



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA21/10103

Date and time of decision: 20 December 2021 14:03:00  
S McNeill, 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 a 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 Hazara Shia from Pakistan. He arrived in Australia [in] April 2013 and on 5 June 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. The applicant claimed to fear harm in Pakistan because he is a Shia Muslim of Hazara ethnicity and the son of a well-known and outspoken politician. On 21 October 2021 a delegate of the Minister for Immigration refused to grant the visa.

### 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). No further information has been obtained or received.

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - He was born in Karachi, Sindh, Pakistan in [Year 1], and is an ethnic Hazara and Shia Muslim.
  - His parents were born in Quetta but moved to Karachi for his older siblings' education. Throughout his life he went back and forth between Quetta and Karachi living in both. His parents and an older brother continue to do this. They own a house in [Location] on [Road 1], Quetta and one in Karachi.
  - His older brother [Mr A] came to Australia on a student visa and was granted protection. His older sister [Ms B] married a Hazara who sponsored her on a Partner visa. They are both citizens.
  - His father was involved in politics in Pakistan for the National Party (NP) from the 1970s and [contested] the [Year 2] elections in Balochistan for the Balochistan National Democratic Party (NDP). He came [Rank] out of [Number] candidates. The first four candidates were from religious parties backed by Wahhabi Sunnis. His father was outspoken against the Balochistan Liberation Army (BLA) and he and his brother who helped him were threatened.
  - His father remains a member of the NP but has stopped many of his political activities. His father was afraid that as he (the applicant) got older he would be targeted by Sunni extremists because of his politics. Their family is well known in Quetta because of his father.
  - In Karachi he used to attend [an] Imambargah a few times a month and every day during Muharram. As he grew older, he became scared it would be bombed by Sunni extremists.
  - In 2009 when he was about [Age], he took part in Muharram on M.A. Jinnah Road when the procession was attacked. He was [Distance 1] metres from the impact of the bomb and over 50 Shia were killed.

- They spent two to three months in Quetta every year. They would travel by bus to Quetta but in recent years it became too dangerous. The Lashkar-e-Jhangvi (LeJ), Sipah-e-Sahaba (SSP) or the Pakistani Taliban (TTP) would stop buses, identify Hazaras, take them off the bus and shoot them. From 2008 or 2009 they started taking the train and sometimes flew to Quetta. His maternal uncle arranged a police escort to their hometown in [Location].
- In Quetta, Hazaras were not safe, there were many attacks by the LeJ and other groups and they became used to the killings and attacks. He used to attend mosque, and several mosques were bombed and attacked especially during Ashura.
- In January 2013 the LeJ attacked the Pearl Snooker Club in Quetta; there were two blasts and the second killed the most people. The snooker club is [Distance 2] metres from their house. His older brother [Mr C] was in Quetta at the time, and he was afraid [Mr C] had been killed. One hundred Hazaras died, and he knew some of these people who were his neighbours.
- The next month the LeJ put 2000 kg of explosives in the water tank near the food market in Hazara town. Many women and children were killed.
- He no longer felt safe in either Karachi or Quetta because of the attacks on the Shia community. His parents made the decision to send him out of Pakistan and he left [in] March 2013.
- If he is returned to Pakistan, he fears being killed by the LeJ or SSP because he is a Shia, a Hazara and the son of a well-known politician outspoken against the BLA and the violence against Shia Hazara. He is afraid he will be caught up in a bomb attack or an attack on a mosque or during a religious occasion.
- To be safe in Pakistan he would have to stay locked in his home. The Pakistani authorities are unwilling and unable to protect him from these attacks and killings; they are influenced by the Sunni extremists who are Wahhabis, and many government officials are too. The LeJ and Taliban are backed by the police and army. The Shia police are targeted in Quetta too.
- There is no place in Pakistan, he is easily identified as a Hazara. Shia Hazara and Shia mosques are targeted in Karachi, Lahore, Quetta, Islamabad and throughout Pakistan.

## Refugee assessment

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5. 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

6. 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.
1. The applicant has consistently claimed to be a national of Pakistan since his arrival in Australia and throughout the protection application process. The applicant has provided copies of his Pakistani passport bio data page, Pakistani birth certificate and English translation, and National Identity (ID) card. I am satisfied there is no issue as to the identity of the applicant or his nationality. I accept that the applicant is a citizen of Pakistan and that Pakistan is the receiving country for the purpose of this review.
  2. The applicant has consistently claimed to be a Hazara of the Shia faith born in Karachi. The applicant had an interpreter in the Hazaragi language at his Arrival Entry (Arrival) interview on 23 May 2013; however, it was mostly conducted in English. His SHEV application form indicates he speaks Hazaragi, Urdu and English. At his SHEV interview of 21 June 2021, the applicant spoke in English however an interpreter in the Hazaragi language was made available. It is apparent in the photos of the applicant in the review material, his physical appearance is consistent with ethnic Hazara's Asiatic Mongol appearance.<sup>1</sup> Education certificates indicate the applicant was educated in Karachi and his birth certificate indicates Karachi as his place of birth.
  3. Pakistan has four provinces, Balochistan (capital Quetta) which borders Afghanistan and Iran to the west, Khyber Pakhtunkhwa, Punjab, and Sindh (capital Karachi) and the Islamabad Capital Territory. Pakistan is ethnically and linguistically diverse. Outside of large urban centres, Pakistanis tend to live in ethnically homogenous communities. Punjabis form the largest ethnic group (44.7 per cent), followed by Pashtuns (15.4 per cent), Sindhis (14.1 per cent), Saraikis (8.4 per cent), Muhajir (Urdu-speaking immigrants from India, 7.6 per cent), Balochi (3.6 per cent), and others (6.3 per cent, including Hazaras who number at less than one per cent).<sup>2</sup>
  4. Pakistan has over 200 million citizens. Muslims comprise of 96.28 per cent of the population, Sunnis the majority with 85 to 90 per cent and Shias between 10 to 15 per cent. Shia live throughout Pakistan in urban centres, including Karachi, Rawalpindi, Islamabad, and in Quetta and other areas in Balochistan. Shia and Sunni communities are generally well integrated, though some Shias, live in enclaves in these areas. Shias are most prominent during religious events and pilgrimages to Iraq and Iran. Shia Mosques are located throughout Pakistan.<sup>3</sup>

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<sup>1</sup> 'World Directory of Minorities and Indigenous Peoples Hazaras', Minority Rights Group International (MRG), 01 January 2008, CX206128.

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>3</sup> Ibid.

5. Hazaras are of Eurasian descent, rendering them visibly distinct from other ethnic groups in Pakistan. They migrated from Afghanistan in the second half of the 20<sup>th</sup> century. Estimates of their population in Pakistan range from 600, 000 to under one million, the majority of whom are Shia. Approximately half a million live in Quetta, concentrated in Hazara town (also known as Brewery Road) and along Alamdar Road towards Mariabad (Mari Abad), enclaves which are protected by high walls and security checkpoints guarded. There are also communities living elsewhere, including Islamabad, Karachi, Lahore, and Rawalpindi.<sup>4</sup>
6. On the information before me I accept the applicant is a Shia Muslim Hazara born in Karachi, his parents were born in Quetta, and his grandparents originated from Afghanistan. Included in the applicant's SHEV application was his older brother [Mr A]'s statutory declaration of 14 April 2011 outlining his protection claims. This provides additional details about the applicant's father's political activities in Pakistan. It states his father worked with the PNP from 1973 until 1990 without a specific role. Between 1990 and 1993 he was [Position 1], then [Position 2] (1993 to 1996) and [Position 3] (1996 to 1997). In 1993 the leader of the BLA, Khair Buksh Marri, returned from exile in Afghanistan and his father as [Position 3], gave an interview critical of him for wanting to look after only the Baloch people rather than all nationalities living in Balochistan. His father started receiving threats.
7. Additionally, [Mr A]'s statement of claims states his father contested the Balochistan National Assembly Election in [Year 2] as a candidate for the Balochistan National Assembly. Other parties including the BLA asked him to withdraw, and they received threats. His father was not successful, but he continued his political involvement. On 22 May 2007 threats of murder were made against his father and their family. His father wrote to the Human Rights Commission of Pakistan about this but did not go to the police as they supported the BLA leader. In [Year 3] the office of his father's political party in [Road 2], Quetta was attacked. His father was working several hours each day at the office but not at that time. One of the workers was killed. After the attack, his father was very upset and moved back to Karachi for safety.
8. Also included with the SHEV application were the following documents in relation to the applicant's father:
  - Certified copy of his father's Pakistan National ID card
  - Letter from the [Position 4] of the NP dated 20 March 2008
  - Photographs of his father during his [Year 2] political campaign
  - Copy of list of candidates and results from the Electoral Commission for elections held in [Year 2], Balochistan
  - Copy of election results for his father [Year 2]
  - Extract from a magazine interview given by his father in 1996 indicating his criticism of the BLA
  - Letter from his father to the Human Rights Commission, Pakistan dated 26 May 2007
  - Various newspaper articles about his father.
9. The applicant's SHEV interview held on 21 June 2021 was conducted in English with a Hazaragi interpreter present. The applicant stated he had been in a relationship with an Australian citizen since July 2018 and in October 2020 their son was born. He stated he had attended mosque and observed religious ceremonies in Pakistan. His father had recently passed away in

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<sup>4</sup> Ibid; 'Country Policy and Information Note - Pakistan: Hazaras', UK Home Office, November 2019, 20191220084848.

the religious month of Muharram. His older brother [Mr C], sister-in-law and nephew lived in Karachi and his mother mainly lived in Karachi with his brother but moved between Karachi and Quetta. She travelled by air if traveling by herself but by road when traveling with others. His maternal grandmother also lived in Quetta. Asked whether they were relatively safe in Pakistan, the applicant said he couldn't say it was safe because they were living a very discreet life, they didn't go for shopping or fun activities. His brother goes to work and then comes home. The worker in the apartment goes and buys the groceries and for urgent things his mother would go.

10. The applicant said his father was a politician by profession. When he was young, his father used to [do a job] and had his first heart attack in 1990 because [of a circumstance]. Because of his heart condition, the last 20 years of his life he had a heart condition. He was on heavy medication and only two per cent of his heart worked. His father was affiliated with the Pakistan NP and when they were young, he was highly active at political gatherings and going against people fighting against their ethnicity and religion but then he had a serious stroke and slowed down but never stopped being politically active.
11. His father advocated for their community, they were a small tribe, everyone knew each other, and they looked up to his father. His father used to travel everywhere but later sat on his computer and phone. His brother and he were very active helping him and writing his speeches. Asked whether his father was ever physically harmed as a politician, the applicant said there were threats, and he was attacked but not hurt. Asked whether his father was the only member of the family involved in politics, the applicant said 'yes'. They would help him write his speeches and articles.
12. The applicant said after he finished his schooling, he had plans to go to university. He went to three or four different academies to get his college but did not complete because they had to flee. He was studying to be a [Occupation 1] and he did his internship for a couple of months as an [Related occupation]. In Australia he had worked for the first five and half years but because of Covid it had shut down. He had been doing casual work and was interviewing; he went for a trial and then Covid started again.
13. Asked why he decided to leave Pakistan, the applicant said first because of his father's political activities and the articles he wrote against the Baluch which caused them to be sentenced to death. His father was on the committee to get someone back to Pakistan and sentenced and the Baluch hold grudges and take revenge; that was the biggest threat. Then their ethnicity and race, they were always discriminated against at school and everywhere. They were called bad names because of their religion and their opportunities are limited. They are targeted and killed and there are those who believe they will go to heaven for killing a Hazara.
14. The applicant said there were a lot of bomb blasts in Quetta [Distance 3] m from their home and he knew a lot of people who were killed; there were pieces in their yard, and they had to go and help everyone. In Karachi they went to a religious ceremony and the bomb blast happened; they were near it and 50 people died in front of his eyes. The bombs had stopped but not the killings; the LeJ think it is a free pass to heaven. He sometimes talked to his cousin in Quetta, they were living in a jail and could not go out of that boundary as they didn't know if they would come back alive.
15. The applicant confirmed two brothers and his sister were in Australia; his first cousins, their wives and children were also Australian citizens. His uncle who came on the boat with them was in South Australia. He did not know if he had been granted a visa as they hadn't spoken to him.

16. The delegate discussed with the applicant the various payments he had sent to Pakistan. He confirmed he had sent money AU\$23 or 24,000 to his father to pay back with interest because he had mortgaged their house for their trip to Australia. They then did renovations so new tenants could move in. He had also been involved in setting up a computer game [Name] on [Social media] and social media; they organised a competition and a tournament. He got money back from his investment and this went to his parents and brother.
17. The applicant said if he returned to Pakistan, because of the security he wouldn't be able to work or go around freely because of the threats against Shia Islam. The major threat was from the Baluch and then the LeJ and jihadis. He could also not go back to Pakistan because of his relationship, his partner was not a Muslim but [Country 1]; her lifestyle, their relationship and son without marriage was a sin. If he is sent back his partner will not go with him and she wouldn't let his son go. If she is forced to go, she would stand out and be targeted.
18. On the information before me, I accept the applicant's mother, older brother, sister-in-law, and nephew are his only immediate family members still in Pakistan and that his older brother [Mr D] resides permanently in Karachi, is married, and works as a [Occupation 2] while his mother travels between Quetta and Karachi. The applicant has extended family in Quetta including his maternal grandmother. I accept his father passed away recently.
19. The education documents and certificates in the review material all indicate the applicant was educated in Karachi. I find the applicant was educated in Karachi and while he spent time in Quetta during his school holidays, I am satisfied he spent most of his formative years in Karachi where his older brother lives and where his mother spends substantial periods of time.
20. The letter dated 20 March 2008 from the [Position 4] of the NP certifies the applicant is an active member of the NP; it does not confirm his father's history with the NP. The letter does not state specifically what the applicant did for the NP, or when he became an active member and the applicant himself has not claimed to be a member only that he helped his father write speeches and articles. I am also mindful that document fraud is widespread in Pakistan; types of documents historically found to be fraudulent include references.<sup>5</sup> I am willing to accept the applicant when he was young may have contributed some limited assistance to his father with his speeches and articles (although he has not provided any examples of this assistance) but I am not satisfied the applicant was otherwise politically active. The applicant has not claimed to have been politically active in Australia and I am not satisfied he is inclined towards politics or political activism and this is not because of any fear of harm but that he otherwise is not interested in pursuing a similar path to that of his father.
21. The photos and documents regarding his father corroborate the applicant's claims that his father was involved in politics. The photos of the applicant's father appearing at various political events appears to resemble the photo of his father's National ID card. There are a couple of news or magazine articles which also include a photo of his father, these articles are not obviously outspoken about the BLA but are more focused on minority rights.
22. There is his father's handwritten letter to the Human Rights Commission, Pakistan dated 26 May 2007 with an English translation, but it is unclear whether the Commission ever responded to the letter. Other material confirms his father was a candidate in the [Year 2] election representing the Balochistan NDP. I accept the applicant's father was involved in politics and that he stood as a [candidate] in [Year 2] in Balochistan.

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<sup>5</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

23. The applicant oral evidence about his father being attacked because of his political work lacked substance and detail and I rely on this brother [Mr A]’s statement of claims which threats and an attack on the office of his father’s political party in [Year 3], but his father was not present at the time. Given the applicant’s unpersuasive evidence and that he relied on [Mr A]’s claims, I prefer the written claims of his brother and accept that the party’s office was attacked but not his father noting DFAT’s observations that politically motivated violence occurs across Pakistan with the prevalence of the violence occurring in Karachi and Balochistan.<sup>6</sup>
24. I accept the applicant’s father may have been threatened during his political career, but I am not satisfied since his father’s relocation to Karachi after the attack on the party office in [Year 3], and due to his poor health and heart condition, his father was as politically active as claimed past this period or that these threats against him or his family continued. None of the family including his father were otherwise harmed and the applicant did not claim that his older brother [Mr D] or mother continue to be threatened because of his father’s political past. On the information before me, I am not satisfied the applicant faces a real chance of any harm on his return to Pakistan now or in the reasonably foreseeable future because of his father’s past political involvement with the Balochistan NP, his political activism on behalf of the Hazara people, or his criticism of the BLA.
25. The applicant claimed to have present during an attack on an Ashura procession in Karachi on 10th Muharram in 2009 when he was [Age] with his father and two brothers; they were [Distance 1] metres from the impact of the bomb blast and over 50 Shia were killed. As noted above, the applicant merely repeated this claim at his SHEV interview and did not attempt to provide any further details to persuade me that he was present. He did not state what time of day this occurred or describe a more real lived experience.
26. Along with his SHEV application, the applicant provided a printout dated 6 February 2017 from the South Asian Terrorism Portal (SATP) of ‘Shias killed in Pakistan since 2001’. There is no mention of an attack of this nature and the death of 50 Shia in Karachi occurring in 2009 or in Balochistan, nor in 2008 or 2010. On the very limited evidence before me including his unconvincing oral evidence, I am not satisfied of this incident or that the applicant, his father, and brothers were present in an Ashura procession in 2009 when a bomb blast occurred, and 50 Shia were killed.
27. The applicant briefly discussed the bomb blasts in Quetta occurring [Distance 3] metres from his house and that many people he knew were killed. In referring to his written claims of the attack at the Pearl snooker club and his brother [Mr C] being in Quetta at the time, these attacks are supported by country information in the review material. The SATP refers to two separate bomb blasts on Alamdar Road in Quetta on 10 January 2013 killing 106 and injuring 169. I accept this is the incident the applicant is referring to. Furthermore, country information referred to below indicates the targeting of Hazaras Shias in Quetta and I consider it plausible the applicant may have witnessed bomb blasts while visiting Quetta.
28. The UK Home Office and DFAT refer to the National Commission for Human Rights, Pakistan (NCHR) Report of 2018 which states Hazaras have consistently been targeted by terrorists and religious fanatics since 1999 through suicide bombings and targeted killings, with more than 2000 having reportedly been killed in the last 14 years. Since January 2012 to date, 509 individuals, from the Hazara community have been killed and 627 injured in different incidents of sectarian violence, which mostly took place in Quetta. This has forced Hazaras into two ghettos in Mari Abad and Hazara Town districts separated by 11.6km via Spini Road which

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<sup>6</sup> Ibid.



connects the two districts.<sup>7</sup> These attacks and threats of further attack have caused severe restrictions on their freedom of movement, their access to livelihoods and education.<sup>8</sup>

29. The LeJ, a Sunni paramilitary groups has claimed several attacks on Shia in recent years, particularly Hazaras in Quetta and other Shia groups in Karachi. In an open letter released in June 2011, LeJ leaders declared their intention to 'abolish the impure sect' of 'Shi'a and Hazara Shi'a.'
30. More recently, the TTP or the Pakistani Taliban, became associated with targeted killings against Shia.<sup>9</sup> These militant groups have been banned but remain active and ISIS (Daesh) and Al-Qaeda have also been operating in Pakistan, especially in Balochistan and Sindh.<sup>10</sup> Extremists have targeted Hazaras with guns and bombs while they participate in religious processions, pray in mosques, travel to work, or just go about their daily life.<sup>11</sup>
31. According to DFAT the security situation in Pakistan is complex, volatile, and affected by domestic politics, politically motivated violence, and international disputes with India and Afghanistan. The security situation varies across the country, however, and militant attacks can occur anywhere. Approximately 3684 civilians have died in terrorism-related violence between 2014 and mid-January 2019. The Pakistan armed forces have launched several security operations beginning in June 2014 with Operation Zarb-e-Azb due to terrorism and the volatile security environment. It involved the Rangers, a paramilitary security force, and intelligence operations in Balochistan and Karachi to target terrorist, separatist, and criminal group.<sup>12</sup>
32. After the deadly attack on the Army school in Peshawar in which 132 children died; the Pakistani authorities introduced the National Action Plan (NAP) in December 2014. The combination of military operations and the NAP formed a civil-military effort to combat terrorism, separatist, and criminal groups across Pakistan. Observers credit Operation Zarb-e-Azb and the NAP with a significant reduction in the number of violent and terrorism related attacks in Pakistan.<sup>13</sup>
33. Government and military operations have disrupted the activities of militant groups and limited their access to former safe havens, and Military courts have tried and convicted individuals with links to terrorist organisations. The frequency of sectarian attacks has reduced annually since the launch of Zarb-e-Azb and the NAP in 2014. There was a 29 per cent decline in the number of reported terrorist attacks in 2018, compared to 16 percent in 2017, and this marked a nine-year downward trend in attacks. Sectarian violence also reduced by 40 per cent in 2018 compared to 2017.<sup>14</sup>
34. Country information before me indicates that, in the last few years, there have continued to be sporadic attacks against Hazaras in Quetta. PIPS reported seven sectarian related attacks in

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<sup>7</sup> 'Country Policy and Information Note - Pakistan: Hazaras', UK Home Office, November 2019, 20191220084848; '509 Hazaras killed in terror-related incidents during last five years in Quetta NCHR report', Dawn (Pakistan), 20 March 2018, CXBB8A1DA25915; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid; 'Pakistan Security Report 2020', Pakistan Institute for Peace Studies (PIPS), 15 June 2021, 20210630123526

<sup>11</sup> 'Country Policy and Information Note - Pakistan: Hazaras', UK Home Office, November 2019, 20191220084848; '509 Hazaras killed in terror-related incidents during last five years in Quetta NCHR report', Dawn (Pakistan), 20 March 2018, CXBB8A1DA25915; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; 'Hazaras Gripped by Religious Extremism in Balochistan', Diplomat, The, 16 April 2019, 20190417114912.

<sup>12</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

2019 in the Quetta and Ziarat district of Balochistan killing 31 and injuring 77; five of these attacks targeted Shia Hazaras killing 24 and injuring 57. Overall terrorist attacks decreased by 27 per cent.<sup>15</sup>

35. PIPS reported a decrease of 50 per cent terrorist attacks in Balochistan in 2020 from 2019.<sup>16</sup> In October 2020, an improvised explosive device (IED) attached to a motorbike set off an explosion in the Hazara Ganji area of Quetta during a political rally in the city, resulting in seven deaths and several injured. The ethnicity of the victims was not disclosed.<sup>17</sup> In early January 2021 armed men abducted and killed 11 Hazara coal miners in Mach a small mining town 48km east of Quetta, ISIS claimed responsibility.<sup>18</sup>
36. On the information before me, I accept that the around the time the applicant departed Pakistan in 2013 there were more frequent targeted attacks against Shia Hazara in Quetta. The Pakistani authorities have taken various steps to improve security for Hazaras in Quetta and there has been an overall reduction in violence in the past eight years; however, armed sectarian groups including those the applicant fears, the LeJ, TTP, SSP and others including ISIS continue to operate in Balochistan. Hazaras tend to reside in the secure enclaves of Mari Abad and Hazara town. While the applicant claimed his home was in [Location], [Road 1] [detail deleted] and the applicant has not claimed his family home is within one of the two enclaves.
37. As noted, the applicant stated his mother continued to travel between Quetta staying in their home next to his grandmother's house and the other half of the time she resided with his brother in Karachi. The applicant did not indicate that his mother had experienced any harm whilst travelling between the two cities nor did he claim that she had been targeted whilst in Quetta. Given the applicant has predominantly resided in Karachi where he was educated, undertook his internship, spent most of his formative years, where his older brother continues to reside whilst working in the fashion industry and where there are more work opportunities, I consider that if he returns to Pakistan, he is very likely to return to the family home in Karachi and reside there with his old brother [Mr D] and mother.
38. I accept the applicant may wish to visit his grandmother and other family members who remain in Quetta given he has not seen them for over eight years. Given the significantly improved security conditions in Quetta, the decline in targeted sectarian attacks on Hazaras, I consider the occasional visit to Quetta would involve only a remote risk that would not amount to a real chance of harm on this basis.
39. Karachi, the capital of Sindh province has a population of over 20 million and is Pakistan's largest city.<sup>19</sup> In 2014 the chief of the Hazara tribe claimed the majority of the one million Hazaras were in Quetta or Karachi.<sup>20</sup> Of the 600, 000 Hazaras in Balochistan, 100, 000 have left Quetta to the major cities which they consider more secure, around 80,000 migrated to Islamabad, Rawalpindi, Lahore, and Karachi. Thousands more wanted to move but poverty prevented them. Karachi's Hazara population has been described as sizable with an estimated

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<sup>15</sup> 'Pakistan Security Report 2019', Pakistan Institute for Peace Studies (PIPS), 05 January 2020, 20200114102703; 'Pakistan Common Claims (November 2020) - PDF version', Country of Origin Information Services Section (COISS), 17 November 2020, 20201117114326.

<sup>16</sup> 'Pakistan Security Report 2020', Pakistan Institute for Peace Studies (PIPS), 15 June 2021, 20210630123526

<sup>17</sup> 'UNHCR Eligibility Guidelines Assess Protection Religion Minorities PAK', UN High Commissioner for Refugees, 01 January 2017, UNAEAA5947

<sup>18</sup> 'Gunmen kill many Hazara Shia coal miners in southwest Pakistan', Aljazeera, 03 January 2021, 20210106090202; 'Armed Attackers Kidnap and Kill 11 Miners in Pakistan', Salman Masood, New York Times, The, 03 January 2021, 20210104135439.

<sup>19</sup> 'DFAT Thematic Report - Shias in Pakistan January 2016', Department of Foreign Affairs and Trade, 15 January 2016, CIS38A801265

<sup>20</sup> 'Country Policy and Information Note - Pakistan: Hazaras', UK Home Office, November 2019, 20191220084848

25, 000 families.<sup>21</sup> DFAT reported in 2014 there is no reliable information on the size of the Hazara community outside Quetta, but Karachi had up to 15, 000.<sup>22</sup>

40. According to DFAT, Sunnis and Shia live throughout the city, although concentrations of Shia, particularly Harazas can be found in Abbas Town, Hussain Hazara Goth, Mughal Hazara Goth, Rizvia, Ancholi, DHA Gizri, Pak Colony and Manghopir. Hazaras report that the few Hazara enclaves in Karachi, such as Mungo Pir, are unsafe and have only arisen out of necessity where poorer Hazaras have had to pool resources. Hazaras report finding it safer to live separately amongst the general community than to relocate to live near other Hazaras.<sup>23</sup>
41. The applicant's family owns property both in Karachi and Quetta, his mother regularly travels between the two cities and the applicant has been educated at a tertiary level. I am not satisfied his family would be considered poor. It is not apparent on the address provided by the applicant that his family home is one of the areas Hazaras tend to concentrate. The applicant's family were established in Karachi since prior to his birth in [Year 1] and own property there. I have not accepted the applicant was attacked in an Ashura procession in 2009.
42. DFAT reported in 2014 that a number of Hazaras have been killed in both targeted and random attacks in Karachi in the context of a high level of generalised violence. This is often related to clashing business, political and criminal interests – sectarian violence has just been one feature of the political landscape.<sup>24</sup> In 2013, the Rangers – a federal, paramilitary force commenced operations in Karachi that significantly reduced political violence. Karachi has historically experienced high levels of violence due to rival ethnic, sectarian, political, business, and criminal interests. Security forces have sought to tackle violent and organised crime across the country, particularly in large urban centres such as Karachi. The Rangers and police have arrested large numbers of people allegedly involved in kidnap, robbery, and extortion in Karachi in recent years. According to official figures, in 2016, there was an 80 per cent reduction in the number of target killings and a 93 per cent reduction in the number of kidnappings in Karachi since the commencement of paramilitary Ranger operations in 2013.<sup>25</sup>
43. DFAT understands serious crime across Pakistan, especially in Karachi and downtown Peshawar, has reduced significantly since Operations Zarb-e-Azb and Radd-ul-Fasaad, and the NAP. The NAP and the highly visible presence of the paramilitary Rangers, have led to a significant decrease in violence, including sectarian violence. DFAT notes Shia are most vulnerable during large gatherings, such as Ashura processions but heightened state protection measures during these events partly mitigate the threats associated with this greater exposure DFAT assesses that a low level of sectarian-motivated violence in Karachi exists within the context of a moderate level of overall violence. The sustainability of recent security force efforts to reduce violence in Karachi is not yet clear.<sup>26</sup>
44. The US Department of State has noted that, although political, sectarian, criminal, and ethnic violence in Karachi continued in 2019, violence declined, and gang wars were less prevalent.<sup>27</sup> In its 2019 report the Centre for Research and Security Studies (CRSS) stated there were 87 fatalities in Karachi and 20 injuries but observed Karachi is 'a mere vestige of the stark violence

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<sup>21</sup> Ibid.

<sup>22</sup> 'DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014', DFAT, 26 March 2014, CIS2F827D91264

<sup>23</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>24</sup> 'DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014', DFAT, 26 March 2014, CIS2F827D91264

<sup>25</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

the city witnessed just five years prior'.<sup>28</sup> The CRSS further reported that, in the first quarter of 2020, there were eight fatalities in Karachi but no targeted attacks on Shias.<sup>29</sup>

45. The 2019 PICSS Annual Security Assessment Report observed a substantial improvement in the security situation in Sindh with two militant attacks in Karachi. Reduction in targeted killings in Sindh clearly suggest the improvement of the law-and-order situation, which could be contributed to ongoing Rangers (paramilitary operation) in Karachi. Security forces conducted as many as 28 operations in which four suspected militants were killed and 65 others were apprehended. The report also noted the mob lynching of a suspected robber and injured another critically in Karachi. Three suspects were trying to snatch cash and other valuables from a citizen when the area people got hold of two of them.<sup>30</sup>
46. In its 2019 and 2020 reports, the Pakistan Institute for Peace Studies (PIPS) observed a sustained declining trend in the incident of terrorist violence in Pakistan that had been ongoing since 2014. It did note however militant and sectarian groups had become active again of late. Karachi reported six sectarian related targeted killings of Sunni and Shia community leaders and members in 2019. Four of the sectarian-related terrorist attacks targeted Shia religious community and were apparently perpetrated by LeJ, three Shias were killed. They were not identified as Hazaras.<sup>31</sup>
47. PIPS 2020 report cites three sectarian attacks occurred in Karachi, claiming four lives, only one of whom was a Shia policeman who was target killed reportedly on sectarian grounds. Again, he was not identified as a Hazara. Two attacks targeted Sunni scholars causing three deaths. Posting a decrease of 50 percent from previous year, seven (7) sectarian-related terrorist attacks took place in 2020 in all of Pakistan. Eleven other attacks in Karachi were terrorist related perpetrated by the nationalist insurgent groups including the BLA, Shia Hazaras were not targeted in any of these attacks. The report did indicate a rise in anti-Shia sentiment including anti-Shia rallies organised by Sunni extremists in several cities including Karachi.<sup>32</sup>
48. An October 2020 Guardian article reported in mid-September, a march of more than 30,000 people, organised by extremist Sunni Muslim groups, gathered in Karachi over two days to call Shia Muslims "unbelievers" and "blasphemers" and called for their beheading. It was the largest anti-Shia march seen in decades in Pakistan, and was copied in other cities including the capital Islamabad. The anti-Shia Muslim campaign first began gathering pace on social media in September, demanding that Shia Muslims were declared heretics. Fifty Shia had been charged in a recent blasphemy crackdown, five have been killed since September. In Punjab, police reportedly beat up and arrested 22 Shia Muslims, including seven women, who were taking part in a ceremony to mark a Shia martyr<sup>33</sup> Again no Hazaras were specifically identified. Whilst a number of sectarian rallies occurred in Karachi in 2020, the information before me does not indicate that this resulted in a significant change to the security situation for Shias in Karachi.

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<sup>28</sup> 'CRSS Annual Security Report 2019', Mohammad Nafees, Centre for Research and Security Studies, 28 January 2020, 20200130161732

<sup>29</sup> 'Quarterly Security Report 2020 – 1st Quarter, 2020', Center for Research and Security Studies, 07 April 2020, 20200416144229

<sup>30</sup> 2019 Annual Security Assessment Report', Pakistan Institute for Conflict and Security Studies, 09 January 2020, 20200122140652

<sup>31</sup> 'Pakistan Security Report 2019', Pakistan Institute for Peace Studies (PIPS), 05 January 2020, 20200114102703

<sup>32</sup> 'Pakistan Security Report 2020', Pakistan Institute for Peace Studies (PIPS), 15 June 2021, 20210630123526.

<sup>33</sup> 'Pakistani Shias live in terror as sectarian violence increases', Shah Meer Baloch and Hannah Ellis-Petersen, Guardian, The, 21 October 2020, 20201021173321.

49. DFAT assessed in 2019 that Hazaras face a high risk of violence from sectarian militants within and outside Balochistan.<sup>34</sup> The basis of this assessment is however not clear and is not reflected in the weight of the overall recent country information which points to a continuing decrease in violence including sectarian violence against Shia and Hazaras. While there have been some sectarian related attacks against Shias in Karachi in the past few years, one in 2020 and four in 2019 resulting four deaths, and none of whom were identified as Hazara this must also be viewed in conjunction that Karachi's population of 20 million. Taking into account the ongoing significant downward trend in violence, and sectarian attacks and targeted killings, I am not satisfied DFAT's 'high risk' assessment accurately reflects the current or reasonably foreseeable situation in Karachi.
50. Article 28 of the Constitution provides that 'any sections of citizens having a distinct language, script language or culture shall have the right to preserve and promote the same, and subject to law, establish institutions for that purpose.' Article 25(1) states that 'all citizens are equal before the law and are entitled to protection of law.'<sup>35</sup>
51. DFAT also states that Shia Hazaras have faced official and societal discrimination in Pakistan. While living in ethnically diverse locations such as Karachi affords increased security, Hazaras still experience societal discrimination. Outside the Hazara enclaves in Quetta, 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. However, DFAT assesses such discrimination reflects individual prejudice rather than systematic and/or formal official discrimination.<sup>36</sup>
52. The applicant has not referred to specific instances of discrimination he faced as a Hazara Shia other than state they were called names and had limited opportunities. The applicant did not indicate he experience any problems in obtaining his passport or his official school certificates and he claimed it was because of the security situation he could not finish his education. I note he was able to obtain an internship as [Related occupation] as a [Occupation 1]. He did not indicate his father experienced any discrimination in his [work] nor did he claim that his brother [Mr D] has experienced discrimination working in Karachi.
53. DFAT reports societal discrimination in Pakistan tends to manifest in the form of positive discrimination in the form of nepotism or patronage in favour of one's own family, tribal or social group. Shias are represented in the professional community including medical and legal professions. DFAT has no evidence of systematic discrimination against Shia in gaining employment in the public service, police, military, or the private sector. However, some Shias perceive discrimination against Shia gaining roles at higher levels of some organisations. Overall, DFAT assesses Shias do not generally face significant levels of discrimination when seeking employment based on their religious affiliation. Sunni and Shia attend the same public and private education institutions. Shias are well represented in parliament and regularly contest elections for mainstream political parties. DFAT assesses there are no barriers to preventing Shias from actively participating in democratic processes in Pakistan.<sup>37</sup>
54. I accept there is a real chance the applicant, as a Hazara/Shia may be called derogatory names, but I am not satisfied this amounts to serious harm. With regards to his claim there were limited opportunities for him as a Hazara, I consider this would apply to the population in

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<sup>34</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid

<sup>37</sup> Ibid.

general given Pakistan's growing youth bulge is one significant push factor driving external migration, as Pakistan struggles to create jobs to meet demand.<sup>38</sup>

55. The applicant has otherwise not claimed to fear discriminatory treatment in Pakistan as a Hazara Shia in accessing other government services, education, and employment. The applicant has work experience in Australia that will help him find suitable employment and he is able bodied. He will be able to reside in the family home while he re-establishes himself. I am not satisfied the applicant will not be able to work, or that he will suffer significant economic hardship, or that he will be denied a livelihood or denied access to basic services such that will threaten his capacity to subsist. I am not satisfied the applicant will face a real chance of discrimination amounting to serious harm in Pakistan, because he is a Hazara Shia.
56. I take into consideration the active involvement of the Pakistani authorities, its various military, and paramilitary operations over an extended period, and that there is no information before me to suggest this will not continue for the reasonably foreseeable future. I also consider there is a continued downward trend in violence and attacks by militant groups in general and that there have been only four sectarian attacks against Shia in the past two years in Karachi.
57. Although attacks against Hazara/Shias have not disappeared entirely and will likely not disappear, the applicant does not have the kind of profile that would result in him being personally targeted nor am I satisfied that such violence is occurring more broadly to the extent that he would face a real chance of serious harm. I have also considered the improved situation in regard to general crime in Karachi and I am also not satisfied the general crime in Karachi is at such a level such that the applicant will face a real chance of serious harm.
58. I am satisfied the risk to the applicant of suffering discrimination or any other harm including being killed by Sunni extremists including the LeJ, SSP or Pakistani Taliban or other militant groups, or more broadly general violence, because he is a Shia Muslim Hazara from Karachi whose father was involved in politics in the past, is remote and does not amount to a real chance. I am not satisfied the applicant faces a real chance of any harm on these bases on his return to Pakistan now or in the reasonably foreseeable future.
59. I accept the applicant is in a long-term relationship with an Australian citizen of [Country] background and that they have a son. I accept his partner does not wish to live in Pakistan and he may not be accompanied by her and their son if he is returned to Pakistan. I accept he might find these circumstances distressing. However, I am not satisfied that one or more of the reasons set out in s.5J(1) of the Act is the essential and significant reason for this or that the applicant faces a real chance of persecution as a result of his family situation. I am not satisfied the applicant faces a real chance of any harm on this basis.
60. I find the applicant does not have a well-founded fear of persecution on any of these bases.

#### **Refugee: conclusion**

61. 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).

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<sup>38</sup> Ibid.

## **Complementary protection assessment**

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62. 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**

63. 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.

64. 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.

65. In my findings above, I have found the applicant will return to Karachi if he were to return to Pakistan. I have also found he may travel to Quetta on occasion.

66. I have considered the applicant's profile and claims and country information before me, have found that the applicant does not face a real chance of harm for any other reason in Pakistan. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test. Accordingly, for the same reasons I have concluded the applicant does not face a real chance of harm, I find that there is not a real risk of significant harm to him in the foreseeable future, were he to return to Pakistan.

### **Complementary protection: conclusion**

67. 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.

## 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.