



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA17/03977

Date and time of decision: 10 August 2018 20:33:00  
A Nesbitt, Reviewer

**Decision**

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

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim Pashtun national of Pakistan. In September 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 21 November 2017 a delegate of the Minister for Immigration and Border Protection refused the application.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 19 December 2017, the applicant's migration agent provided a submission from counsel for the applicant. I have had regard to the submission, which contains argument addressing the delegate's decision, including by reference to information that was before the delegate.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - He is a Pashtun Muslim from a village near the town of [Town 1] in Attock District, in Punjab Province.
  - He owned and operated a small business in [Town 1] selling [certain goods]. His stock included [western goods].
  - In 2008, some men came to his store and announced they were from the Taliban. They told him that operating a [certain product] shop was against Islam and said he should close the shop. After this, groups of two to five armed men visited his business, delivering the same message, every month, two months, or three months until around 2011. The men had Afghan accents. He wasn't sure whether they were from the Afghan Taliban or the Tehreek-e-Taliban Pakistan (TTP). They continued to say that his business was against Islam and to pressure him to close it.
  - In 2011, the tone of the visits became more threatening and aggressive. The men warned that if he did not close the shop, they would destroy it.
  - In around February or March 2012, a group of three armed members of the Taliban visited his shop. They were angry and yelled at him, warning him that if he did not close the shop within two weeks they would destroy the business and kill him. After this, he noticed he was being watched and followed.
  - One or two weeks after the February or March 2012 visit, five armed men came to the shop. He recognised two of them from a previous visit. They yelled that they were going to burn and destroy his shop and make an example of him. He understood this meant that they would kill, kidnap or otherwise seriously harm him. He was worried and started to open the shop less often.

- [In] December 2012 his shop burned down. A day or so later, he received a telephone call. The caller said that he had not listened to them and this was the result. The caller warned him that they would shoot him if he went against them.
- He suffered severe psychological harm as a result of the destruction of his shop and the threats he received.
- He feared for his life and decided to leave Pakistan. He departed Pakistan to travel to Australia in March 2013.
- He was known for his modern and progressive views in Pakistan and was viewed as moderate, liberal, and leftist.
- Since his departure from Pakistan the Taliban have regularly asked his brother-in-law where he is.
- He is on the Taliban's watch list and they will find him wherever he is if he returns to Pakistan. The Taliban threaten and kill people in many parts of Pakistan. They will torture and / or kill him as an example to show others what they do to people who do not listen to them and who engage in activities they consider to be un-Islamic.
- If the Taliban come to know that he sought protection in Australia, a western country they consider to be their enemy, they will kill him. They will perceive him to be opposed to them and consider him a spy and a traitor who wanted to assimilate in a western country. They may torture him to discover whether he has given the Australian government information about them. They will disseminate his photograph and information within the community and claim that he is a spy and traitor. This will prevent him from finding employment as employers will be afraid that they or their businesses might be harmed if they employ him.
- He could not relocate to another place in Pakistan. The Pakistani authorities are not willing or able to assist him.

### **Refugee assessment**

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6. 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**

7. 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.
8. The applicant presented his original Pakistani computerised national identity card (CNIC) and driver's licence, as well as a copy of his Pakistani passport. I find that he is a citizen of Pakistan. I accept that he has no right to enter and reside in any other country. I find that Pakistan is his receiving country. I accept that the applicant is of Pashtun ethnicity.
  9. The applicant described his religion as Muslim but declined to indicate whether he is a Sunni or Shia Muslim. He said that he sometimes attended a mosque on Fridays in Australia but was not sure whether it was a Sunni or Shia mosque. I find it difficult to accept that the applicant could have attended a mosque on a number of occasions and failed to have noticed whether it was a Shia or Sunni mosque. I note that Pashtuns are overwhelmingly Sunni.<sup>1</sup> I am willing to accept however, that the applicant prefers not to identify himself as Sunni or Shia. He has not claimed that he has experienced any harm or received any threats because of this preference in Pakistan in the past, or that he fears he will do so in future. I am not satisfied that there is a real chance of any harm to him on this basis in Pakistan, now or in the foreseeable future.
  10. The applicant claims that from 2003, he operated a shop in the town of [Town 1] which sold [certain goods]. His merchandise included [western goods]. He claims that the Taliban pressured him to close his business in visits to his shop over the course of approximately four years from 2008 until 2012. He did not comply with their requests and in December 2012, his shop was destroyed by fire. He received an anonymous phone call shortly after the fire which suggested that his shop was burned because he had not listened to 'them'. The caller warned that the applicant would be killed if he went against them.
  11. The applicant claims that he does not know to which group the men who visited his shop belonged, although they identified themselves as members of the Taliban, and at least some had accents suggesting that they came from Afghanistan. DFAT reports that the Tehreek-e-Taliban Pakistan (TTP), a loose network of Sunni militant groups often referred to as the Pakistani Taliban,<sup>2</sup> maintains an identity distinct from the Afghan Taliban, although they are ideologically aligned.<sup>3</sup> The goals of the TTP are said to differ from those of the Afghan Taliban in that the TTP are committed to the overthrow of the Pakistani government. This goal is reflected in the targets of the TTP's attacks, which are frequently police and other individuals or sites associated with the Pakistani Government. DFAT reports that the TTP has targeted government security forces, political rivals, civilian infrastructure, and non-Sunni minorities throughout Pakistan. This has included direct attacks using small arms, suicide bombings, car bombs and improvised explosive devices, as well as complex attacks using a combination of these tactics.<sup>4</sup> The US Department of State reported that in 2012, the TTP and associated groups targeted civilians, journalists, schools, community leaders, security forces, and law enforcement agents. Militant groups also often attacked religious minorities.<sup>5</sup>

<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>2</sup> UK Home Office, "Country of Origin Information Report Pakistan 2013", 9 August 2013, OGC0D145414.

<sup>3</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>4</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; Pak Institute for Peace Studies (PIPS), "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

<sup>5</sup> UK Home Office, "Country of Origin Information Report Pakistan 2013", 9 August 2013, OGC0D145414.

12. Jane's Sentinel reported in their 2012 'Security Assessment' that constituents of the TTP posed a significant threat throughout the Federally Administered Tribal Areas (FATA) and in some areas of Khyber Pakhtunkhwa (KP) Province, regularly confronting and defeating Pakistani security forces, although their ability to deploy suicide bombers made them a threat throughout Pakistan. Their control of much of the Afghanistan-Pakistan border was said to have enabled them to forge strong operational links with the Afghan Taliban.<sup>6</sup>
13. The United States Department of State reported that during 2012 the Pakistani military conducted counterinsurgency and counterterrorism operations in the FATA to stem the TTP militancy in these areas. Militants and Pakistani authorities were reported to have clashed repeatedly in the period from 2008 to 2012, primarily in FATA and KP province. Parts of FATA and KP province were reported face threats from the TTP, groups linked to the TTP, Taliban and Al Qaeda militants.<sup>7</sup> The TTP was said to have wielded control over various portions of Pakistan, mostly in the north western tribal areas in the ten year period before 2014.<sup>8</sup>
14. In FATA and parts of KP Province, the Pakistani Taliban were reported to have adopted a strategy of first gaining effective control over an area, then using violence and public punishments to impose codes of conduct based on their own interpretations of Islamic law. This included forcing residents of those areas under their control not to watch television or listen to music. In Swat District in KP Province, a Sunni militant group linked to the TTP led an insurgency from 2007. This group established parallel administrative structures in some districts, burned girls schools, and killed artists, teachers, government officials, policeman, paramilitary soldiers and Army troops.<sup>9</sup> The information before me does not indicate that the applicant's district of origin, Attock District, or any other part of Punjab Province, was ever under the control of the TTP or any other militant group.
15. As noted, the TTP demonstrated the ability to carry out attacks throughout Pakistan, often targeting police and religious minorities.<sup>10</sup> The United Kingdom Home Office reported that Punjab was the province least affected by fatalities as a result of terrorism in 2013. Nevertheless, the information before me indicates that members of Sunni militant groups, including the TTP and the Punjabi Taliban, were present in Punjab province. Southern Punjab was reported to be the home, or the area of origin, of many members of Sunni militant groups.<sup>11</sup> I note that when asked about the level of Taliban activity in in his area, the applicant indicated that they were quite active. Asked about the type of things the Taliban did in his area, the applicant replied in general terms that they would kidnap people for ransom. He indicated that he had not encountered the Taliban prior their claimed visit to his shop in 2008.
16. There is little evidence before me to suggest that the Afghan Taliban were active in the applicant's home district of Attock in Punjab province in the period during which the applicant claimed he was visited by members of the Taliban or other militants. Members of the Afghan Taliban and Al Qaeda were reported to be present in parts of FATA, close to the border with Afghanistan, in 2013, and to have been the subject of US and Pakistani government attacks in these areas.<sup>12</sup> I note that the applicant's home District of Attock is in

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> "Taliban's rise in Karachi must be stopped", Al Jazeera, 3 February 2014, accessed at <http://america.aljazeera.com/opinions/2014/2/pakistan-talibankarachiviolencterrorism.html> on 10 August 2018.

<sup>9</sup> UK Home Office, "Country of Origin Information Report Pakistan 2013", 9 August 2013, OGC0D145414.

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

<sup>11</sup> Ibid.

<sup>12</sup> UK Home Office, "Country of Origin Information Report Pakistan 2013", 9 August 2013, OGC0D145414.

northwest Punjab Province and borders KP Province. While it is not very distant from the border with Afghanistan, it does not border Afghanistan or the FATA, and both KP Province and the FATA lie between Attock District and Afghanistan.

17. It was submitted by counsel for the applicant that the applicant's evidence of a pattern of gradually increasing visits from the Taliban over time is in keeping with the Taliban's small but increasing numbers or influence in his area at this time. However, as discussed, the country information does not indicate that the Taliban's influence in Attock District was increasing at this time, and in those parts of Pakistan where the Taliban and other militants had had some level of control, Pakistani Government military operations designed to reduce that control were underway or complete. In Swat District in KP Province, for example, the Pakistani Government had regained control in 2009, although in FATA, the TTP were reported to remain a powerful force.<sup>13</sup> It was also submitted that, as the Taliban demonstrated the capacity and willingness to attack targets and engage in kidnapping in Peshawar, a nearby city in neighbouring KP Province, it is plausible that the Taliban extended their resources to send sporadic and limited resources to more rural and sparsely populated areas such as the applicant's home area. The information before me indicates that the Taliban did have the capacity to attack targets in many areas of Pakistan, including in Attock. The applicant provided a report of a TTP attack on an air force base in Attock in 2012 in which one security official and eight members of the TTP were killed. The only other report of an attack by the Taliban in Attock before me is a report provided by the applicant of an attack targeting a provincial government minister in 2015, which is said to have killed a number of people.
18. Considered as a whole, the information before me suggests that in areas in which the Pakistani Taliban or other militant groups exercised some degree of control, they attempted to impose their standards and beliefs on the communities under their control. In areas in which they were not in control, they attacked targets associated with the Government and members of religious minorities in particular, while also attacking members of some other groups such as polio workers and journalists. As discussed, the information before me does not indicate that Attock District was under Taliban control in the relevant period, or at any other point in time. The information discussed suggests that it is unlikely that the Afghan Taliban, the TTP, or any other militant group or groups, would have sought to persuade the applicant to close his shop in [Town 1] on the basis that it was un-Islamic over the period of four years claimed, or at any point. The nature of the applicant's evidence regarding the claimed visits and threats made by the Taliban in relation to the operation of the shop is also of some concern to me. His statements about these matters have varied considerably over time and are, in a number of respects, difficult to accept.
19. The applicant's evidence appeared to change during the SHEV interview in some instances. For example, when asked how he identified the men who first visited his shop in 2008 as members of the Taliban, the applicant referred to their beards, manner of dress and accents. When asked whether the men said they were members of the Taliban, the applicant said the men would not say so 'bluntly' but would hint, or imply, that they were members of the Taliban. When it was put to him that in his statement in his SHEV application he said that the men announced they were from the Taliban, the applicant said that the men always gave visible and understandable hints that they were from that group. When asked again whether the men said they were Taliban, the applicant responded in an indirect manner. When asked again whether the men said they were from the Taliban as he had indicated in his SHEV application, the applicant said the men did say they were from the Taliban. The applicant's responses appeared to change to address the delegate's concerns. I note that the applicant

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<sup>13</sup> Ibid.

claims that he does not know to which precisely which group the men who visited him belonged, although they identified themselves as members of the Taliban, and at least some of the men had an Afghan accent. He thought they could be associated with the TTP or the Afghan Taliban. I find it difficult to accept that in the course of numerous interactions with members of this group or groups over the course of four years the applicant did not gain a clearer understanding of the affiliations of the men he claims visited him.

20. The applicant's evidence as to the number of visits he received from the Taliban, and their timing, has varied and remained vague. In his SHEV application, he said that from 2008 he started to receive 'random visits' from groups of 'up to two to five' armed men 'at least once a month for up to four or six months'. He did not indicate how many men visited him on the first occasion. The Taliban said his business was un-Islamic, or words to that effect, and told him he should close his shop. He said that 'Such visits continued until 2011', then 'Throughout 2011' the visits started to get more frequent and turned into warnings and threats. He was warned that his shop would be destroyed if he did not close it. In around February or March 2012, he received a visit from three armed men. The men were shouting and aggressive. They gave him two weeks to close his shop and warned that if he did not do so they would destroy his business and kill him. One or two weeks after this, he received another visit from five men. He did not receive any a visit after that 'for up to 4 months', then in December 2012 his shop burned down.
21. During the SHEV interview the applicant said that after the first visit from 'a few' members of the Taliban in February 2008, a second visit from another group of men followed a few months later. From that point he received a visit roughly every two to three months, and sometimes after only one month until about February or March 2011. Asked what happened then, he said that on one occasion armed men visited the shop and were yelling and swearing. Asked whether they said anything different to him on that occasion, he replied that 'after 2011, especially in the start of 2012' the discussion during the visits became more threatening. They threatened to make an example of him and to destroy his business. He understood this to be a threat to kill, kidnap, or otherwise harm him. The men said that they knew all about him, his beliefs, and his thought processes. About six weeks to a couple of months after this, they started to visit him again. These visits continued until around mid-2012 or after that, then [in] December 2012 his shop was burned.
22. When the applicant was asked to describe his reasons for leaving Pakistan during the entry interview conducted shortly after his arrival in Australia, he referred to a number of visits to his shop from members of the Taliban, indicating that the first such visit, from two men, was in March 2012. Given the number of visits that the applicant claims to have received from the Taliban, some lack of precision in describing the total number of such visits would be expected. However, it is difficult to accept that the applicant would not mention during the entry interview that the visits from the Taliban began several years earlier than 2012, if this was the case. When this difference in his statements was put to the applicant, he said he was traumatised by the journey to Australia and other circumstances at the time of the entry interview, and didn't know what he was saying at the time. He also said that he felt a fear of authorities acquired in Pakistan and this led him to provide only limited information about his reasons for leaving Pakistan. I note that these explanations appear to be mutually exclusive.
23. The part of the entry interview in which the applicant's reasons for leaving Pakistan were discussed took place more than a month after the applicant's arrival. The recording of the interview indicates that although an interpreter was present, the applicant responded to the questions asked during the interview in English. He provided unhesitating, appropriate, and detailed answers to the questions asked, including to the approximately ten questions asked

about his reasons for leaving Pakistan. The interviewing officer did not hurry the applicant or ask him to limit himself to brief responses. The applicant did not indicate that he felt unwell during the interview. I am satisfied that the applicant participated effectively in the entry interview.

24. As mentioned, the applicant referred during the entry interview to his ownership of a [certain] shop and to visits received from the Taliban in connection to his business in 2012. It is not evident why a fear of authorities would have prevented the applicant from mentioning that he was first pressured by the Taliban in 2008, and then pressured in visits that occurred over the course of the following four years. I note that the applicant mentioned a number of other matters, including a consultation with a psychologist which found him to be physically and mentally well. I am not satisfied that the matters raised by the applicant account for the differences between his statements in his entry interview and his later evidence.
25. The applicant's evidence regarding the Taliban's motivations for visiting him also appeared to vary to some degree. In his SHEV application and during the entry interview, the applicant indicated that the Taliban were opposed his operation of the shop on the basis that it was 'wrong', un-Islamic or otherwise inconsistent with their beliefs. During the SHEV interview the applicant suggested that his personal views and attributes were the main reason for the Taliban's adverse interest in him. However, when the delegate put to the applicant that it was his understanding that the Taliban's interest in him was related to his operation of his shop, the applicant replied 'Yes, it was a part of the whole scenario.'
26. The applicant's claim that the Taliban or other groups visited him frequently over the course of a number of years suggests that these groups had a strong interest in the closure of the applicant's business. It is difficult to understand why the Taliban would seek to achieve this goal by visiting the applicant many times over an extended period, rather than resorting to more direct action, such as the destruction of the business, at an earlier point. I note that the applicant indicated in the SHEV interview that even on the second visit in 2008, the men were almost yelling and the tone of the visit was 'harder'. It is hard to accept that matters did not escalate before 2011, and that the Taliban pursued the goal of the closure of the applicant's business in such a restrained manner over a number of years.
27. It was submitted by counsel for the applicant that as the Taliban were not in control of the area they may have visited the village while they were in the area and may not have begun their strategy of more violent intimidation at that time. However, as discussed, the Taliban have shown the ability and willingness to attack targets in areas in which they are not in control. I do not consider that their lack of control over the area would have prevented them from violently attacking the applicant or his business if they had wished to do so. I note also that if it were the case that the Taliban's actions were constrained by a lack of numbers in the area, it is unclear why they would have chosen the apparently more resource intensive approach of frequently visiting the applicant over the course of a number of years rather than taking action such as the destruction of the shop at an earlier point. This more direct action would also appear to be more likely to discourage others from engaging in similar activities, which the applicant claims was one of the Taliban's stated aims. Counsel for the applicant argued that the applicant was able to forestall the Taliban for a period of four years by operating his business less and less and keeping a lower profile. However, the applicant's evidence, while somewhat unclear, is that he started to open his shop for reduced hours only from 2011 or 2012, suggesting that he operated his shop normally for a number of years, despite the Taliban's claimed visits.

28. The applicant's evidence regarding his interactions with the police in relation to the Taliban's claimed actions was also vague in nature and appeared to be slightly different on each occasion it was described. The applicant indicated in his SHEV application that on a number of occasions he reported the threats and warnings he had received from the Taliban to the police. He did not indicate when he had done this or provide any documentary evidence of this, such as any police reports. During the SHEV interview, he indicated that in around 2011 he received a note from the Taliban and took this to the police station. He did not refer to receiving any note or written threat from the Taliban in his SHEV application. When asked, during the entry interview, whether he had notified the police about what had happened to his shop, the applicant indicated that he had considered notifying the police but decided did not do so because a friend who consulted with a police inspector advised him that the police inspector said these sorts of events were common and the police were not able to secure the safety of every person in Pakistan. When this apparent discrepancy was put to the applicant during the SHEV interview, he said that his response during the entry interview related only to the burning of the shop. He said it was true he did not contact the police about that, but this was because he had previously contacted the police in relation to the Taliban's visits and they had done nothing.
29. The applicant presented two documents purporting to be statements made by people who witnessed the Taliban visiting the applicant's shop. One of these was made by the applicant's brother-in-law, while the other was made by a man described by the applicant as a customer. These statements are both dated in September 2016 and appear to have been prepared for the purposes of supporting the applicant's claims for protection. They relate to events said to have occurred at least three years before the date of the statements. The purported statement by the applicant's brother-in-law refers to two occasions in the period from 2008 to 2012 on which the author claims he was present when the applicant was approached by the Taliban in his shop. It does not include the dates of these incidents. It indicates that on a few occasions the author noticed men who looked like they were from the Taliban looking at the applicant and following them they were outside the shop. The author indicates that after the applicant's departure from Pakistan he had been approached by a number of men asking after the applicant. He estimates that he has been asked about the applicant's location at least once or twice a month by these 'random people' who he believes are informants for the Taliban and a part of their group. As this statement has been prepared by the applicant's brother-in-law for the purposes of supporting his application for protection, was prepared a number of years after the events it describes, and lacks detailed information about the events to which it refers, I place limited weight on it as evidence that the events it describes occurred.
30. The purported statement from a regular customer of the applicant's shop indicates that the author was present on two occasions when men came into the applicants shop, although he does not recall the exact dates of these events. He recognised these men and believes them to have been members of the Taliban due to their manner of dress and the fact that they were armed. The author states that he was asked by the applicant's brother-in-law to provide this statement. For similar reasons to those described in relation to the statement from the applicant's brother-in-law, I place little weight on this document as evidence that the events described in it took place.
31. Considering the evidence as a whole, I am not satisfied that the applicant was ever visited in his shop, or asked to close his shop, by members of the Taliban or any other militant group. I do not accept that he was ever threatened by members of the Taliban or any other militant group, or that the Taliban or any other group burned his shop. It follows that I do not accept that the applicant experienced any psychological harm as a result of any threats from the

Taliban or as a result of the destruction of his shop, or that his departure from Pakistan was prompted by any threat received from the Taliban or any other militant group. The applicant did not advance any evidence to support his claims that his shop had been burnt, including any police report or photograph of his former premises. While I have some doubts about the applicant's claim that his shop burned down, I am willing to accept that it was destroyed by fire. However, on the limited evidence before me, I am not satisfied that it was destroyed by arson.

32. I am not satisfied on the evidence before me that the applicant was of any adverse interest to the Taliban, or to any other militant group, for any reason, including any reason related to his operation of a [certain] shop, at the time that he left Pakistan. I do not accept that members of the Taliban or any other militant group have visited any member of the applicant's family looking for him since his departure from Pakistan.
33. Given my finding that the applicant was not of any adverse interest to any Sunni militant group for any reason related his operation of [the shop] at the time he left Pakistan, and having regard to the passage of time since the applicant's operation of this business, I am not satisfied that there is a real chance of any harm to him in Attock District on this basis, now or in the foreseeable future.
34. The applicant claims that he experiences depression and anxiety at the thought of having to return to Pakistan. There is no independent evidence before me, including any medical evidence, relating to the applicant's current or future health. He has not expressed any fear of harm in Pakistan related to his health. While I accept that the prospect of return to Pakistan may be unwelcome, I am not satisfied on the evidence before me that there is a real chance of any harm to the applicant in Pakistan on this basis.
35. The applicant claimed during the SHEV interview that before 2008, he had no difficulties related to the operation of his shop, but did have some problems related to his ideology, his thought process and beliefs. When asked to explain this, the applicant said that when he started college and as a teenager, he started thinking about life. Some of his teachers studied in Russia and were politically left-leaning. The applicant appeared to suggest that as a result of spending time with these teachers, he was a moderate modern man who thought openly and was quite expressive. He said he did not hide his feelings and opinions and for that reason, he had problems later in life. Despite providing a detailed response to this question, the applicant did not clarify the nature of the problems he claimed to have experienced on this basis. When asked what problems he encountered when he expressed himself as a modern man, the applicant spoke in general terms about the conservative views of the majority of Pakistani society. When asked again in what way this created issues for him, the applicant's response was unclear. He appeared to suggest that later on, he became known as a leftist and a liberal and because his area of origin borders Khyber Pakhtunkhwa Province and is not far from Afghanistan, the people who threatened him later in life were also spread, and /or their ideology was spread, in his area. For that reason, he was the kind of person whose face and name people will know. When asked to explain further, the applicant referred to debates and arguments he and some other students at college used to have about life and their beliefs. These discussions attracted the attention of other people, who would talk about the applicant and his friends, and especially the applicant, when they were not present. The delegate asked the applicant to give an example of some of the perspectives he would be putting forward during these discussions. The applicant said he was in favour of freedom, liberty, democracy, and freedom of expression. When asked to give an example of how he would express his views about these matters, the applicant said that there were many complicated things he could mention. He said he would start with Darwin's theory.

People would argue with him about the theory of evolution. He referred to his scientific beliefs and his views about modern democracy and equal rights and opportunity for women.

36. During the SHEV interview, the applicant repeatedly referred to himself as an expressive person. He appeared to suggest that he used to express views critical of actions of the Taliban such as kidnap for ransom. He criticised the actions of Pakistani political party, MQM, during the SHEV interview, saying that they could readily kill people. He suggested that the issues he had with the Taliban pressuring him to close his shop were related in some way to his beliefs and his expressive nature. As discussed, the delegate noted that it was his understanding that the Taliban's concerns with the applicant were due to his operation of his shop and asked the applicant whether he agreed that this was the case. The applicant replied in the affirmative, indicating that it was 'part of that, the whole scenario'.
37. The applicant did not refer to his views, beliefs, or expressive characteristics in the entry interview or in his SHEV application. This, the confused nature of the applicant's description of his beliefs, and his inability to describe any specific occasion on which his views or his expressive nature caused any difficulties for him, with the possible exception of his claimed interactions with the Taliban related his operation of his shop, which I have not accepted occurred, leads me to conclude that the applicant did not publicly express any particular political, scientific or religious views, and did not have a profile as a leftist, a liberal, or an outspoken person. The applicant is well educated and I am willing to accept that he is more progressive in his private views than other residents of his village, and that due to his level of education, he is seen as moderately progressive in the context of his small home village. However, I do not accept that his profile as a moderately progressive person in the context of his village attracted any adverse attention in the past. Other than his claims to be expressive and outspoken in relation to various matters, which I have not accepted, the applicant does not claim that he engaged in political or 'activist' activities, such as participating in protests, campaigns, or joining political parties, in Pakistan. He has not expressed any desire to engage in such activities in future. I am not satisfied that there is a real chance of any harm to the applicant in Attock District, now or in the foreseeable future, on the basis of his progressive private views or his profile within his village as a moderately progressive person, even having regard to his past operation of a [certain] shop.
38. I have considered the chance of harm to the applicant as a result of attacks by the Taliban and other militant groups in Attock District. A significant reduction in violence across Pakistan has been reported since 2014 as a result of major government initiatives aimed at reducing violence, particularly by targeting the activities of militant groups. These initiatives have included Operation Zarb-e-Azb and the National Action Plan on terrorism, both launched in 2014.<sup>14</sup> Many members of militant groups are reported to have been killed or arrested in operations conducted by security forces in recent years. For example, security forces and law enforcement agencies are said to have arrested 1,418 suspected terrorists and members of radical organizations in search operations conducted throughout Pakistan during 2016. These included 812 suspected militants linked with the TTP or local Taliban groups.<sup>15</sup>
39. DFAT reported in 2016 that militant groups, particularly the TTP, are divided and disrupted.<sup>16</sup> PIPS commented that the operational capabilities of the TTP in 2016 had suffered a great blow.<sup>17</sup> Militant groups are nevertheless reported to remain active in Pakistan. In 2016, the TTP was said to remain the major actor of instability in Pakistan, carrying out 106 terrorist

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

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

attacks across the country. As discussed, the TTP is reported to have particularly targeted members of security forces, government institutions and personnel, and members of religious minorities in attacks in recent years.<sup>18</sup>

40. Punjab is the country's largest province, with an estimated population of 100 million people. DFAT reported in 2016 that Punjab remained relatively free of sectarian and generalised violence.<sup>19</sup> The Pak Institute for Peace Studies (PIPS) reported that there were 24 terrorist attacks in Punjab Province in 2015, while in 2016, there were seven, representing a 69 per cent reduction in the number of such attacks.<sup>20</sup> The number of people killed in terrorist attacks only fell by four per cent due to a major attack targeting Christians in Lahore in March 2016, which killed 74 people. Of the seven reported attacks in Punjab in 2016, five were carried out by the Taliban and other militants with similar objectives, while the remaining two attacks were sectarian in nature.
41. According to PIPS, Attock District did not experience any terrorist attacks in 2016.<sup>21</sup> The South Asia Terrorism Portal's 2016 timeline referred to the killing of an Ahmadi man by unidentified men in Attock District.<sup>22</sup> The Center for Research and Security Studies report on the security situation in Pakistan for the third quarter of 2016, described Punjab as the most peaceful province in Pakistan in terms of fatalities as a result of violence. Attock was not among the ten districts of Punjab which experienced five or more fatalities in this period.<sup>23</sup>
42. The applicant provided a range of news articles with his SHEV application. Among these are a number of items relating to events in Attock, including several reports of the killing of 17 people in an August 2015 attack on a Minister in the Punjab provincial government in Shadi Kahn village. There is also a 2014 report of the arrest of six suspected terrorists from indifferent parts of Punjab, including Attock. I note that PIPS reported that in September 2016, a senior counter terrorism official in Punjab claimed an Islamic State recruitment network in Rawalpindi and Attock had been exposed.<sup>24</sup> The applicant also provided a list of terrorist incidents in 2012 which includes a report of an attack on a Pakistani air force base by members of the TTP in August 2012.
43. Overall, the information discussed suggests that violent incidents in Attock District, including attacks by militant groups, are rare and where terrorist attacks have occurred, they have targeted politicians, military targets, or members of religious minorities. The applicant is not among those groups regularly targeted in attacks by militant groups. He is not, for example, a member of the police force or the military, a member of a religious minority, a politician, or a tribal or religious leader. Even having regard to his past ownership of a [certain] shop, his private progressive views, and his profile within his village as a moderately progressive person, I am not satisfied that there is a real chance of harm to the applicant as a result of attacks by the Taliban or any other Sunni militant groups, or as a result of the security situation in Attock District, now or in the foreseeable future.
44. The applicant claims that the Taliban may harm him on his return to Pakistan. He will be seen as a traitor because he sought asylum in Australia, a western country. The Taliban might

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<sup>18</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

<sup>19</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<sup>20</sup> PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

<sup>21</sup> PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

<sup>22</sup> South Asia Terrorism Portal, "Pakistan Timeline 2016", 23 October 2016, CIS38A80122473.

<sup>23</sup> Center for Research & Security Studies, "Security Report: July-September 2016", 28 October 2016, CIS38A80122494.

<sup>24</sup> PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

believe he has shared information about them with the Australian authorities as part of his application for protection. I note that I have not accepted that the applicant was of any adverse interest to the Taliban or any other militant group at the time he left Pakistan. The applicant did not advance any independent evidence of any attacks by the Taliban or other militant groups targeting Pakistani citizens returning to Pakistan after living in western countries, including any attacks on returning unsuccessful asylum seekers. There is no other evidence before me of attacks of this type. According to DFAT, western influences are pervasive in Pakistan and many Pakistanis have relatives in western countries and aspire to migrate abroad. DFAT assesses that individuals are not subject to discrimination or violence on the basis of having spent time in western countries.<sup>25</sup> I am not satisfied that the applicant would be of any future adverse interest to the Taliban or any other Sunni militant group on this basis, even having regard to his other characteristics discussed.

45. DFAT reports that entry and exit from Pakistan is governed by the Passports Act 1974. Pakistani citizens require a valid Pakistani passport to exit or enter Pakistan. Penalties under the act can include imprisonment for up to one year, a fine, or both. Returnees who leave Pakistan on valid travel documents have not committed immigration offences. The applicant states that he departed Pakistan legally, using his own 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. While there is no evidence that unsuccessful asylum seekers returning to Pakistan are punished on return, DFAT suggests that returnees may come to the attention of Pakistani authorities at airports, and may be questioned by the Federal Investigative Agency (FIA) or other authorities to check whether they are wanted for committing crimes in Pakistan.<sup>26</sup> There is no evidence before me indicating that the applicant has committed, or would be suspected of having committed, any crime in Pakistan.
46. While I accept that on his return to Pakistan, the applicant may be questioned by the FIA to check whether he is wanted for committing any crime, I am not satisfied that any brief period of detention for questioning of this type would amount to serious harm. I am not satisfied that there is a real chance of any other harm to the applicant in Attock District, now or in the foreseeable future, having regard to his individual circumstances and claims, considered separately and cumulatively, and to the other information before me.

#### **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**

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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.

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<sup>25</sup> DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

<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 Pakistani authorities to check whether he is wanted for committing any crime. 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. I have concluded that the applicant does not otherwise face a real chance of harm in Attock District for any reason related to his past operation of a [certain] shop, his health, his private progressive views, his profile within his village as a moderately progressive man, on the basis that he will be returning to Pakistan having unsuccessfully sought asylum and lived in Australia for approximately five years, due to the security situation in Attock District, or as a result of any combination of these matters. 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

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

## Decision

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

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

***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.