



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/06916

Date and time of decision: 29 August 2019 11:10:00
D Power, 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) claims to be a Turi Shia from Pakistan. On 11 October 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 26 July 2019, a delegate of the Minister for Immigration refused to grant the visa. The delegate found that the applicant had a well-founded fear of persecution in Kurram Agency but that he could relocate to Karachi or Islamabad. The delegate also found that the applicant did not have a well-founded fear of harm or a real risk of significant harm in Karachi or Islamabad on the basis of his faith or ethnicity, his tribal affiliation, due to his father's role as a [village leader], or as a former asylum seeker or returnee from a western country.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 21 August 2019, the IAA received submissions from the applicant's representative which refute a number of the delegate's findings. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates or clarifies a number of claims made to the delegate. No new information was provided or obtained.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant is a Turi Shia Pashtun from Kurram Agency. He grew up in a small village just outside [Town].
 - From 2007 onwards, his home area became quite dangerous. There was tension between the village and Sunni extremists who wanted access to the area due to its proximity to the Afghan border.
 - The applicant's family also owned land in the area. The nearby village is populated by Sunnis who regularly attacked their farm and killed their cattle. The family was eventually forced to stop farming a portion of their land.
 - The applicant's father was also [a type of village leader]. Because of his role he received threats from the Taliban. The Taliban also threatened to confiscate their land. Land mines and bombs were planted on their land.
 - In 2008, the applicant and some friends were shot at while collecting wood near their village. Four months later, the applicant and his [relative] were caught up in a bomb attack at a [location]. The bomb went off as they were visiting the grave of their [relative]. The applicant's [relative] lost his legs, and the applicant was lucky to escape injury.

- In 2011, while he was working as a [occupation], the applicant witnessed three separate bomb attacks targeting Shias. His family forced him to stop working as a [occupation] out of concern for his safety.
- The applicant will be targeted wherever he goes in Pakistan. The Taliban and other Sunni extremists will target because of his Shia religion. His identity documents, religious practices and surname will make him readily identifiable as a Shia. He will be further targeted because of his association with his father.
- He may also be targeted because of his family's wealth and because he owns a successful business in Australia. Reports of his business success may have sent back to individuals in Pakistan who will target him on that basis.

Refugee assessment

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

Well-founded fear of persecution

7. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. I accept that the applicant is a Shia Pashtun from the Turi tribe. The applicant has given a consistent account of his identity and provided a number of documents (including a copy of a valid passport) in support of that identity and to substantiate his claims to hail from Kurram Agency. The applicant spoke in some detail at interview about the area surrounding the small village where he grew up and about his religious practice. I accept that his identity, ethnicity, tribal affiliation and nationality are as claimed, that he is a national of Pakistan, and that Pakistan is his country of reference for the purposes of this decision.
9. The applicant stated that his family were farmers. They lived in [Village 1], near [Town], and owned some land there. Part of the land bordered a Sunni village called [Village 2].

10. The applicant claimed that from 2007 onwards the family's land had been regularly attacked by Sunni extremists. Their cattle were also killed. Because of these attacks, the family were forced to stop farming the section of their land that bordered the Sunni village and only grew crops on that portion of the land that was further away, causing them hardship.
11. The applicant's father was also [a type of village leader]. The Taliban wanted access to the area but his father refused to grant it. For this reason, the applicant's father was personally targeted by the Taliban.
12. The applicant also recounted two incidents that occurred in 2008 and that allegedly targeted him or his family. In the first incident, he was out gathering wood with friends when their party was allegedly shot at by Sunni extremists. The applicant was unharmed but a donkey was killed. The applicant and his friends had to remain hiding until dark. In a separate incident four months later, the applicant claimed a bomb exploded as he was visiting [a relative]'s grave in the company of his [relative]. The [relative] lost both legs but the applicant managed to escape injury. The applicant claims that the [relative] had himself been killed by the Taliban in 2000.
13. The applicant also claimed that he witnessed three separate sectarian attacks on Shias while [working] in 2011. The family subsequently forced him to stop [working] out of concern for his safety.
14. The applicant's account raises a number of issues. The applicant spoke of two attacks in 2008 in which he claimed to have been personally targeted. The delegate asked the applicant why he then waited until 2013 to leave Pakistan. The applicant responded that he was too young to hold a passport, and also seemed to infer that his father kept him occupied on the farm and did not allow him to go out. However, presumably this situation changed at some point as the applicant noted that he was [working] by 2011.
15. The applicant's family also remain in the same village where the applicant grew up. The applicant did not indicate that any members of his family have moved away or attempted to relocate. Outside of the alleged 2008 incidents the applicant did not provide any specific examples of the family being targeted or harmed. The applicant claimed that in his role as a [village leader], the applicant's father had refused to give the Taliban access to their land. When the delegate asked how his father had managed to survive, given the apparent enmity of the Taliban and extremist groups, the applicant responded that the family had lots of land and that things were all right on their side, which I took to mean the side away from the Sunni village. When the delegate clarified that he was asking how the father had avoided harm given that the extremists knew where he lived, the applicant stated that there not many issues in their village.
16. The applicant's cursory responses were singularly at odds with his earlier descriptions of repeated threats and attacks from Sunni extremists and the Taliban. In his written claims and during the course of his interview, the applicant variously claimed that the family had been repeatedly attacked by Sunni extremists, their land had been mined and bombed, they had been forced to abandon a portion of their land neighbouring a Sunni village, repeatedly threatened by the Taliban, and personally targeted in separate attacks in 2008. When the applicant was asked why the Taliban had not attempted to take the village by force the applicant then claimed that the Taliban had attacked the village several times but that the villagers were unwilling to abandon it.

17. The applicant's claims that the family suffered repeated attacks from Sunni extremists, and drove off armed incursions from the Taliban on more than one occasion seems entirely at odds with his statements that the family are all residing safely in that very same village more than a decade after the claimed incidents in 2008. In addition to running the farm, the applicant indicated that his father was also able to run a [business]. The applicant also [worked] for several years in nearby [Town], and no specific incidents of harm or attempted harm were raised by the applicant after the attacks in 2008 but for the attacks he witnessed in 2011 while [working]. I do not accept as plausible the applicant's claims that the family was subjected to repeated extremist attacks, and drove off multiple armed incursions from the Taliban, but somehow remained safely within the same village for years. Nor do I accept that if the applicant had a genuine fear of harm stemming from those attacks that he would wait until 2013 to depart the country given his claimed belief that the family was being specifically targeted by extremists in 2008 and armed attacks on his village occurred throughout that period. While I accept that there may have been tensions between the applicant's village and the nearby Sunni village, I do not accept the applicant's claims that his family were personally targeted or violently attacked, either by the Taliban or Sunni extremists.
18. The applicant did claim at interview that members of his extended family had been killed in attacks. He said that three [relatives] were killed in an attack in March 2017. DFAT confirms that there was a serious attack around that time in [Town]¹. It is possible that the applicant's [relatives] were killed in that attack. However, the March 2017 attack appeared to be one of three attacks that year which targeted the [Tribe] population generally. I accept that this attack would have significantly affected the applicant and the Shia community in that area. The applicant did not indicate that his [relatives] were personally targeted in that attack (i.e. as individuals or because of their family connections) and there is no indication that this well publicised attack has any direct connection to the applicant's family.
19. The country information does indicate that sectarian violence against Shias continues in Pakistan, and that there has been specific threat to the Turi community in Kurram agency and Khyber Pakhtunkhwa (KP) province. There is also some support for the contention that Turi Shias are identifiable to others by their accents, tribal names and their places of residence. Kurram Agency went against the generally improving security trend to record a significant increase in terrorist fatalities in 2017². DFAT particularly notes those three attacks in [Town] in the first half of 2017 that specifically targeted Turis and claimed 120 lives.
20. Since the 2017 attacks, the security situation for Turis has improved but at the cost of some restriction on freedom of movement and economic opportunity³. DFAT also notes that discrimination and violence towards Turis "remains significant" within Kurram Agency, due in part to concerns regarding Iranian influence within the Shia community and the enduring presence of groups such as Islamic State and Al Qaeda⁴. KP province suffered the highest number of terrorist attacks in Pakistan in 2018 according to the Pakistan Institute of Peace Studies (PIPS), although less fatalities overall than Balochistan⁵. However, it appears that security forces have borne the brunt of militant attacks in KP province as a whole. PIPS indicates that security and law enforcement deaths accounted for 75 deaths in

¹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

² Ibid

³ Ibid

⁴ Ibid

⁵ PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

KP province in 2018 out of a total of 196 fatalities. The overall improvement in the situation in Kurram Agency is also notable. PIPS lists just one terrorist attack in Kurram for 2018, although it claimed 11 lives⁶. However, the Shia community remain a target, with 36 Shias killed in KP province in 2018, the highest figure for any group outside of security and law enforcement. The European Asylum Support Office (EASO) also notes an improvement in KP province, but quotes the assistant editor of Dawn newspaper as saying ‘The marked reduction in violence in KP is real, but it is difficult to argue that the province is no longer vulnerable to militant violence’⁷. EASO also notes that the KP provincial government raised concerns about the strengthening of Islamic State (IS) “in the border areas of Afghanistan”⁸. I do not accept that the applicant or his family were repeatedly threatened by or have a personal profile with any militant group. The most recent data from KP province (and Kurram Agency in particular) also indicate some real improvements in the overall security outlook in the region. However, the heightened profile of Turi Shias in the context of the ongoing sectarian attacks in KP province still raises the question as to whether the applicant would face a real chance of serious harm if he was to return to Kurram Agency.

21. However, even if the risk of harm in Kurram Agency and KP province could be said to rise to a real one, s.5J(1)(c) of the Act requires that the real chance of persecution relates to all areas of the receiving country. For the following reasons, I am not satisfied that this is the case.
22. The available country information does not support the view that the applicant would be targeted in Islamabad or Rawalpindi because of his faith or ethnicity or for any other reason.
23. The applicant claims that he would be targeted wherever he went because of his Shia faith and father’s role as [village leader]. As set out above, I do not accept that the applicant’s family were threatened by extremists as claimed or that his father’s role as a [village leader] within his village would be of any interest to persons outside of Kurram Agency.
24. The applicant also stated that people who previously lived in his area in Kurram Agency would be able to identify him. He also stated his general fear of being targeted as a Turi Shia. The applicant’s agent also submitted some news articles to the delegate in support of the applicant’s claims. Some of the articles refer to ongoing instances of sectarian violence in Kurram Agency of the areas bordering Afghanistan.
25. The applicant’s migration agent also referred to an article which stated that an interior ministry report had declared Islamabad “extremely dangerous”. This article dates from early 2014. I note that the report the article refers to did not find that Islamabad is dangerous based on actual instances of violence but on its assessment that there remain sleeper cells or vestiges of banned terror groups in the city. Another article, detailing a blast at a shrine in a city 20 kilometres east of Islamabad, similarly dates back to 2014. A further article from 2014 talks about fears that previous residents of Kurram Agency feel in Islamabad and details alleged incidents of Turis receiving threatening letters⁹.
26. It is not clear that the articles provide much by way of tangible evidence of violence or sectarian attacks in Islamabad itself. Regardless, these articles were published prior to the

⁶ PIPS, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758

⁷ EASO, “EASO Country of Origin Information Report - Pakistan Security Situation”, 16 October 2018, CIS7B8394110560

⁸ Ibid

⁹ The Nation, “Spectre of Sectarianism still chasing Kurram Residents”, Inamullah Khattak, 28 September 2014

implementation of Pakistan's National Action Plan (NAP) which had (and continues to have) a significant impact on Pakistan's security environment. DFAT states that the Government introduced the NAP in December 2014, following an attack on army school in Peshawar that killed over 140 children¹⁰. The NAP and associated military operations are credited with a significant reduction in violent incidents and terrorist attacks in Pakistan¹¹. The articles supplied by the applicant may provide relevant background. However, given the significant changes (and improvements) in the security situation from the beginning of 2015 onwards, I consider that these articles are of limited assistance in assessing the current security situation in Pakistan.

27. The applicant's agent did also make reference to a more recent 2017 Voice of America report about an attack on a Shia mosque in Islamabad that killed one person. There is also a 2019 article from the Eurasian Times that discusses claimed disappearances among the Shia population and the general situation for Shias in Pakistan. It mentions the troubled region of Balochistan and notes that most of the disappearances are related to this region. Although it does mention overall sectarian deaths, the figure it provides is for 2012 and is now almost seven years out of date. A further article from the Tehran Times also talks about the targeting of Shias. It includes some historical data and discusses sectarian attacks in Karachi and KP province, among others. Neither of these articles mentions Islamabad or Rawalpindi.
28. Notwithstanding the report of the fatality in Islamabad in 2017, the country information indicates that Islamabad and Rawalpindi are safe cities with a stable security outlook. The Government maintains a strong security presence in Islamabad, making it relatively less prone to violent crime¹². EASO quotes PIPS figures that indicate there were just three terrorist attacks in 2017 in the entire Islamabad Capital Territory, with the same number recorded in 2016¹³. PIPS did not record a single terrorist attack in Islamabad in 2018¹⁴. These figures must also be considered against the sizeable population of Islamabad. DFAT notes an approximate population of two million people (including migrants from all over the country)¹⁵ for Islamabad city alone. In Rawalpindi, situated close to Islamabad, PIPS noted just one terrorist attack in 2018 that killed two people. This was a decline from the previous year¹⁶. DFAT notes that for 2018, there were just four terrorist attacks (resulting in 18 deaths) for the whole of Punjab¹⁷. Violent civilian fatalities of any kind were also relatively rare in Punjab as a whole with just 32 such civilian deaths in total there in 2017¹⁸. No death is insignificant, but in the context of a province whose population (110 million) accounts for more than half of Pakistan, I consider the risk to the applicant in Islamabad or Rawalpindi from any sort of harm, sectarian or otherwise, to be remote. The applicant's agent has noted the fluid nature of sectarian violence in Pakistan. However, while that may be true for parts of Pakistan, the evidence before me clearly demonstrates that the security situation in Islamabad and Rawalpindi has been stable (and improving) for some time.

¹⁰ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹¹ Ibid

¹² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹³ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁴ PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹⁵ DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515

¹⁶ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁷ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁸ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

29. The applicant has quoted a number of sources, including the United Nations High Commissioner for Refugees, the United States Commission on International Religious Freedom, and Minority Rights Group International that indicate ongoing sectarian-motivated attacks on Shias in Pakistan. It is not disputed that sectarian violence against Shias continues to occur in parts of Pakistan. The agent also quoted a recent Centre for Research and Security Studies (CRSS) report that indicated there were rises in sectarian casualties in some areas of Pakistan¹⁹. While there has been an overall improvement in the security situation in Pakistan, outcomes have differed across the country. However, while the observations made in the reports listed above are valid overall, the available evidence indicates that the security situation in Islamabad and Rawalpindi has been stable (and improving) for some time. The 2017 CRSS report referenced by the applicant's agent lists just two sectarian fatalities in Islamabad for 2017. As noted above, PIPS notes that sectarian fatalities in Islamabad dropped to zero for 2018. The agent has made the point on a number of occasions that the risk to the applicant as a Turi Shia Pashtun from Kurram Agency must be viewed cumulatively, with each of those factors contributing to a real chance the applicant would face serious harm even if he were to relocate elsewhere in Pakistan. However, on the overwhelming weight of the information, the risk to the applicant of serious harm in Islamabad or Rawalpindi as a Turi Shia Pashtun from Kurram Agency or on any other account is remote.
30. The applicant claimed that his identity card would show he was from [Town] and that this would identify him as a Turi Shia. DFAT confirms that there is evidence that Turis specifically can be identified by their tribal names, accents and the areas in which they reside²⁰. I accept that the applicant is a Turi Shia and might be identified as such if he moved to Islamabad or Rawalpindi. The applicant and his agent referred to the applicant's Turi Shia community standing up to extremists and the Taliban and therefore earning the animosity of extremists there. The applicant's agent also put forward the argument that Turis who live safely outside [Town] do so because they moved prior to the conflict in Kurram and are "therefore not treated with the same level of animosity" as those who remained during the conflict. It is not clear what exactly is being referred to but it may be a reference to the Kurram Agency conflict, a sectarian dispute that ran from 2007 - 2011 and claimed some 1,500 lives²¹.
31. It is possible that the conflict in Kurram exacerbated existing tensions between Shias and Sunni extremists in that area. However, the idea that all Turis living safely elsewhere in Pakistan do so because they moved years earlier appears to be speculation on the part of the agent and no country information has been put forward to support this contention. I do not consider plausible the idea that every Turi living safely outside Kurram moved away years before and there have been no more recent arrivals to cities such as Islamabad and Rawalpindi that have known Turi populations. DFAT noted in its 2016 report that "Shias relocate with relative ease and frequency because of family and communal networks throughout Pakistan" and specifically noted input from Turi immigrants in Islamabad who had moved there for greater access to employment and health and education services²². I note that the same report also states that although some Turi families move to Islamabad as family groups, other Turis live independently there²³. DFAT notes in its 2019 report the continued prevalence of internal migration and the appeal of large urban centres that offer

¹⁹ CRSS, "Center for Research and Security Studies Annual Security Report 2017", 1 March 2018, CIS7B83941392

²⁰ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²¹ Arif Rafiq, "Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

²² DFAT, "DFAT Thematic Report - Shias in Pakistan", January 2016, 15 January 2016, CIS38A801265

²³ Ibid

anonymity to those fleeing extremist violence²⁴. Nor do I consider it plausible that extremists are somehow able to readily identify those Turi Shias who were resident in Kurram at a particular time from those who moved earlier, or that they target their sectarian attacks on that basis.

32. The agent included in their submission to the delegate excerpts from two Administrative Appeals Tribunal (AAT) decisions that previously found Turi Shias would be at risk of harm in Kurram Agency. Both these decisions concern individual applicants and are not written (or intended) as general guidance in regard to Turi Shias. The agent has not given any background on the individuals to whom those decisions relate and it is not evident that they have any personal links to the applicant. I note the finding in one of the quoted AAT decisions that the applicant in that case could not safely relocate anywhere in Pakistan. However, considering the country information set out above, particularly in regard to the security situation in Islamabad and Rawalpindi, and taking into account his personal circumstances, I have reached a different conclusion in regard to the referred applicant.
33. The applicant stated in his written claims that lack of family support would be an issue if he relocated somewhere else in Pakistan. In the subsequent submission to the delegate (and the IAA) the agent also indicated that a lack of family support would be a barrier to the applicant relocating elsewhere in Pakistan and that he would have no access to amenities in other parts of Pakistan.
34. I do not accept that the applicant would require the support of his family to live elsewhere in Pakistan. The delegate explicitly indicated to the applicant that he appeared to be financially secure and the applicant agreed. The applicant further indicated he would not have any financial issues relocating and that his concerns related to being targeted due to his faith. In fact, the applicant speculated that because both he and his father were well off, he might be targeted because of that wealth. Otherwise, the applicant appeared to clearly indicate that he would not require external financial support in order to relocate within Pakistan.
35. In terms of amenities, basic health care is free in Pakistan²⁵. DFAT notes that resourcing issues can limit access but there is no information to suggest that such services are withheld for any convention-related reason and the applicant never indicated that he had been unable to access services in the past. The applicant also reiterated a number of times that he was in a secure financial position and that financial considerations were not a barrier to relocating. DFAT notes that accessing private health services can be an option for wealthier Pakistanis²⁶.
36. DFAT has reported that Turis face difficulties finding employment and “are generally discriminated against in employment selection processes”²⁷. However, DFAT also notes that Turis generally prefer moving to known Shia areas, and that Islamabad and Rawalpindi are among the preferred migration destinations²⁸. Turis often live in enclaves that mitigate societal discrimination²⁹. DFAT has previously noted that large urban centres (such as Rawalpindi or Islamabad) generally offer better economic opportunities³⁰. Country

²⁴ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

²⁵ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ DFAT, Pakistan Country Information Report 1 September 2017, 1 September 2017, CISED50AD5515

information cited above also demonstrates that [Tribe] Shias have previously relocated to cities like Islamabad in order take advantage of greater access to services and amenities³¹, including health and education services.

37. The applicant runs his own business in Australia, and he has a significant work history. Although the agent has contended that the applicant has limited work experience, I do not accept that this is the case. The applicant has worked as a farmer, [occupation 1] and [occupation 2]. Further to this, the applicant has displayed considerable initiative in starting up and running a successful business here in Australia. The applicant indicated at interview that his family are relatively well off and also acknowledged that he has considerable funds at his own disposal. As well the ability to speak, read and write his native Pashto, the applicant speaks Urdu and English. He is not yet 30 years old. Pakistan's official unemployment rate is relatively low at 5.8%³² and the growth rate relatively high (5.7% in 2017 and projected to be 5.8% in 2018)³³. I do not consider that the applicant would require familial support in Islamabad or Rawalpindi given his work history, language skills, general adaptability, and demonstrated capacity to accumulate savings and support himself away from his family. I consider that given his linguistic abilities, entrepreneurial skills, work history, financial means and relatively young age, he is well-placed to find employment or otherwise subsist in Islamabad or Rawalpindi.
38. The applicant also claimed that he will be targeted due to his Pashtun ethnicity. The applicant has not indicated any instances where he was targeted or harmed due to his Pashtun ethnicity per se. However, in her submission, the agent stated that Pashtuns can be subject to discrimination and racial profiling. Pashtuns are Pakistan's second largest ethnic group, comprising just over 15 per cent of the population³⁴. Pashtuns are heavily involved in the transport sector, but also well-represented in the security forces³⁵. As many Pashtuns are Sunni, and the TTP's support base is Sunni, there are reports that some Pashtuns have been subject to racial profiling and harassment by security forces³⁶. In the submission to the IAA, the applicant's agent highlighted information in the DFAT Report that some Pashtuns have faced discrimination and racial profiling by authorities. DFAT does note reports that some Pashtuns have paid bribes as high as \$5500 AUD to avoid being listed as terrorists³⁷. However, the report gives no indication of the frequency of such incidents and notes that the issue is most prevalent in Karachi and Lahore. The applicant would be returning to Islamabad or Rawalpindi. I note that the applicant is a Shia, not a Sunni, Pashtun and to that extent unlikely to be seen as affiliated with Sunni extremist organisations.
39. The applicant would be returning to Pakistan after an absence of six years. It is possible that he would be viewed as a returnee from a western country or a former asylum seeker.
40. DFAT notes that 'genuine returnees' are issued temporary documents on arrival in Pakistan and specifically notes that "a genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered their destination country"³⁸. The applicant left Islamabad airport on a valid passport in his own name. He confirmed that his passport was

³¹ DFAT, "DFAT Thematic Report - Shias in Pakistan", January 2016, 15 January 2016, CIS38A801265

³² Dawn, "Unemployment rate slips to 5.8pc in FY18", 12 January 2019

³³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

legally obtained and that document remains valid until 2023. DFAT notes that even those who return to Pakistan involuntarily, while usually questioned on arrival regarding the circumstances of their departure and whether they committed crimes in Pakistan or abroad, “are typically released within a couple of hours”³⁹. There is no suggestion from DFAT, or in the other country information before me, to suggest that returnees suffer any sort of mistreatment during this process or that the situation for Turi Shia Pashtuns or former asylum seekers returning from abroad is any different to the situation for returnees generally. The applicant has not indicated that he was ever charged with any offence, either in Pakistan or Australia, nor is there anything to suggest that he would be of any particular interest to the Pakistani authorities for any other reason. DFAT has also noted a particular issue in relation to returnees being detained at Karachi airport, sometimes for several hours. As Islamabad has its own airport⁴⁰ and the applicant originally departed from there, there is no reason why the applicant would not fly directly there.

41. DFAT has previously indicated that “western influence is pervasive in many parts of Pakistan, particularly in large urban centres”⁴¹. It assesses that returnees are typically able to reintegrate “without repercussions from their migration attempt”⁴². I do not accept that the applicant ever came to the personal attention of any militant or extremist groups while in Pakistan. There is nothing in the information before me to suggest that returnees, including Turi Shia Pashtuns asylum seekers or former asylum seekers more generally, are targeted by militant or extremist elements on return to Pakistan due to their having spent time or sought asylum abroad. The applicant remains an observant Muslim and regularly attends Friday prayers at an Imambargah here in Australia. He contacts his family on a weekly basis. His frequent contact with his family would likely help him retain some familiarity with his native Pashto as it is spoken in Pakistan.
42. DFAT also notes that the constitution guarantees freedom of movement throughout Pakistan and states that “internal migration is widespread and common”⁴³. Islamabad is serviced by its own airport⁴⁴ and Rawalpindi is close by⁴⁵. I have considered the applicant’s arguments regarding the importance of family networks in securing employment. As set out above I consider that the applicant is well-placed to secure employment in Islamabad or Rawalpindi without the assistance of his family.
43. The applicant’s agent has stated that the applicant has a wife and child that he needs to support. The agent stated that the applicant’s family have never lived outside of their village and would find a move to a city very difficult. However, I do not consider that it would be necessary for the family to re-join the applicant in Islamabad. The applicant has been separated from his family for many years here in Australia and his application for a SHEV indicates his continued preparedness to live apart from them. His family have also supported themselves adequately without significant assistance from the applicant. When the delegate pointed out to the applicant that he had sent relatively little money home to his family, the applicant again confirmed that his father was relatively well off and able to support the applicant’s family, allowing the applicant to use his own savings funds to expand his business here in Australia. However, the applicant acknowledged that he was secure financially and that a considerable amount of money had passed through his

³⁹ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

⁴⁰ Ibid

⁴¹ DFAT, “Pakistan Country Information Report 1 September 2017”, 1 September 2017, CISED50AD5515

⁴² DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ PIPS, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758

company. I am not satisfied that the applicant would be unable to support himself and his family, even without the assistance of his father.

44. At interview, the applicant speculated that his financial means (and that of his father) may see him targeted on return to Pakistan. The applicant's agent has re-stated that claim in their submissions to the delegate and the IAA and indicated that Pakistanis here in Australia may have passed on information about the applicant's wealth to individuals in Pakistan. No explanation is given as to why people in Australia would do this or to whom they would transmit the information. No explanation was provided as to how these people back in Pakistan would know when the applicant was returning to Pakistan or his final destination on arrival. No country information has been sourced to support this claim, nor has the agent explained why the father has been able to remain in the same village at the same address for the past six years without an issue given his apparent means. The applicant has never indicated that his father or any other member of the family has been subject to a kidnap or abduction attempt or even the threat of same in the six years the applicant has been absent from Pakistan. I note that the applicant's extended family have continued to reside at the same address in the same village for that entire and the applicant did not indicate that they have ever felt it necessary to take special precautions against kidnap or abduction.
45. DFAT does note large numbers of arrests for kidnapping, extortion and robbery in Karachi in recent years. However, it also notes that serious crime (especially in Karachi and Peshawar) has reduced significantly since the implementation of the NAP and subsequent military operations. In any case, the country information does not support the view that kidnapping or abduction is a significant issue in Islamabad or Rawalpindi. PIPS discusses kidnap for ransom in its 2018 report, mentioning incidents in Karachi and Balochistan, but lists no kidnap or abduction reports for Islamabad or Rawalpindi⁴⁶. EASO similarly mentions kidnappings and abductions in Karachi and Balochistan but lists no such incidents for Rawalpindi or Islamabad⁴⁷.
46. The applicant may face challenges re-establishing himself on return to Pakistan after a six year absence. However, he was an adult when he left Pakistan and remains in touch with his family there. He has lived apart from his family for many years in Australia and his application for a SHEV indicates his continued preparedness to do so. Given the applicant's relative youth, facility in Pashto, Urdu and English, ability to build up a thriving business in Australia, and the fact that he has been able to live independently in a country whose culture must initially have been at least somewhat unfamiliar to him, I am not satisfied that the applicant would be unable to find, or be prevented from finding, employment or otherwise subsisting in Islamabad or Rawalpindi.
47. Given his general profile and religious affiliation, I am not satisfied that there is a real chance the applicant would be imputed with any extremist associations or attract adverse attention from law enforcement or security forces, the Taliban, or other militant elements, whether on account of his religion, Pashtun ethnicity, origins, actual or perceived wealth, his father or for any other reason in Rawalpindi or Islamabad. I am also not satisfied that there is a real chance the applicant would face any harm as a returnee from a western country, whether from the Pakistani authorities, extremist elements such as the Taliban, or on any other account in Rawalpindi or Islamabad.

⁴⁶ PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

⁴⁷ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

48. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

49. 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

50. 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

51. 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.

52. In accordance with s.36(2B) of the Act, there is taken not to be a real risk of significant harm if it would be reasonable for the person to relocate to another area of the country where there would not be a real risk of significant harm. Even if the applicant were to face a real chance of persecution in Khyber Pakhtunkhwa province, I am satisfied that that risk does not extend to the entire country and the applicant would not face a real chance of serious harm in Islamabad or Rawalpindi. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm in Islamabad or Rawalpindi.

53. The applicant has stated that it would be impossible for him to relocate within Pakistan because he would be identified (and targeted) as a Turi Shia Pashtun from Kurram Agency wherever he went. He claimed that militants have networks everywhere and former Sunni residents from his area would identify him as a Shia (and [village leader]'s son). He also indicated that he would be especially vulnerable without family support and would find it difficult to source employment or support his family. He further claimed that his wealth might see him targeted for kidnapping and ransom. However, for the following reasons, I am also satisfied it is reasonable, in the sense of practicable, for the applicant to relocate to Islamabad or Rawalpindi.

54. The applicant speaks Pashto and Urdu, as well as having acquired some facility in English. He is currently employed here in Australia managing his own profitable business. He indicated that he was secure financially. I consider that the applicant is a resilient and adaptable individual who would cope adequately without the support of his family. I also

consider that he is well-placed to support his family wherever they choose to remain in [Village 1] or not. Country information cited earlier confirms that Rawalpindi and Islamabad are favoured destinations for Turi Shias and have Turi populations. The applicant is young, in apparent good health, with an extensive work history that includes managing his own business. The applicant indicated at interview that financial issues did not present a barrier to him relocating elsewhere in Pakistan. He appears to have access to considerable funds here in Australia. The applicant has also shown an ability to succeed in a culture and environment that must have initially been quite unfamiliar to him. I consider that the applicant has also demonstrated a capacity to live apart from his family and a continued preparedness to do so. However, I am not satisfied that the applicant would be unable to secure employment or support his family, wherever they choose to live apart from him or not.

55. The applicant and his agent have stated that he could not relocate to Rawalpindi or Islamabad because these cities were also subject to violent attacks. I have taken account of the applicant's concerns about his safety in Islamabad and Rawalpindi. However, country information indicates that these cities are now generally considered safe. As cited above, country information indicates that Islamabad, having suffered very few attacks in the past few years, recorded none at all in 2018 and Rawalpindi suffered just a single terrorist attack. The country information does not indicate any recent evidence of abduction or kidnapping attempts in either city. Country information noted earlier indicates that the security situation in these cities is stable and contained, especially relative to their size.
56. Information set out above also confirms the constitutional right to freedom of movement for Pakistani citizens and that internal relocation is widespread in Pakistan. Islamabad is serviced by its own airport and Rawalpindi is close by. There is nothing in the country information before me to suggest that there are any barriers to the applicant accessing Islamabad or nearby Rawalpindi.
57. Taking into account all the applicant's circumstances and the country information before me, I am satisfied that in the circumstances it is reasonable for the applicant to relocate to Islamabad or Rawalpindi, an area of the country where there is not a real risk that he will suffer significant harm.

Complementary protection: conclusion

58. 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.