



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/10028

Date and time of decision: 9 December 2021 17:04:00
D Hughes, 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) applied for a protection visa on 11 May 2017. A delegate of the Minister for Immigration refused to grant the visa on 29 September 2021.
2. The applicant initially claimed to be a citizen or national of Afghanistan that had lived in Pakistan. Following the delegate's decision, the applicant now claims that he is a citizen of Pakistan.

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 provided one submission to the IAA. The submission includes a statutory declaration from the applicant, declared 26 October 2012. In the declaration, the applicant states that he provided incorrect information to the Department. His new information is as follows:
 - He was born in Pakistan and is a citizen of Pakistan. He is not from Afghanistan.
 - His date of birth is [date], not [date].
 - He has a brother, [Mr A] (born [date]). He is a Pakistani citizen. He arrived in Australia in February 2010. He was granted a SHEV visa on 16 October 2017.
5. In support of that revised background, he provided a copy and translation of his Pakistan national identity card.
6. He raises his fears in relation to Pakistan, relating to his ethnicity and religious profile, if he returns to Pakistan and his home area in Quetta. He refers to feeling very depressed and seeking medical help, but that he has not yet seen a psychologist. No medical evidence is attached.
7. At the visa interview, I note the applicant was invited to comment on information that the delegate considered raised concerns about his claimed identity and citizenship. The applicant provided no comment at the interview, but he and his representative indicated they would provide post interview submissions. On 30 September 2021, the representative contacted the Department to confirm that she had spoken to the applicant and that he had instructed that he had no further comments to make or information to provide regarding his SHEV application.
8. The applicant claims his representative did not contact him after the interview. He claimed he was under a lot of mental stress and forgot to follow up with her. He claims there was a major miscommunication between him and the representative.
9. While the applicant's overall credibility is a matter of concern in this review, I consider the national identity card provides some independent corroboration of his identity. In terms of his revised identity, I am satisfied this is credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims.

10. I am not persuaded that the applicant forgot to contact his representative and make submissions, but I do consider the information he has provided to the IAA appears to clarify and confirm his identity and citizenship. I also accept that he would have felt considerable stress and anxiety in having that incorrect information identified by the delegate during the visa interview and this may explain, to some degree, his decision not to provide comment and correct his identity at an earlier point. The applicant did not benefit from post interview submissions and now concedes he provided incorrect information to the Department. I am satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

11. In the visa application, the applicant raised claims to fear harm on return to Afghanistan. These can be summarised as follows:

- He was born [in the later year] in [Village 1] , Jaghori, Ghazni Province, Afghanistan. This was a Hazara village. He was very young when they left Afghanistan.
- His father died when he was very young. His mother has had a difficult life. His father's brother (his [uncle]) still lives in [Village 1] and assisted him to obtain documentation.
- In 1998, when he was [age] years of age, they fled to Pakistan. He cannot remember the journey to Quetta. They never registered with the Pakistan authorities. His mother was not educated and was scared of the authorities. The house they lived in was owned by a Hazara man [who] had a big family (more than 15 people) and they had a room in his house. They lived as refugees without documents in Pakistan.
- The reason he fled Pakistan was because he was afraid he would be killed as a Shia Hazara. He fears Lashkar-e-Jhangvi (LeJ) or the Taliban.
- He recalls several major attacks against Hazaras. After an attack at a shopping centre in Hazaratown on 16 February 2013, his mother told him she wanted him to leave Afghanistan.
- He cannot return to Pakistan because he is not a citizen of Pakistan and does not have the right to live there. He lived there as an unregistered refugee. He is afraid he will be killed by LeJ or the Taliban in Pakistan because he is a Shia Hazara.
- He cannot return to Afghanistan because he is afraid of being killed as a Shia Hazara by the Taliban, Daesh and other groups that target Hazara.
- As he has spent most of his life outside of Afghanistan, he does not know how he would survive there. He is also afraid of returning to Afghanistan as a Shia Hazara who has lived in Australia for many years. He is afraid that the Taliban and other groups could find out he has lived in Australia and see him as an infidel.

12. In his visa application, the applicant provided a range of documentation in support of his claims to be an Afghan citizen including a 'Form of Identity Verification and other services for Afghan Citizens Outside the Country', a copy of his uncle's Taskera (an Afghan national identity document), and a letter [which] confirms his family arrived in the Quetta settlement in 1998. He later provided a copy and translation of his own Afghan Taskera [in] July 2021, which included a revised birthdate ([date]).

13. In his submission to the IAA, the applicant revised his claims as follows:

- He is a citizen of Pakistan, born [date]. His brother, [Mr A], is also a citizen of Pakistan.

- He left Pakistan under tremendously difficult circumstances. He was young and due to ongoing systematic genocide of Shia Hazaras in Quetta, he was not mentally in the right frame of mind. Taking this into account he was misguided by agents during his dangerous journey to Australia. Being naive and not having travelled before, he quickly became their victim, as he was convinced to lie about his identity and country of citizenship.
- Everything he and his brother have done for his visa application, they have done because they feared for their safety and lives. These are mistakes that he and his brother wish they never made, but in their situation they did not know what to do.
- He has been feeling very depressed and has sought medical help. He has not yet seen a psychologist.
- He currently supports his mother and his siblings in Pakistan, who rely on him to survive. He came here for a better future, to help his family in Pakistan, and to forget all the bad things he has seen. If he returns to Pakistan, he will have no future, and his whole family will suffer.
- The situation for Hazara Shias in Pakistan is not safe. The Taliban and Islamic State militant groups are active and are still killing Hazara Shias in Quetta and the rest of the country. They often carry out bomb attacks in neighbourhoods where Hazara Shias live.
- The government cannot or will not protect him from harm, and he cannot seek protection from the police or other authorities.
- There is nowhere safe he can go in Pakistan. His hometown Quetta is extremely dangerous. Even other cities are not safe as he is easily recognisable. He will not survive living in Quetta, or anywhere else in the country.
- He is certain he will suffer harm or lose his life if he goes back to Pakistan.

Factual findings

14. For the reasons that follow, I find the applicant is not a credible witness.
15. As indicated above, since his arrival in Australia, the applicant has claimed to be a citizen/national of Afghanistan, and a Shia Hazara from Jaghori. He claimed to have no brothers. He arrived in Australia on [date] April 2013, claiming to be born [in a later year]. Accepting that birthdate, he represented that he was a minor when he arrived in Australia.
16. In his 2017 visa application, the applicant contended he left Afghanistan at a young age, around [age] years of age, and his claims relative to Afghanistan were limited given his age when he departed. He feared returning to Afghanistan principally because he was a member of the country's at times vulnerable Shia Hazara minority. In the visa application, the applicant declared that his claims in that form were true and correct.
17. At the visa interview in 2021, the applicant was reminded that his claims would be treated in confidence and the importance of telling the truth, and providing complete and accurate claims. He was also reminded of the consequences of providing false and misleading information. He confirmed he understood.
18. During that interview, the applicant confirmed that he had revised his birthdate, stating he was born in [a different year]. The delegate asked him where the [later year] came from (being the year of birth he had claimed previously). The applicant said he did so to gain access to a

language centre and because he was told older people arriving to Australia were being sent to Nauru.

19. The applicant was asked a number of questions during the visa interview relevant to his identity, background and experiences. Other than his year of birth, and confirmation of his given name / surname, he reiterated all his previous identity claims.
20. In the latter stages of the visa interview, the delegate formally put to the applicant that there was information before the Department that indicated he had undeclared brothers in Australia, and that one of these brothers had originally claimed to be from Afghanistan, but was later identified as being a citizen of Pakistan and holder of a Pakistani passport.
21. The applicant did not provide comment or response to the delegate's concerns, whether at the visa interview or in post interview submissions.
22. In his submission to the IAA, the applicant resiles from his earlier claims to be a national of Afghanistan. He now confirms he is a citizen of Pakistan, and a Shia Hazara from Quetta. He confirms [Mr A] is his brother. He claims to be born on [date], making him [age] years of age on his arrival in Australia.
23. It is now apparent his claims about his identity, age, citizenship and fears in returning to Afghanistan were untrue. I have not considered his claims or profile in terms of Afghanistan any further.
24. I have weighed the applicant's submission to the IAA and his explanation for why he provided incorrect information.
25. I am not satisfied and do not accept that he was a victim of agents when travelling to Australia. It is not implausible that the applicant could have received bad advice when travelling to Australia, however I consider there are a range of factors that indicate this was the applicant's conscious and independent decision, and one he has persisted with until the time of this review.
26. Firstly, I do not accept the applicant was young and naïve on coming to Australia. Accepting his revised birthdate, he was around [age] years of age when he arrived in Australia. While still relatively young, I consider he was at an age where he would have understood his responsibilities to provide true and correct evidence regarding his identity and claims.
27. Secondly, his arrival was not the only time he or his siblings claimed to be from Afghanistan. The applicant's brother claimed to be from Afghanistan prior to the applicant's own arrival in Australia. I consider this indicates it was the applicant and his siblings that decided together to advance claims with respect to Afghanistan.
28. Thirdly, even accepting he was young and received bad advice, the applicant actively persisted in providing false and incorrect information in the eight years that followed his arrival in Australia. This includes in his 2017 visa application and the supporting documents, in which he declared the truth and completeness of his evidence. This also includes the provision of his purported Afghan identity document to the Department (an Afghan Taskera) on 23 July 2021 ahead of his visa interview. This continued in the 2021 visa interview, where he was again reminded of his responsibilities to provide true and correct evidence, and the consequences of he did not do so. The applicant had legal representation at the time, was in his [age], and was aware of his responsibilities, yet he continued to provide incorrect evidence about his identity and claims, including the apparent provision of a bogus document (his Afghan Taskera) in

support of his identity. He did not volunteer this new information until after the delegate's decision and her findings that he was a citizen of Pakistan.

29. I have weighed his contentions about the impact of the violence he has witnessed and his claims to be under stress or depressed. The applicant has provided no medical evidence of this, but given his history, I accept he may have felt under stress or depressed. However, I am not satisfied that those concerns are at a level that excuses or explains his decision to provide incorrect information over an eight year period.
30. While I accept the applicant's revised evidence to the IAA, including his Pakistan national ID, that he is a citizen of Pakistan from Quetta, I am not satisfied he is a witness of credit, or that his evidence can otherwise be relied upon.
31. I do not accept he was at all undocumented or financially limited in Pakistan. I find he held a valid Pakistani passport and left the country lawfully. I do not accept his claims that he did not receive formal schooling. Given his language abilities (being able to speak English, Urdu and Hazaragi), I find that he is likely educated. I note English and Urdu are the languages taught in Pakistan schools. Given he grew up in the Hazara enclaves, where Hazaragi would have been spoken, I consider a full education is the most reasonable explanation for his multilingual abilities.¹
32. The discussion at the visa interview indicated the applicant travelled to Australia at considerable cost. As I find the applicant is not a witness of credit, I consider the applicant's claims to have been of limited financial means (and that his mother borrowed money so that he could travel to Australia) are also untrue. Those claims were predicated on the false claim that his family were undocumented Afghan refugees.
33. With respect to Pakistan, I am also not satisfied the applicant's specific claims are credible. The applicant has not satisfied me that he was ever directly threatened or harmed. I find the applicant lived, studied and worked in Pakistan without any specific incident. As he is not a witness of credit, I am not satisfied and do not accept his claims to have had any close proximity to sectarian violence in Quetta. If he was living in Quetta at the time, I accept he may have been present in the city at the time of past attacks and that insecurity may have impacted him to some degree. It may even have been a factor in his decision to leave. However, I am not satisfied he ever faced any direct or specific threat as a Shia Hazara or on any other basis. Indeed, if the situation was as dire in Quetta as he now contends, I consider he would have raised his initial protection claims with respect to Quetta or Pakistan. That he did not do so is a further indication to me that his fears with respect to living in Pakistan were limited.
34. I consider he would return to Pakistan as a Shia Hazara. As he would not be returning to Afghanistan as he initially contended, I do not accept he would be vulnerable in terms of his inexperience in living in the country. On the contrary, I find he would be returning to a country where he has over two decades of life experience, as well as existing family and social support networks.
35. I have not accepted the applicant left the country on a false passport. Accepting he is a citizen, I find he left lawfully using a valid Pakistan passport, which is how returnees tend to leave the country.² I accept it may be determined that he lived in the west and sought asylum, but beyond that I am not satisfied he has any other profile.

¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

² DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409

Area of return

36. The applicant claims to be from Quetta. Country advice indicates that approximately 96 percent of Pakistan's 208 million population are Muslim. Of that number around 15-20 percent are Shia, or around 30-40 million. There are around one million Hazaras, with around half of the overall Hazara population living in Quetta, and around 700,000 said to reside in or around the Quetta area. Hazara communities also live in Islamabad, Lahore and Rawalpindi.³
37. Quetta is a city in Southwestern Pakistan and is the capital of Balochistan Province. The majority of Hazaras in Quetta live in enclaves due to the security situation in Balochistan. The Hazara community in Quetta lives in two main areas, Hazara town in the west of the city, and Mari Abad in the east. Many, but not all Hazara in Quetta reside in these areas. The government provides security to these Hazara enclaves, including for Shia religious activities.⁴
38. Despite my concerns about the applicant's credibility, I consider his claims to be from Quetta to have at least been consistently raised and, importantly, they find some corroboration in the other evidence before me. I find the applicant lived in Quetta for the first [number] years of his life. Despite his contentions about insecurity, his family continues to live in Quetta and have done so apparently without direct threat or incident. He indicated at the visa interview that his family lived in the mountains. While not determinative, I consider this is likely some indication that his family home is securely within Mari Abad, Quetta.
39. Based on the evidence before me, I accept his sisters and mother continue to reside in Quetta. I consider this is the area the applicant would return and live if he went back to Pakistan. Within Quetta, I accept the applicant is from Mari Abad and this is the specific area he would return. Within Quetta or elsewhere in Pakistan, I accept he would be recognisable as a Shia Hazara from his appearance and religious engagement.⁵

Refugee assessment

40. 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

41. 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

³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; UK Home Office, 'CPIN - Pakistan: Hazaras', 9 November 2016, OGD7C848D98.; DFAT, 'Thematic Report - Shias in Pakistan', 15 January 2016, CIS38A801265; DFAT, 'Thematic Report - Shias in Pakistan', January 2016, CIS38A801265.

⁴ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Thematic Report - Shias in Pakistan', 15 January 2016, CIS38A801265.

⁵ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; UK Home Office, 'CPIN - Pakistan: Hazaras', 9 November 2016, OGD7C848D98.

- 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.

Ethnic, religious and related profile

42. The applicant's claims in relation to Pakistan relate to the situation in the country, but Quetta specifically. In his submission to the IAA, the applicant contends the situation for Hazara Shias in Pakistan is not safe. He states that Quetta is extremely dangerous, and the Taliban and Islamic State militant groups are active and are still killing Hazara Shias in Quetta and the rest of the country. They often carry out bomb attacks in neighbourhoods where Hazara Shias live.
43. As above, Shia Hazaras in Quetta tend to reside within one of the two enclaves (Hazara Town or Mari Abad). The government provides security to these Hazara enclaves, including for Shia religious activities and commemorations.⁶
44. According to DFAT, the security situation in Pakistan is complex, volatile, and affected by domestic politics, politically motivated violence, ethnic conflicts, sectarian violence, and international disputes.⁷
45. In terms of his ethnic profile, information from the UK Home Office indicates that in Pakistan, Hazaras are not at risk of persecution or serious harm from the state. The risks to Hazaras and Shia Hazaras are from Sunni militant and terrorist groups, including the Taliban, LeJ, and Islamic State.⁸
46. At the time the applicant left Quetta in 2013, sectarian and ethno-sectarian violence was at a high level throughout Pakistan, including Quetta. According to DFAT, there were 131 sectarian incidents in the country in 2013, killing 558 and injuring 987.⁹ Through 2012 and 2013, a significant number of attacks occurred in Quetta and the wider province of Balochistan, several of which resulted in high numbers of Shia and Hazara casualties, including major attacks referred to in the applicant's claims.¹⁰
47. In the intervening years since the applicant departed the country, the Pakistan Government and military/security forces have undertaken a series of major operations targeting militant and terrorist groups, including the Taliban, throughout Pakistan, extending into Balochistan. These measures are credited with a significant reduction in the number of violent and terrorism related attacks in Pakistan. These operations have disrupted the activities of militant groups and disrupted their access to former safe havens. Since the launch of these operations

⁶ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

⁷ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

⁸ UK Home Office, 'CPIN - Pakistan: Hazaras', 9 November 2016, OGD7C848D98; UK Home Office, 'CPIN - Pakistan: Hazaras', 9 November 2016, OGD7C848D98; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

¹⁰ South Asia Terrorism Portal, 'Shias killed in Pakistan since 2001', 28 August 2016, CX6A26A6E8837.

and the National Action Plan in 2014, the frequency of sectarian (and ethno-sectarian) attacks has reduced in Pakistan year on year.¹¹

48. Despite the decline in incidents, DFAT's February 2019 advice in relation to Shia Hazaras 'moving out of the enclaves, within and outside of Balochistan' was that they face a high risk of violence from sectarian militants. While DFAT does observe the reduction in sectarian attacks in the country, its assessment of the security risks in Quetta and Balochistan relies on reporting and data from 2012 to mid-2018.¹² Much of the analysis before me relates to this period, however I consider more recent information indicates that the risks to Shia Hazaras living in Quetta continues to reduce.
49. In terms of more recent security incidents, the delegate has had regard to the following attacks in Quetta and Balochistan through 2019 and 2021:
- 21 April 2019 – an attack in Quetta's Hazargangi market that killed 20 and injured 48.¹³
 - 30 May 2019 – an unsuccessful attack at an Imambargah in Quetta, which was foiled by security forces.¹⁴
 - 6 August 2019 – an attack that killed 2 and injured a dozen at a Hazara shoe market in Mission Road, Quetta.¹⁵
 - 25 October 2020 – an IED explosion in Hazargangi, Quetta in which 7 were killed and several injured at the same time a Pakistan Democratic Movement rally was being held.¹⁶
 - 3 January 2021 – the killing of 11 Hazara miners in Balochistan in a small village (Mach) near the Afghan border in 2021.¹⁷
50. These attacks indicate that ethno-sectarian attacks continue to occur in Quetta and Balochistan, however I also consider the above timeline of incidents is indicative of the improved security environment within Quetta and what appears to be a growing infrequency in ethnic and sectarian attacks against Quetta's Shia Hazara population.
51. There is support for this in a 2020 report from the Pak Institute for Peace Studies (PIPS). It confirms that sectarian-related targeted killings of members of the Shia Hazara community is a regular feature of Balochistan's security landscape. However, it also confirms there has been a gradual decline in terrorist violence in Balochistan, particularly since 2013, and that the activities of violent sectarian groups have become less frequent in recent years. Building on DFAT analysis above, it states that Counterterrorism campaigns and high security infrastructure throughout the province have weakened sectarian (and nationalist) groups.¹⁸
52. In the five years to March 2018, around 509 Hazaras were killed in terror related incidents in Quetta.¹⁹ However, through 2019 to 2021, it appears that the steady decline in attacks against

¹¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

¹² DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

¹³ Dawn, '20 killed, 48 injured in attack targeting Hazara community in Quetta', 12 April 2019, 20190416073650.

¹⁴ Pakistan Today, 'Security forces foil terror bid outside Imambargah in Quetta', 30 May 2019, 20190531130549

¹⁵ Pakistan Today, 'Two dead as Hazaras come under attack, again', 6 August 2019, 20190807085445; Express Tribune, 'Blast hits Hazara community's shoe market in Quetta', 6 August 2019, 20190807090404.

¹⁶ Pakistan Today, 'IED attack in Quetta kills 7, injures several', 25 October 2020, 20201027102816.

¹⁷ Dawn, 'PM Imran visits Quetta, meets families of slain Hazara miners', 9 January 2021, 20210111084455; Gul Yousafzai, 'Slain Pakistani miners buried after protest', Reuters, 13 January 2021, 20210113110241.

¹⁸ MA Rana, 'Militant Landscape of Balochistan', Pakistan Institute for Peace Studies, 19 June 2020, 20200623101100.

¹⁹ Dawn, '509 Hazaras killed in terror-related incidents during last five years in Quetta NCHR report', 20 March 2018, CXBB8A1DA25915.

Shia Hazaras as identified by DFAT and PIPS has continued. Given the 2021 attack against the Hazara miners occurred well outside Quetta, the information before me indicates just one ethno-sectarian attack in Quetta through 2020-2021. Even accepting there may be other incidents not detailed in the reports, I consider there has been a clear reduction in attacks targeting the city's Shia Hazara population, particularly when compared against the number of sectarian attacks between 2010 and 2018.²⁰ I consider the earlier DFAT assessment indicating the risk of violence was high does not have the benefit of more recent information indicating the trend of declining violence and influence of militant and extremist groups has continued.

53. The advice before me indicates that Shia Hazaras are safe in the enclaves in Quetta, due in part to measures taken to protect the enclaves by Pakistan authorities and Shia communities.²¹ Within these areas, I am satisfied the chance or risk of harm to the applicant would be very limited.
54. I accept there remains some degree of risk in Quetta, both from ethno-sectarian attacks outside of the enclaves, and other insecurity within Quetta – for example attacks by nationalist insurgent groups (which do not appear to target Shia Hazaras). In terms of the latter, I note that the applicant has no profile that I consider would put him at risk from Baloch nationalist groups, nor do I consider he would have any proximity to these groups and their targets (e.g. military and economic infrastructure). I accept there is insecurity in Quetta from other nationalist groups, but I also note there has been a decline in attacks from these groups, in the context of the improved security measures in the area and Pakistan overall.²² Based on the advice before me, I am not satisfied there is a real chance of the applicant being harmed in generalised violence within Quetta.
55. The applicant claims that the Pakistani authorities cannot or will not protect him. I am not satisfied that is the case. I accept DFAT refers to some discrimination (in the form of obstruction) against Hazaras by security forces at checkpoints.²³ However, the country advice does not indicate that Shia Hazaras are denied protection. The weight of the more recent information before me demonstrates that the Pakistani authorities have taken significant steps to reduce extremist and militant activity throughout Pakistan, including within Quetta and Balochistan. I note in the April 2019 blast, Frontier Corps paramilitary soldiers assigned to guard the Hazara shoppers were among those killed and wounded.²⁴ I also note that in terms of Ashura, the Pakistan government and security forces have provided significant security for Shia religious processions, including within Quetta.²⁵ Based on the information before me, I am not satisfied the Pakistani authorities cannot or will not protect the applicant or other Shia Hazaras living in Quetta.
56. I have weighed the limited evidence before me about the impact of developments in Afghanistan and the resurgent Afghan Taliban²⁶ (which is not the same entity as the Pakistan Taliban²⁷). While I accept those developments are concerning, I am not satisfied they are yet indicative of any shift in the overall security environment in Quetta.

²⁰ South Asia Terrorism Portal, 'Shias killed in Pakistan since 2001', 28 August 2016, CX6A26A6E8837; Dawn, '509 Hazaras killed in terror-related incidents during last five years in Quetta NCHR report', 20 March 2018, CXBB8A1DA25915.

²¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; US Department of State, 'Country Report on Human Rights Practices for 2017 – Pakistan', 30 April 2018, OGD95BE927478.

²² MA Rana, 'Militant Landscape of Balochistan', Pakistan Institute for Peace Studies, 19 June 2020, 20200623101100.

²³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

²⁴ Dawn, '20 killed, 48 injured in attack targeting Hazara community in Quetta', 12 April 2019.

²⁵ News International (Pakistan), 'Ashura observed across the country peacefully', 12 October 2016, CX6A26A6E10809.

²⁶ Mohsin Dawar, 'Pakistan's Shameful Glee at the Taliban's Rise', The Diplomat, 17 September 2021, 20210923133119.

²⁷ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

57. Outside of ethnic and sectarian violence, DFAT states that some (typically low-level) anti-Shia discrimination does occur in Pakistan. DFAT further states that Hazaras face a moderate risk of societal discrimination, including by government officials and security forces, in the form of obstruction at checkpoints, denial of or delay in access to identity documentation, employment and services. DFAT assesses such discrimination reflects individual prejudice rather than systematic and/or formal official discrimination. The risks of discrimination appear to be higher for Hazaras travelling in and outside of Balochistan itself. DFAT assesses that Hazaras in Pakistan who remain inside Hazara enclaves in Quetta do not face societal discrimination.²⁸
58. In terms of his religious profile, nearly all Hazaras are Shia. DFAT assesses that Shia who are not Hazara (or Turi) generally do not face discrimination based on their religious affiliation when seeking employment.²⁹
59. While within the enclaves, I am satisfied the applicant would face no discrimination as a Shia or Hazara. Outside the enclaves, I consider the risks of discrimination relate principally to his profile as a Hazara, rather than his faith. I accept DFAT's advice that Hazaras face a moderate risk of societal discrimination in other parts of Quetta, including at checkpoints. However, I am not satisfied any discrimination would constitute or give rise to serious harm. While not determinative, I give weight to the fact that the applicant detailed no claim of discrimination or interference with the authorities in the past, or that he was unable to access employment. On the information before me, I am not satisfied any discrimination he may face would be at a level that would threaten his capacity to earn a livelihood, cause him significant economic hardship, deny him access to basic services, threaten his capacity to subsist, or otherwise give rise to or constitute serious harm.
60. As above, I am satisfied he would return to live with his family in Mari Abad, as he did previously. I consider this would alleviate some of the logistical issues of returning home, such as accessing accommodation. I am satisfied the applicant would again be able to find work. He has a range of work experience from his time in Pakistan and [Australia]. The applicant spoke English well at the visa interview. According to his visa application, he also speaks, reads and writes Urdu. He contended that he had limited schooling, but I have found his evidence in this regard was also not credible. The applicant was not an undocumented Afghan refugee, but a citizen of Pakistan in a country where education is compulsory to the age of 16. I consider his age, education, language skills, and work experiences will equip him to obtain work in Pakistan. I am satisfied he would be able to work, subsist and access the services he may require.
61. Based on the country advice which indicates the enclaves are secure,³⁰ I find there is no real chance or risk of the applicant facing harm in living and working in Mari Abad. I consider the applicant would live principally within the enclaves, however I accept the country advice that he may need to travel outside of the Hazara safe zones for example to access certain services or for certain goods or food.³¹ Given my assessment of the security environment in Quetta and the reducing frequency of sectarian attacks and activity, I consider the chance he would be harmed while travelling outside the enclaves within Quetta would be present, but remote. I have no reason to consider he would need to travel outside of Quetta into other parts of Balochistan where the security situation is more severe,³² other than for direct journeys to

²⁸ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409

²⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

³⁰ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

³¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; US Department of State, 'Country Report on Human Rights Practices for 2017 – Pakistan', 30 April 2018, OGD95BE927478.

³² DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

other cities. I consider the risks to him in travelling on major roads and not spending time in other areas in Balochistan would mean that the chance or risk of harm is even more remote.

62. The delegate concluded that there was a small, but real chance that the applicant would face harm in Quetta. I do not consider our assessments are at odds, but I consider the chance or risk of harm to the applicant in returning to live in Quetta is more remote. In that assessment, I have given weight to the improved security infrastructure and counter terrorism measures put in place since 2013, and what I consider to be a clear decline in sectarian attacks and militant activity in recent years. I have also weighed the applicant's individual circumstances, which I do not consider would obviously take him out of Quetta into more insecure parts of Balochistan. In view of the information before me, while I accept that the situation in Quetta is challenging, I consider the chance or risk of harm to the applicant is present, but more than remote. For clarity, I am satisfied the applicant would not face a real chance of harm or serious harm in Quetta arising from either his ethnicity (Hazara), his religion (Shia), on any related basis, or in the broader security environment within Quetta, whether now or in the reasonably foreseeable future.

Other profile considerations

63. I have additionally considered his departure from Pakistan and his time in the west, the latter being an aspect of his claims related to his return to Afghanistan.

64. According to DFAT, western influence is pervasive in many parts of Pakistan. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assesses that individuals in Pakistan are not subject to additional risk of discrimination or violence on the basis of having spent time in the west.³³ I note the applicant is a practising Shia and would be returning to a major urban area where he has existing family and social networks. Given his continued engagement with his faith, I am not satisfied he would be seen as a kaffir or an infidel, or that he would be viewed with mistrust. On the limited information before me, I find the applicant would have no adverse profile from his time in the west or for having sought asylum. I find he would face no real chance of harm for these reasons.

65. DFAT states that returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistan law.³⁴ Based on the evidence before me, I have found the applicant left Pakistan lawfully on his own passport. I find he has committed no offence under Pakistan law.

66. As the applicant would in all likelihood need to travel on a temporary document (given the absence of his previous Pakistan passport) I accept he may be detained and questioned to establish his identity, profile and means of departure from Pakistan.³⁵ There is nothing before me to indicate he would have any profile of concern to the Pakistan authorities or that he would face any differential treatment on the basis of his other claimed profile. While I have found the applicant is not a witness of credit, there is nothing before me to indicate he has any adverse character or record in Pakistan or Australia. I consider he has access to other documents (his national ID card) that can verify his identity. Given his lack of adverse profile and lawful departure, I do not consider there is any real chance of the applicant facing harm on

³³ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

³⁴ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

³⁵ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

return to Pakistan, nor do I consider any brief period of questioning or detention (likely a couple of hours³⁶) by Pakistani officials at the airport on his return to Pakistan would constitute serious harm.

67. Having regard to all the information before me, I find there is no real chance of the applicant facing harm for any of these reasons, including in return processing at the airport, if he were to return to Pakistan, now or in the reasonably foreseeable future.

68. I do not consider that the applicant has any cumulative profile beyond that already considered above. I am not satisfied the applicant would face a real chance of harm on the basis of his individual or cumulative profile if he was to return to Pakistan, now or in the reasonably foreseeable future. I consider his fears of persecution, however described, are not well founded.

Refugee: conclusion

69. 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

70. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

71. 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.

72. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

73. On his return to Pakistan, I have found that any brief period of questioning or detention in return processing would not constitute serious harm. In view of the same information and analysis, while I accept that he may be detained for a few hours and questioned on return to Pakistan, I am also satisfied this would not constitute significant harm as defined. I do not consider he has any profile that would put him at risk of any additional penalty, harsher treatment or harm, or anything else that would constitute significant (or serious) harm.

³⁶ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

74. In the assessment above, I have found any discrimination the applicant may face as a Shia Hazara would not amount to serious harm. Having regard to the same information and considerations, I also do not accept any discrimination he may experience on return to Quetta would constitute significant harm as defined.
75. I have otherwise found there is no real chance of the applicant facing harm for any of the reasons he has claimed. For the same reasons, and having regard to the same information and analysis, I find there is not a real risk of the applicant facing significant harm for these reasons.
76. As I have found the applicant would not face a real chance or risk of harm in returning to Quetta, it is not necessary to go on and consider the issue of relocation.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

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.