



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA19/07050

Date and time of decision: 27 September 2019 15:52:00  
N Becke, 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 from Kurram Agency, Khyber Pakhtunkhwa Province (KPP), Pakistan, and a citizen of that country. On 3 November 2016 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 22 August 2019 a delegate of the Minister for Immigration (the delegate) refused to grant this visa.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 11 September 2019 the IAA received a submission and new country information on behalf of the applicant ('the IAA submission'). The IAA submission reiterates claims made to the delegate that are contained in the review material. It also contains arguments in relation to issues before the delegate, which I have noted and considered.
4. The IAA submission claims that the applicant suffers from anxiety and depression which significantly impacts his life and will worsen upon return to Pakistan. Furthermore these conditions will make it difficult to find employment and shelter in Islamabad, or any other part of Pakistan, and he will not be able to access the care he needs. These claims regarding the applicant's mental health issues, and their impact upon his return to Pakistan, were not before the delegate and are new information.
5. Also attached to the IAA submission is a referral letter, dated 10 September 2019, from a doctor to a counsellor regarding the applicant. The doctor notes that the applicant is an asylum seeker who has been exhibiting symptoms of depression since the recent refusal of his visa application. The letter lists the applicant's symptoms, which include poor concentration, poor sleep, feelings of sadness, and lack of ability to function at work, and suggests that he would benefit from counselling sessions to help develop coping mechanisms as required.
6. The new information about the applicant's mental health appears have been raised in the context of the submission's arguments about the reasonableness of relocation to Islamabad. However, for the reasons given below, I have not considered whether the applicant can relocate to another part of Pakistan, outside of Kurram Agency, where he would not face a real chance of persecution. Furthermore, the referral letter clearly indicates that the applicant's depression began after he was notified of the delegate's decision to refuse his application for a SHEV, and the applicant himself did not suggest he had depression or anxiety in his SHEV application or at interview. Nor does the new information before me offer a prognosis, apart from the assertion that his symptoms will worsen upon return, which is unsubstantiated and has little probative value. While I consider the applicant's reaction to the refusal of his SHEV application to be understandable, given all the circumstances I am not satisfied exceptional circumstances exist to justify consideration of the new information relating to his mental health or the referral letter.
7. Attached to the IAA submission are various sources of new country information, which were not before the delegate, which mostly predate the delegate's decision. The IAA submission argues that exceptional circumstances exist to justify consideration of the new sources because the applicant's former representative provided insufficient country information in

his submissions to the delegate regarding the security situation in Pakistan and the persecution of Shias and Turis. As the applicant trusted his former representative, a registered migration agent, he had no way of knowing that the submissions were insufficient, and so he could not have presented those of the new sources which predate the delegate's decision any earlier.

8. However, following the SHEV interview the applicant's former representative sent the delegate a number of documents in support of the applicant's claims, including a further statutory declaration from the applicant, and five sources of country information regarding the security situation in Pakistan for Shias and Turis. While one of these sources was unidentified and undated, the other four were recent and from reputable, credible sources. In his decision, the delegate made multiple references to the statutory declaration and the country information from the applicant's then representative and gave reasons why he had relied on some sources more than others. On the evidence I am not persuaded by the arguments the IAA submission makes regarding the submissions from the applicant's former representative.
9. The IAA submission also argues that the new country information it refers to amounts to credible, personal information because it deals with the situation of Turi Shia men returning to Pakistan, of which the applicant is one. However, these new sources concern the general political and security situation in Pakistan and the KPP region, not only for Shias, Turis, and other minorities, but for all Pakistanis, and I am not satisfied they constitute credible personal information in the relevant sense. Given the circumstances overall, I am not satisfied the new predating country information contained in the IAA submission meets s.473DD(b).
10. Some of the new country information postdates the delegate's decision and is from the South Asia Terrorism Portal (SATP), which provides very recent data on terror incidents in Pakistan, including attacks on Shias, up to the date of the IAA submission. For the same reasons as given above in relation to the predating country information, I am not satisfied that the SATP data constitutes credible, personal information about the applicant in the relevant sense. However, given the date of publication, I am satisfied that the SATP data could not have been provided before the delegate's decision. Furthermore, as discussed below, I accept that while the security situation in Pakistan has improved in recent years, it nonetheless remains volatile, and the SATP data squarely addresses this by providing recent information published since the delegate's decision. For this reason I am satisfied exceptional circumstances exist to justify its consideration.

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

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11. The applicant's claims can be summarised as follows:
  - In [year] he was born in Parachinar, Kurram Agency, KPP.
  - He is an ethnic Pashtun, a Shia Muslim, and a member of the Turi tribe.
  - The Taliban are targeting the Shia community in his home area.
  - He survived a bomb blast in the Parachinar market.
  - In 2008 and 2009 he volunteered for a non-governmental organisation (NGO) which administered polio vaccinations in his area. The Taliban target these groups.

- Between 2009 and 2011 he lived in Islamabad where he was in hiding from Sunni militants.
- In May or June 2013 he departed Pakistan legally, using a passport issued in his own name, and travelled to Australia.
- He fears Sunni militant groups in Pakistan, such as the Taliban, will subject him to serious harm because he is a Shia Pashtun of the Turi tribe, and because of his imputed anti-Taliban political opinion arising both from this profile and from his NGO work.
- The Pakistani authorities are corrupt and unwilling to protect Shias.
- He cannot relocate because the Taliban target Shias like himself everywhere in Pakistan. Recently Shias were killed in Islamabad.

### **Refugee assessment**

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12. 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**

13. 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.
14. During the SHEV interview the delegate referred to financial transaction reports before the department, which indicated that the applicant had been transferring money overseas, and he asked the applicant to clarify who he had sent money to. I have not had further regard to those financial transaction reports in the following decision, as I do not consider they otherwise have any relevance.
15. The applicant has been consistent in stating his identity since his arrival in Australia. In support, the applicant has provided his original Pakistani passport and his national identity card (NIC), with an English translation. The applicant has also provided English language

versions of his Pakistani birth and domicile certificates, and various educational certificates issued to him in Pakistan.

16. The applicant's evidence at SHEV interview regarding his place of origin and his religious practice was detailed and spontaneous. I accept that the applicant is from Parachinar, Kurram Agency, KPP, is a practising Shia Muslim of Pashtun ethnicity, and a member of the Turi tribe. On the basis of the information before me I am satisfied the applicant's identity is as claimed and that Pakistan is the receiving country for the purposes of this assessment. Apart from two years in Islamabad, the applicant resided in Parachinar from his birth until his departure from Pakistan in 2013, and all his family continue to reside there. On the evidence I am satisfied that Parachinar, Kurram Agency, KPP is the area to which the applicant would return.
17. Following the applicant's SHEV interview on 19 July 2019, the applicant's former representative emailed the delegate a new statutory declaration from the applicant, in which he reiterated his claims for protection. Attached to the statutory declaration were various sources of country information about historical and recent sectarian violence in KPP and other parts of Pakistan. I have had regard to the post-SHEV interview statutory declaration, and the attached country information in the following decision. The applicant has also provided a general letter of support for his SHEV application from the Goulburn Valley Afghan Association, which I have had regard to.
18. During the SHEV interview the delegate asked the applicant for more information regarding the bomb blast in the Parachinar market which he claims to have witnessed. The applicant claimed that he was standing 100 or 150 metres away from the blast when it occurred, and for this reason was unharmed. The applicant explained that he passed out for several minutes and when he woke up he was covered in blood, but was uninjured and very grateful to be alive. While the applicant did not specify when this occurred, the country information discussed below indicates that between approximately 2007 and 2014 the overall security situation in Kurram Agency, including Parachinar, was fragile and a number of suicide and terror attacks took place. I accept the applicant's claims regarding his proximity to the blast.
19. During the SHEV interview the applicant advised the delegate that during 2008 and 2009 he had volunteered for an unnamed NGO, which administered polio vaccinations in his area, and that as a result Sunni militants have included his name on their target list. The delegate asked the applicant for further information about his activities on behalf of the NGO and he responded that vaccinations were his passion, and that he volunteered once or twice a month for this [NGO]. The applicant also claimed to have [done other work] on behalf of unspecified charity organisations. The applicant claimed that "they" used to throw letters on the road warning people not to work for NGOs and that this scared him and prompted him to leave Parachinar for Islamabad in 2009.
20. The Department of Foreign Affairs and Trade (DFAT) indicates that some Sunni militant groups claim that polio vaccination programs are a Western plot to sterilise Muslims and that targeted killing of polio health workers is common - at least 70 polio workers killed between 2011 and 2015 alone, with attacks continuing into 2017 and 2018. DFAT further indicates that NGO health workers, particularly those involved in polio vaccination programs, face a

moderate risk of violence from militant groups, and that this is more common in areas with poor security, including KPP.<sup>1</sup>

21. While I accept that NGO workers, particularly in the health sector, face significant risks in Pakistan, I have serious concerns regarding the credibility of the applicant's claims in this regard. The delegate asked the applicant why these claims were not in his written SHEV application. The applicant responded that he had told his then representative about his NGO volunteer work, but his representative must have forgotten to put it in his SHEV application. The delegate then asked the applicant if he had any evidence to corroborate his claim regarding his NGO volunteer work, and he responded in the negative. The delegate then referred to the applicant's August 2013 arrival interview, which was conducted the month after his arrival in Australia.
22. I have listened to the audio recording of this interview in which the applicant was asked for the reasons he left Pakistan. The applicant referred to the poor security situation in Pakistan prior to his departure and told the interviewing officer "Bad situations started happening. I was a student there, I was studying but all the schools...educational institutions were closed for more than seven years now...people got killed and beheaded...suicide attacks happened. We were told by the bad people that all the NGOs and charity workers that were there in the area, or who wanted to come and do something good for the people of the area. We were threatened by bad people not to help them, not to support them... or we will behead and kill you all. Putting all these problems in front of me that the reason why I left". On the evidence I do not accept the applicant claimed to have had NGO or charity involvement during his arrival interview.
23. The applicant now claims his volunteer work is one of the key reasons he fears harm in Pakistan; however I have difficulty accepting that if this was the case, that he would not mention it in his arrival interview. The delegate has noted in his decision record that he has decided to extend the applicant the benefit of the doubt on this issue, and accepted that he had "a minor role" for an NGO; however I do not accept that this is the case. I do not accept the applicant had any involvement with NGOs, or charities, in any capacity prior to his departure from Pakistan.
24. The applicant has claimed that in 2009 he moved to Islamabad, where he remained until 2011. The applicant's evidence at SHEV interview suggested that he was in hiding in Islamabad; however I note he registered with the Pakistani authorities there, as evidenced by the Islamabad address shown on his NIC, and he worked in the construction industry, for the same employer, during this period. I also consider the applicant's reasons for returning to Parachinar were inconsistent. The applicant told the delegate that he returned to Parachinar because people were looking for him in Islamabad; however he also said that he decided to return after he was involved in a serious [accident]. When asked how he was able to return to Parachinar if he was on the Taliban's target list there for his previous NGO work, the applicant responded that he stayed at home in hiding. While the applicant has claimed that he is a person of adverse interest to the Taliban and other Sunni militant groups in Pakistan, he has not provided any credible reasons why this is the case. On the evidence overall, I do not accept that the applicant is known to the Taliban or any other Sunni militant group in Pakistan or that he has ever been in hiding in Parachinar or Islamabad.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

25. In June 2014, a year after the applicant's departure from Pakistan, *Operation Zarb-e-Azb* commenced in a number of Pakistani cities, targeting terrorist and criminal networks. The National Action Plan (NAP), established later that same year in response to an attack on a Peshawar public school in which more than 130 children died, ended Pakistan's unofficial moratorium on the death penalty, established military courts to try suspected militants, targeted sources of finance for militant organisations, took measures to restrict hate speech, and committed to policy reforms, particularly in the former Federally Administered Tribal Areas (FATA), now KPP. In 2015 and 2016 the military operations and NAP continued, with the Pakistani army targeting a wide array of militant groups in the tribal areas. In response to some major attacks in early 2017, the Pakistani government introduced *Operation Raad-ul-Fasaad* as the successor to *Operation Zarb-e-Azb*.<sup>2</sup> In 2018, the Pakistani government announced its second National Security Policy, and the Ministry of Interior is reportedly preparing NAP-2. Observers credit *Operation Zarb-e-Azb*, its successor *Operation Raad-ul-Fasaad*, and the NAP with a significant reduction in the number of violent and terrorism related attacks in Pakistan.<sup>3</sup> The SATP data the applicant has provided also indicates a marked, consistent reduction in terrorist incidents and related civilians deaths across Pakistan since 2014.<sup>4</sup> EASO also reported in 2017 that the security situation in the former FATA had improved significantly since the start of *Operation Zarb-e-Azb*.<sup>5</sup> For example, in 2013 3,000 civilians and 676 security force personnel were killed in terrorism related attacks, but in 2018 the total number killed was 595 people, including both civilians and security personnel.<sup>6</sup>
26. Amidst the trend of declining sectarian violence, Parachinar experienced three significant attacks in the first half of 2017: on 21 January 2017 militants detonated a remote controlled improvised explosive device in a market; on 31 March 2017 a suicide bomber attacked a Shia mosque; and on 24 June 2017 two devices were detonated in a market. The three attacks killed over 120 people.<sup>7</sup>
27. DFAT reports that recent military operations to erect fencing and other border control measures have improved the security situation in Kurram Agency, with a 20 to 30 square kilometre 'red zone' around Parachinar now secured by the military. Shia Turis in Parachinar have reported significantly fewer road attacks, as militants have been forced into the mountains, and confidence has been restored in the community to resume travel on the Tall-Parachinar Road.<sup>8</sup> The country information before me indicates there were no significant attacks reported in Parachinar in the second half of 2017, or 2018, or to date in 2019.
28. Given the country information, I have considered whether the applicant faces a real chance of harm as a Shia Pashtun of the Turi tribe from Kurram Agency. The Turi tribe comprises of around 500,000 people, who are not generally distinguishable from other Pashtuns by appearance, but are identifiable by tribal names, accents, and residency in known Turi areas. I accept that Shia Turi communities in Kurram Agency have historically not allowed the Taliban and other Sunni militant groups to access Afghanistan through their territory and that Turis are imputed to hold a political opinion against these groups for this reason, as well as

<sup>2</sup> DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; European Asylum Support Office (EASO), "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

<sup>3</sup> DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

<sup>4</sup> South Asia Terrorism Portal (SATP), "Datasheet- Pakistan Terrorist Attack Fatalities", September 2019

<sup>5</sup> EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

<sup>6</sup> Ibid.

<sup>7</sup> DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

<sup>8</sup> Ibid.

because of their ethnic, religious, and tribal profile for which these groups also target them. Between 2008 and 2014, Turis faced significant violence. Most Turis live in and around Parachinar and Kurram Agency in small geographic areas which renders these communities vulnerable to attack. Groups such as the Taliban targeted Turis for their Shia faith and militants frequently stopped and killed Turis travelling by road outside Parachinar between 2007 and 2014.<sup>9</sup>

29. While Pakistani NICs do not indicate the bearer's religion, I accept the applicant's claim that aspects of his appearance, his name and address in a known Shia area near to Parachinar city (as displayed on his NIC), his attendance at Shia mosques, and participation in Shia religious ceremonies would all identify him as a Shia Turi. The applicant claimed that the laws in Pakistan discriminate against Shias but did claim that he had ever personally faced discrimination. DFAT indicates that Shias generally do not face discrimination when seeking employment in the public or private sectors, enrolling in educational institutions, getting married, or when participating in the democratic process.<sup>10</sup> On the evidence, I am not satisfied Pakistani laws discriminate against Shias such as the applicant.
30. Pashtuns make up the second largest ethnic group in Pakistan and traditionally live among their own tribes in the former FATA and KPP. DFAT notes Pashtuns migrating to places such as Lahore and Karachi have reported ethnic profiling and harassment by local security officials. DFAT also assesses that Pashtuns may face a risk of such profiling in areas where they are in the minority, but that there is low risk of official discrimination against Pashtuns in areas where they form the majority, such as the applicant's home area.<sup>11</sup> As noted above, the applicant has not claimed to have experienced discrimination previously and I consider his Pashtun ethnicity does not change or elevate his profile in Parachinar.
31. DFAT assesses that Shias in the former FATA faced a low risk of sectarian violence (within the context of a moderate level of militant and criminal violence across the region) but that for Shias in Kurram Agency, particularly in Parachinar, the risk is higher than other parts of the former FATA.<sup>12</sup> DFAT defines "low risk" as meaning DFAT has knowledge of past incidents, but insufficient evidence to conclude they form a pattern. DFAT notes that Turis in Kurram Agency face a moderate risk of sectarian violence from militant groups, because of their Shia faith, which DFAT defines as meaning it is aware of sufficient incidents to suggest a pattern of behaviour.<sup>13</sup>
32. Operations *Zarb-e-Azb* and *Raad-ul-Fasaad*, and associated counter-terrorism activities, have significantly decreased the number and severity of attacks on Turis. DFAT notes that in the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device which targeted women and children. DFAT is unable to verify these claims and does not specify where the two attacks took place. DFAT assesses that despite a reduction in the level of violence across Pakistan, sporadic large scale terrorist attacks are likely to continue to occur against a background of ongoing smaller-scale attacks (albeit at a reduced tempo).<sup>14</sup> Turis reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. This has restored confidence within the community for individuals (although not large groups) to travel on the Thall-Parachinar road, although only between dawn and dusk.

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.



33. The applicant has claimed that the Pakistani authorities cannot protect him from the Taliban, and other Sunni militant groups in Pakistan. As of February 2018 the Pakistani authorities had completed 40 per cent of military fencing in Kurram Agency which, coupled with tighter border controls, decreased the permeability of the Pakistan-Afghanistan border. Furthermore, the military has implemented a 20-30 kilometre red zone in Parachinar, which contains a smaller, second red zone in which markets and schools are located, and access to these zones requires the presentation of identity documents.<sup>15</sup> Despite the three attacks in Parachinar city in 2017, the country information before me indicates that the Pakistani authorities have further enhanced security in and around the city and on the evidence I am not satisfied the authorities are unable to provide protection.
34. The applicant has also claimed that the Pakistani authorities are unwilling to provide protection to Shia Turis and are corrupt, providing the details of Shia Turi citizens directly to the Taliban for money. Country information before me does indicate that corruption remains a serious issue within Pakistan's various security and law enforcement branches, particularly the police. However, the country information before me does not contain any evidence that the Pakistani authorities are deliberately withholding protection from Shia Turis, or providing the personal details of Shia Turis to the Taliban for money, as the applicant has claimed.
35. I accept the security situation in much of Pakistan remains fragile, and that prior to the applicant's departure from Pakistan he narrowly avoided being harmed in an explosion in Parachinar market. However, looking at all the information before me as discussed above, overall I am satisfied the situation in Parachinar, and KPP more widely, has improved markedly since the applicant was last there. DFAT notes, "Local observers, including officials, in Khyber Pakhtunkhwa also reported a trend of increased security, a reduction in reported killings and reduced fear within the community in 2018."<sup>16</sup> The SATP data indicates that none of the four verified targeted attacks on Shias in 2019, up until the end of August, have taken place in KPP.<sup>17</sup> Given all the evidence, I am satisfied that the applicant can freely practise his Shia religion in Parachinar and its surrounds, and that the chance of him facing harm for this reason, including when he is at a Shia mosque or publicly participating in a Shia religious ceremony, is remote.
36. Based on the applicant's personal circumstances and recent country information, I am not satisfied he faces a real chance of harm from Sunni militants in Kurram Agency because of his profile as a practising Shia Pashtun member of the Turi tribe, because of any real or imputed anti-Taliban political opinion arising from this, because of the general security situation in the KPP or at all. I am also not satisfied that the applicant faces a real chance of official discrimination as a Shia Muslim in Pakistan.

*Returning Asylum Seeker from a Western country (Australia)*

37. I accept that the applicant may be returned to Pakistan involuntarily, or on a temporary travel document, which DFAT indicates will attract attention from the Pakistani authorities upon arrival. DFAT also indicates that in such cases returnees are questioned and those who have departed Pakistan legally are issued with temporary documents upon arrival.<sup>18</sup> Those wanted for a crime in Pakistan or who have committed a serious offence while abroad may

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> SATP, "Civilian Data: Attacks on Shias Pakistan", August 2019

<sup>18</sup> DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

be arrested and held on remand, or required to report regularly to police as a form of parole.<sup>19</sup> The applicant departed Pakistan legally and is not wanted for a crime in Pakistan.

38. At the SHEV interview the applicant told the delegate that if he returns to Pakistan from Australia, a western country, Sunni militants will regard him as unholy and impure and target him for this reason. The delegate put to the applicant that thousands of Pakistanis return to Pakistan each year from Australia and other western countries, and that there is no information to indicate that are targeted for any reason. The delegate invited the applicant to provide evidence to corroborate this particular claim following the SHEV interview, but he did not do so.
39. According to the 'Minister for Overseas Pakistanis and Human Resources Development', approximately 2.5 million Pakistanis travelled overseas for employment between 2015 and 2018. Nearly 0.8 million people travelled abroad in 2014, 0.9 million in 2015, and 0.8 million 2016.<sup>20</sup> Both the previous and current DFAT reports for Pakistan indicate that returnees do not face a significant risk or societal violence or discrimination as a result of their attempt to migrate, and are typically able to reintegrate into their respective community without issues.<sup>21</sup> Given the country information, I am not satisfied the applicant faces a real chance of harm in Pakistan because of his residence in Australia, a western country.
40. Given all the circumstances, I am not satisfied that the applicant has a well-founded fear of persecution, for any of the reasons claimed, in Kurram Agency, KPP. On the basis of this conclusion I find it is unnecessary to consider the question of whether the applicant can relocate to another area of Pakistan, such as Islamabad.
41. There is also no information before me to indicate the applicant would not be able to safely access his home area of Kurram Agency upon return to Pakistan.
42. The applicant does not have a well-founded fear of persecution within the meaning of s.5J of the Act.

#### **Refugee: conclusion**

43. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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44. 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**

45. Under s.36(2A), a person will suffer 'significant harm' if:

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> DFAT, "DFAT Country Information Report – Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

- 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.
46. I have concluded that the applicant does not face a real chance of harm for any reason. Based on the same information, I am not satisfied that the applicant has a real risk of suffering significant harm.
47. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

**Complementary protection: conclusion**

48. 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:

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***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.