in any area of Pakistan, bad people will not hesitate to attack Christians.
28. The limited and unspecific nature of the applicant's evidence in relation to his claimed mistreatment due to his religion in his village in his SHEV and entry interviews leads to me question his claims in his SHEV application to have experienced almost daily verbal abuse and physical attacks in his village, and to have been threatened that he would be killed if he did not convert from Christianity to Islam. I find it difficult to accept that if he had in fact experienced these events, that he would not have mentioned them when asked about his reasons for leaving Pakistan during the entry interview or when invited to describe any past incident of persecution related to his religion during the SHEV interview.
29. As discussed, the applicant did not refer to any difficulties securing employment when asked whether anything had happened to him in Pakistan because he was a Christian, or when he was asked to describe any past experience of persecution related to his Christianity in Pakistan during the SHEV interview. I note that the applicant's evidence is that he worked on the family farm or farming for himself from approximately 1971 to 1990, and for his [relative] as a [Occupation 1] from approximately 1990 to 1994, before travelling to [Country 1] where he worked as a [Occupation 1] from 1995 until his departure from that country in 2013 to travel to Australia. The applicant's description of his work history does not suggest that he experienced periods of unemployment for any reason. This, together with the omission of any reference to difficulty securing employment in Pakistan because of his Christian faith from his evidence during the SHEV interview, leads me to question the applicant's claims that he had difficulty finding work in Pakistan due to his Christian faith. As discussed, during the entry interview, the applicant appeared to refer to a hypothetical situation in which, were he employed and his Christianity discovered in the course of that employment, he would be fired. Given that this appears to have been presented as an example of the type of mistreatment experienced by Christians generally, rather than an example of his own experience of mistreatment related to his religion, and as the applicant's other evidence does not include any reference to losing a job because of his religion, I am satisfied that the applicant was not fired from any employment because of his Christian faith.
30. Considering the applicant's evidence as a whole, I find that he exaggerated his claims of his own and his family members' mistreatment related to their Christian faith in his home village in his SHEV application. The Department of Foreign Affairs and Trade (DFAT) assesses that Christians in Pakistan generally face a moderate level of societal discrimination.<sup>2</sup> Although the applicant was not able to recount any specific instances of past mistreatment due to his

---

<sup>2</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

Christian faith in his village, having regard to the country information before me, and to the applicant's consistent reference to some form of discriminatory treatment related to his Christian faith, I am willing to accept that he and his family may have been the subject of occasional general verbal abuse due to their religion in his village. However, I do not accept that the applicant experienced daily verbal abuse, any physical attacks, or that he was threatened that he would be killed if he did not convert to Islam. Neither do I accept that he experienced any difficulty finding employment for any reason related to his Christian faith, or that the church that he attended was bombed. While undoubtedly unpleasant, I do not consider that the occasional verbal abuse experienced by the applicant and his family in their village amounted to serious harm.

31. There are estimated to be somewhere between four to six million Christians in Pakistan, most of whom live in Punjab province.<sup>3</sup> There are no legal restrictions on the rights of Pakistani Christians to worship freely.<sup>4</sup> The UK Home Office assesses that, in general, Christians in Pakistan are able to practise their faith, attend church, participate in religious activities and have their own schools and hospitals.<sup>5</sup> However, Christians and Christian places of worship have often been subjected to communal and sectarian violence.<sup>6</sup> Christians have also faced violence provoked by accusations of blasphemy.<sup>7</sup>
32. The Open Doors International Research Unit recorded a 'minimum' of 39 Christians killed for their faith in Pakistan between 1 November 2014 and 31 October 2015 and 17 attacks on places of worship during the same period.<sup>8</sup> In a report on religious freedom in Pakistan, the Jinnah Institute, a public policy think tank, found that the majority of attacks on Christians in Pakistan occurred in Punjab Province, mainly in Lahore, Faisalabad, Rawalpindi, Okara and Gujranwala. In a submission to the All Party Parliamentary Group (APPG) Pakistan report, the Iman Foundation Trust reported 378 deaths and 987 injuries against Pakistani Christian civilians and church workers due to targeted attacks between 11 September 2001 and 31 August 2015. According to the data, over 60 per cent of these attacks occurred in Punjab Province.<sup>9</sup> The high proportion of attacks on Christians in Pakistan that have occurred in Punjab province may reflect the presence of the majority of Pakistan's Christian population in that province.
33. The applicant provided a number of reports of attacks on Christians in Pakistan with his SHEV application, including reports of incidents in the district of Toba Tek Singh, the location of his home village. The source of some of the reports is unclear. Included in this information is a report of unclear origin relating to a September 2013 assault of a Christian girl in a village in Toba Tek Singh District, allegedly perpetrated by police officers. Another report of unclear origin refers to a 2009 incident in Gojra, a town in Toba Tek Singh District, in which a mob destroyed more than 75 homes of Christian residents after a Christian resident was accused of burning some pages from the Quran. A 2007 report, said to have been published by the 'Voice of the Martyrs' refers to the charging of five members of a Christian family from Toba Tek

---

<sup>3</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; the UK Home Office indicates that estimates of the size of the Christian population in Pakistan vary widely - UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>4</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>5</sup> UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>6</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>7</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>8</sup> UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>9</sup> Ibid.

Singh district with blasphemy, allegedly in retaliation for the Christian family confronting a Muslim family about an attack on their son by the son of the Muslim family. Other information before me includes reports that eight people were killed in the mob attack on Christians in Gojra previously mentioned, while in 2013 a mob destroyed around 100 houses in a Christian area of Lahore after a Christian resident was accused of blasphemy.<sup>10</sup>

34. While blasphemy laws apply to Muslims and non-Muslims, the information before me suggests that these laws disproportionately affect religious minorities in Pakistan.<sup>11</sup> Blasphemy laws are reportedly often misused to settle personal or property disputes in Pakistan.<sup>12</sup> The UK Home Office, in its May 2016 'Country Information and Guidance – Pakistan: Christians and Christian converts' expresses the view that although Christians, as with other faiths, may be at risk of blasphemy allegations, this in itself is not generally enough to make out a claim under the Refugee Convention unless there is evidence that the charge is pursued.<sup>13</sup> I note that the applicant has not claimed that he has been, or fears that he will be, accused of blasphemy. I consider the assessment of any chance of harm to the applicant on the basis that he might be accused of blasphemy in future to be speculative in nature.
35. The applicant claims to fear harm from extremist Sunni groups the Taliban and Lashkar-e-Jhangvi. According to DFAT, since 2013, local police have provided security to major churches during religious services. Despite some improvement in security, occasional attacks against churches and Christians in Pakistan still occur.<sup>14</sup> On 15 March 2015, for example, two bomb attacks targeting Christian churches in the Youhanabad area of Lahore killed 14 people and injured more than 78.<sup>15</sup> A splinter group of the Pakistani Taliban, Jamaat-ul-Ahrar (JuA), claimed responsibility for the two attacks.<sup>16</sup> More than 70 people were killed in a suicide bomb attack at a public park in Lahore on 27 March 2016 (Easter Sunday). JuA claimed responsibility and stated that the attack targeted the Christian community and was also a protest against Pakistan's military operations in the tribal regions of Pakistan. A number of arrests were made following the attack.<sup>17</sup>
36. Nevertheless, DFAT assesses that given the size of the Christian community in Pakistan and the number and severity of attacks, Christians in Pakistan are subject to a low level of sectarian and communal violence.<sup>18</sup> The UK Home Office similarly concludes that while evidence suggests that Christians face increased discrimination and targeted attacks because of their faith, there are a large number of Christians in Pakistan and, in its opinion, whilst some individuals may be at greater risk, taken as a whole the evidence does not indicate that Christians in Pakistan are, in general, subject to a real risk of persecution or inhuman or degrading treatment. The UK Home Office expresses the view that "A person who fears persecution in Pakistan purely on the basis of their Christian faith is unlikely to qualify for a

---

<sup>10</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>11</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>12</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>13</sup> UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

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

<sup>15</sup> Ibid.

<sup>16</sup> UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>17</sup> Ibid.

<sup>18</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

grant of asylum or humanitarian protection”, although regard must be had to the individual circumstances of each case.<sup>19</sup>

37. The information before me suggests that Christians who are at particular risk of harm in Pakistan include converts to Christianity and Christians who engage in proselytization. The applicant is not a convert to Christianity and has not claimed that he has engaged in, or has any wish to engage in, proselytization.
38. DFAT reports sectarian tensions are generally worse in rural areas of Pakistan.<sup>20</sup> I have considered whether sectarian tensions in the applicant’s home village, a rural area, may be high and may increase the risk that the applicant will be harmed in his village in future due to his Christian religion. As discussed, the applicant referred to reports of several incidents targeting Christians in the district in which his village is located, the most recent of which was the alleged assault on a Christian girl in another village in the district in 2013. There are no reports before me of any more recent incidents in Toba Tek Singh District. I have accepted that the applicant and his family experienced occasional verbal abuse due to their Christian faith in their home village, although I have found that this treatment did not rise to the level of serious harm.
39. During the SHEV interview, the delegate asked the applicant what he thought would happen to him if he returned to Pakistan. The applicant indicated that ‘they would hate me’. Asked who would hate him, the applicant replied ‘All the people who know us’. DFAT assesses that overall, there is a low level of official discrimination and a moderate level of societal discrimination against Pakistan’s Christian community.<sup>21</sup> The UK Home Office states that, in its opinion, while Christians in Pakistan generally suffer discrimination, this is not sufficient to amount to a real risk of persecution.<sup>22</sup>
40. I accept that on his return to his home village in the Toba Tek Singh District, the applicant may experience occasional general verbal abuse related to his Christian faith. Although objectionable, I am not satisfied that any such treatment would amount to serious harm. There is no credible evidence before me to suggest that the applicant will experience any other harm related to his Christian faith in his home village in future.
41. The applicant claims that he may be arrested or otherwise harmed by the Pakistani Government on his return to Pakistan because of his religion and because he left Pakistan and came to Australia, and in so doing has given the Pakistani Government a bad name. There is no credible independent evidence before me, including any evidence advanced by the applicant, to suggest that individuals of any faith who leave Pakistan and return, having unsuccessfully sought asylum and lived in western countries, face any form of harm from Pakistani authorities on their return to Pakistan. I note that DFAT assesses that individuals returning to Pakistan are not subject to discrimination or violence on the basis of having spent time in western countries.<sup>23</sup>
42. DFAT reports that unlawful emigration is an offence in Pakistan, usually punishable by a small fine.<sup>24</sup> The applicant claims, and I accept, that he departed Pakistan legally, using his own

---

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> UK Home Office, "Country Information and Guidance - Pakistan: Christians and Christian converts", 1 May 2016, OGD7C848D15.

<sup>23</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>24</sup> Ibid.

genuine Pakistani passport. There is no credible evidence before me to suggest that he 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 FIA or other authorities to check whether they are wanted for committing crimes in Pakistan.<sup>25</sup>

43. Credible sources have also told DFAT that the Pakistan government maintains a 'Black List' to record the details of all involuntary returnees.<sup>26</sup> Individuals whose names are on the Black List are unable to hold or obtain passports. Recent reports have indicated that this Black List has been replaced by separate Passport Control and Visa Control Lists, and that placement on these lists only takes place pursuant to an adverse finding by Pakistani courts, tribunals or security agencies, and is limited to three years in duration. It is not clear from DFAT's advice whether this penalty is imposed on all involuntary returnees or only to persons who have committed immigration-related offences or been involved in 'anti-state' activities.
44. There is no evidence before me indicating that the applicant has committed, or would be suspected of having committed, any crime in Pakistan. While I accept that if he returns to Pakistan he may be questioned by the FIA, I am not satisfied that any brief period of detention for questioning of this type would amount to serious harm. I accept that it is also possible that the applicant's name may be placed on a list that will prevent him from holding a passport, and therefore from travelling abroad, for three years. However, I am not satisfied that this would amount to serious harm.
45. I have found that the applicant may, in future, experience occasional verbal abuse related to his Christian faith in his home village. I have also accepted that he may be briefly detained and questioned by the FIA on his return to Pakistan, and that his name may be placed on a list that will prevent him from holding a passport, and therefore from travelling abroad, for three years. Considered as a whole, I am not satisfied that any such treatment, should it occur, would amount to serious harm.
46. Having carefully considered the applicant's individual circumstances and profile, and the range of evidence before me, I am not satisfied that there is a real chance of any other harm to him in his home village, now or in the foreseeable future.

#### **Refugee: conclusion**

47. 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**

---

48. 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.

---

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

## Real risk of significant harm

49. 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.

50. 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, and / or placed on a black list that may prevent him from obtaining a passport or travelling to other countries for several years 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.

51. Although the applicant was not able to recount specific instances, I have accepted that he may have been the subject of occasional general verbal abuse due to his religion in his village. I have found that he may occasionally experience similar verbal abuse in future. However, I am not satisfied that any such future treatment would cause pain and suffering that can be reasonably be regarded as cruel or inhuman in nature, severe pain or suffering, or extreme humiliation, to the applicant. 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 any occasional verbal abuse he may experience on the basis of his religion in his village in future.

52. I have concluded that the applicant does not otherwise face a real chance of harm as a Christian who will be returning to his village having left Pakistan and unsuccessfully sought asylum and lived in Australia, a western country, for approximately five years. As 'real risk' and 'real chance' involve the application of the same standard,<sup>27</sup> I am also not satisfied that the applicant would face a real risk of significant harm on these grounds.

## Complementary protection: conclusion

53. 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.

---

<sup>27</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## 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.