



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

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA19/07464

Date and time of decision: 19 December 2019 15:43:00  
M Simmons, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Pashtun from Pakistan. 11 May 2017 he lodged an application for a temporary protection visa. A delegate of the Minister for Immigration refused to grant that visa and his matter was referred to the IAA on 4 November 2019.

### 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. The applicant and his authorised representative, a registered migration agent, provided submissions to the IAA. To the extent these discuss information that was before the delegate and respond to his findings, they do not convey new information and I have had regard to them. These submissions also provide new information, specifically a claim to fear being prosecuted for an illegal entry or exit to or from Pakistan. A copy of the practice direction was forwarded to the applicant. In contravention of the practice direction, this new information was not clearly identified in the submissions and there is no explanation as to how this new information meets the requirements of s.473DD. Furthermore in support of this new claim further new information was provided which is seemingly from a media article. The information from the media article was also not identified as new information and has no s.473DD explanation, moreover, the only details of the source of this article is a hyperlink which the practice direction stipulates is not acceptable. Given these various instances of non-compliance, and that the submissions were prepared by a registered migration agent who would be aware of the requirements of the practice direction, I have decided not to accept the new claim or the new information provided in support of that claim per s.473FB. I have not had regard to this new information.

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - The applicant originates from Parachinar where he was born and grew up. He has never resided elsewhere in Pakistan.
  - The applicant has never attended school. When he was young he was learning to be a [Occupation 1] and did not go to school. During the conflict, which began in 2007, he was prevented from attending school because the Taliban targeted schools. His freedom was significantly curtailed because of the Taliban sought to control his area and wanted all local people to support them. The applicant did not support the Taliban.
  - The applicant received aid from [Organisation 1] after the conflict started. The Taliban threatened anyone who received foreign aid. He was threatened at least 3 times in Peshawar because he had a ration card.
  - In 2008 the applicant's uncle was shot by the Taliban in Parachinar en route to the hospital.
  - The applicant fled Pakistan in March 2013 in fear of being forcibly recruited by the Taliban. The applicant did not believe in Jihad.

- He fears being returned to Pakistan as the Taliban are in Parachinar and, along with Daesh, are forcibly recruiting young Sunni males in the area. The applicant fears he will be killed if he resists.
  - The applicant cannot relocate as his accent will distinguish him as being from Parachinar. He will be at risk from supporters of the Taliban for leaving Parachinar. Opponents of the Taliban will impute him as being pro-Taliban.
  - The applicant fears harm after having become westernised in Australia. He fears he will not be able to express himself freely in Pakistan.
  - The applicant fears harm for no longer being a strict Sunni Muslim, praying only two or three times a day instead of five and for having a non-Muslim girlfriend. The applicant fears being viewed as kaffir (an infidel) and not a good Muslim.
5. In a written submission after the interview with the delegate, the applicant the applicant made the following amendments to his claims:
- He did not reside in Parachinar during the conflict. He moved to [Town 1] in 2007 with his family and resided there until 2013.
  - He stopped attending school, both in Parachinar and [Town 1], due to disinterest. He also feared attending school due to the Taliban and other militants. He feared harm from the Taliban in [Town 1] as well as being forcibly recruitment.
6. The applicant did not claim to fear harm because he requested asylum abroad or for reasons of his Pashtun ethnicity, though this ethnicity was suggested as a factor that may limit his ability to relocate within Pakistan. The delegate considered whether he faced a future risk of harm in Pakistan for these reasons and found he did not. The applicant did not respond to these findings in his submissions to the IAA, which he prepared with assistance from a lawyer. I am satisfied he has had ample opportunity to raise all claims and to make argument in support of these particular matters if he wished.

## **Factual findings**

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### **Credibility**

7. The applicant has demonstrated a preparedness to provide inaccurate or misleading information for the purpose of obtaining a favourable migration outcome. His evidence is not reliable. When asked by the delegate to explain his relationship with various individuals in Australia, Pakistan, [Country 1] and [Country 2], the applicant provided numerous responses variously suggesting these persons were unknown to him or not disclosing the full extent of his relationship to them. Following extensive questioning by the delegate he subsequently indicated his initial responses were false and that all the people discussed were known to him.
8. In submissions to the IAA discussing his relationship with these various persons, the applicant's current representative contended that the applicant: "has not in any way intentionally and/or deliberately misled the Department of Home Affairs in the process of his application". He asserts the applicant was frustrated, confused and stressed during the interview, and the entire process of his application and he was influenced by wrong advice given to him by friends and peers who have persuaded him that he should deny knowing or having familial links to people in Australia. He claims after his interview he realised and was convinced that he should not deny knowing or having familial links to the people in Australia, so he did so in the post interview submission. I disagree with the characterisation that the applicant did not

intentionally mislead or deceive. Taking the representatives submissions at face value, even if the false information was provided on the suggestion of other persons, the applicant elected to provide it and repeatedly restate it because he believed doing so would benefit him. I consider the explanation provided in the IAA submissions indicates a deliberate intention to mislead on the applicant's part. Moreover, the applicant did not see the errors of his way after the interview and seek to set the record straight in the post interview submissions as the representative suggests. He conceded at interview that he had been dishonest after extensive questioning from the delegate which suggested contradictions and implausibility in various aspects of his evidence with respect to his relationships with the various persons of interest. The true nature of the applicant's relationship with these people was not volunteered by him; he only made these disclosures after the delegate set out numerous concerns with his evidence which severely undermined the credibility of his initial narrative. That he eventually conceded and told the truth in these circumstances does not weigh particularly strongly in his favour, it does not evidence contrition.

9. In both his visa application and his testimony at the interview with the delegate he claimed that he resided in Parachinar for his entire life and that the insecure situation there motivated him to flee Pakistan. However in a written submission after the interview with the delegate, the applicant shifted his narrative considerably and indicated that he actually moved to [Town 1] with his family from 2007 and resided there until his departure from Pakistan in 2013. Up until the post interview written submission he consistently and unambiguously asserted that he had only resided in Parachinar. This is significant as most of his protection claims in his visa application and those raised at interview relate to experiences purportedly in Parachinar from 2007 onwards after the conflict began.
10. Of further concern is that in submissions to the IAA the applicant has seemingly sought to account for this significant shift in evidence by offering an explanation that is at odds with the evidence in his visa application and provided at interview. He asserts that he always thought and understood that [Town 1] belonged to Parachinar. Hence, when referring to his place of residence, from birth till he departed Pakistan, he indicated Parachinar. When he was advised that Parachinar and [Town 1] were not referred to as the same one place and that [Town 1] is a separate town/city in Khurram that is not part of Parachinar, he realised that he had made a mistake. The applicant's residential history in his visa application indicates only ever lived at one address for the entirety of his life at Pakistan. It does not reflect that he ever relocated anywhere. Irrespective of whether he erroneously considered [Town 1] to be part of Parachinar, his visa application clearly states he resided at the same property from 1992 to 2013. The applicant was asked about his residence at this property by the delegate, and he again affirmed that he had lived there his whole life before leaving Pakistan. The delegate asked "did you live anywhere else?" and the applicant replied "I have not lived anywhere else even for a short amount of time". Accordingly even in his most recent evidence it appears the applicant has been untruthful.
11. The applicant provided various documents with his visa application and at the interview with the delegate which offer a confused and conflicting narrative in relation to his residency. For instance, a document entitled 'Kurram Domicile B. Category', dated March 2015 (though it seems the handwritten date may have been altered) asserts that at that time he was resident in Parachinar. A character certificate, which although unclear seems to have been attested to on '[date]/12/13', asserts he was a permanent resident of Parachinar at that time. Also provided was an undated letter, purportedly from an [Senior Official] for [Town 1], which states that the applicant and his family were resident in Parachinar until they were displaced to Attock in November 2007. A further document entitled 'IDP registration form' appears to have been issued in respect of his family. It states that they were displaced in 2009, they are

currently resident in Peshawar, and that their tribe is '[Tribe 1]'. This does not accord with his claims to be a member of [Tribe 2] and his more recent claims that the family were displaced in 2007 to [Town 1]. I have serious doubts as to the provenance of these documents, and consider this to be further evidence of the applicant offering conflicting evidence in respect of his claimed residential history. I reiterate, the residential history set out in the visa application indicates the applicant has only ever resided at one address in Pakistan.

12. In light of these considerations I find the applicant is not a credible witness and I do not consider the information he provided to be generally reliable.

## **Identity**

13. The applicant claims to be a national of Pakistan. He provided copies of documents issued by the Pakistani authorities including a National Identity Card (NIC). The NIC states the applicant's current addresses when it was issued in 2010 were in Parachinar. However, in his post-interview submission the applicant claimed to have resided in [Town 1] from 2007 – 2013. That this document further contradicts his amended narrative in respect of his residential history causes me to further doubt the reliability of his evidence. However, the applicant has provided NICs for a number of his relatives. Given this I am prepared to accept he is a Pakistani national as claimed. Pakistan is the receiving country for the purpose of this review.
14. The applicant conducted the interview with the delegate via a Pashto-English speaking interpreter. DFAT describes the use of the Pashto language as an identifying feature of the Pashtun community and notes Pashtun comprise the largest ethnic minority in Pakistan.<sup>1</sup> On this basis I accept that he is ethnically Pashtun as claimed.
15. The applicant has not claimed to fear harm due to his membership of [Tribe 2]. Notwithstanding that the IDP registration form referred to above suggests the family may have a different tribal affiliation, for the most part the evidence before me has consistently indicated that the applicant is a member of [Tribe 2]. I accept this claim at face value.
16. The applicant's evidence that his family reside in Attock and have done so since his departure from Pakistan has remained relatively consistent. Given the applicant's confused and dishonest narrative in respect of his own residential history, the delegate concluded that prior to leaving Pakistan the applicant resided in Attock, where his family currently reside, and that he would return to that area were he to return to Pakistan. In submissions to the IAA the applicant refutes the conclusion and asserts that this is based on mere speculation. The identity documents provided in relation to the applicant's family, including Pakistani passport, confirm that they originate from Parachinar. I accept that his family moved from Parachinar to Attock at some time, and given the evidence he has provided in respect of his prior residency in Pakistan is deficient in various respects, I consider it possible he may have moved to Attock with his family at some stage prior to travelling to Australia. I consider that were the applicant to return to Pakistan, he would return to and reside in Attock where his family have now resided for a number of years and where he may possibly have resided for some period.

## **Taliban threats**

17. In his visa application the applicant stated the war started in 2007 and after that his family relied on [Organisation 1] in Peshawar to provide them with rations. He claims the Taliban were against all foreign organisations and NGOs and threatened anyone who took the foreign

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<sup>1</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

aid. [Organisation 1] gave local people ration cards to get food but the Taliban targeted anyone who relied on the support provided by [Organisation 1]. It is claimed the Taliban threatened him at least 3 times.

18. I note that on the date of birth he has provided the applicant would have been around [a certain] age in 2007 when the war commenced; after which he claims to have gone to Peshawar to obtain rations. However, at the interview with the delegate the applicant stated the he only once spent 2 to 3 days in Peshawar when he was young, about [age range]. He claims to he been threatened personally at least 3 times while in Peshawar. If he was [a certain age range] at that time, I have serious doubts as to whether he would have personally been threatened by militants for accessing rations given his young age. I also have some doubts whether he would have had responsibility for obtaining rations given his young age. The delegate alerted the applicant to the absence of any corroborative reports suggesting persons holding [Organisation 1] rations cards were targeted by militants for holding those cards as he claims occurred. The applicant did not offer any material in support of his claim either in his post interview submissions or in submissions to the IAA to support his assertion that ration card holders were targeted.
19. In his post-interview submission the applicant claimed he lived in [Town 1] from 2007 to 2013 and that he still feared the Taliban and other Sunni militants, motivating him to leave Pakistan. In those submissions he does not mention travelling to Peshawar to obtain rations or being threatened by the Taliban in Peshawar. However, in submissions to the IAA, the applicant's lawyer asserts that: "[Applicant] is adamant that he was threatened by the Taliban in Peshawar, while receiving rations from [Organisation 1]. [Applicant] argues he was not evasive or vague in any way in his PV interview, when responding to the threats received in Peshawar. On the contrary, [Applicant] confirms that he clearly stated that he was threatened personally by the Taliban about two to three times in Peshawar when he was collecting rations from [Organisation 1], as an IDP". Despite restating these claims, the applicant has not sought to explain how his newly claimed residence in [Town 1] aligns with the narrative regarding obtaining rations in Peshawar after the war began in 2007. Nor has he explained how he was "around [a certain age range]" during his single visit to Peshawar as stated at the interview, given per his date of birth he was around [a certain] age when the conflict began. He has also not been forthcoming with any material to corroborate his claim that ration card holders were targeted despite being squarely questioned about this by the delegate.
20. Given the inconsistent narratives put forward by the applicant, the lack of corroborative material, and that I have found him to not be a credible witness, I am not satisfied the applicant was ever personally threatened or harmed by the Taliban as claimed. I find these claims are entirely fabricated.
21. At the interview the applicant claimed the Taliban tried to forcibly recruit him during the conflict in Parachinar and that they tried to force him to attend mosque but he resisted. These assertions were lacking in detail and the applicant struggled to respond to questioning by the delegate on this subject. Furthermore he has now admitted he was not in Parachinar at that time. I am satisfied these claims were also fabricated.
22. The applicant has claimed one of his uncles was killed by the Taliban in 2008 in Parachinar. He has offered little detail about this incident and there is no corroborative material before me to support that this event occurred as claimed, such as official documentation relating to the death or evidence of the attack being reported such as to police or in the media. Furthermore, I have serious doubts as to whether the applicant had an Uncle resident in Parachinar in 2008 given he has now conceded he was dishonest in respect of his own claimed period of residence

in that city. As I have found this applicant is not a credible witness I do not accept that this incident occurred based on his mere assertion. I am not satisfied that he had an uncle who was killed by the Taliban in Parachinar in 2008; I do not accept this event occurred.

### **Religious belief and practise**

23. DFAT notes that Pashtuns are predominantly Sunni, as the applicant claims to be.<sup>2</sup> In light of this I accept he is a Sunni Muslim as claimed. The applicant's evidence in respect of his faith has varied at different intervals. In his visa application he states that in Pakistan he could not express himself or his attitudes safely or stop being a Muslim. He stated: "I do not pray 5 times a day anymore but maybe 2 or 3 times and I do not observe any other Sunni religious practices. I did not have freedom to do these things when I lived in Pakistan. I had to pray and fast and follow Sunni Islam strictly. I am afraid if I return, no matter where I went I would be seen as a kaffir and not a good Muslim." The applicant's responses to the delegate's questioning on this subject were lacking in detail. At odds to the information in his visa application, he suggested he would not attend mosque in Pakistan because he did not like it and because of this he would be called an infidel. He stated that he has only been to mosque once or twice since coming to Australia. In his decision record, the delegate pointed out that this is inconsistent with the information in his 2017 visa application, completed around 4 years after he arrived in Australia, which indicates at that time he was praying two or three times a day in Australia. The applicant did not address this inconsistency in his submissions to the IAA.
24. There have been unclear assertions as to the nature of the applicant's views in relation to Islam and religion generally, and if or how he practises his faith. In the September 2019 post interview submissions to the delegate it is suggested that it is open to find the applicant has abandoned observing the Sunni Muslim faith. It is claimed he would be perceived as a "kaffir" or apostate from the Muslim faith, and on return he would be identifiable as a non-practising Sunni Muslim, due to not attending mosque, praying or fasting. However in December 2019 submissions to the IAA, it is claimed that the applicant does actually continue to practise Sunni Islam, but not as a commonly practicing Muslim would normally do; that he engages in praying two or three times per day, going only a few times to Eid Prayers, and not regularly attending the Friday obligatory Prayers, making him a non-practicing Muslim by his perception. This more recent account suggests he may be relaxed in his engagement in religious rites but does not indicate an abandonment of religious observation as previously asserted. The shifting nature of the applicant's evidence on this matter is not persuasive.
25. It is also claimed that being in a relationship with a non-Muslim [woman] would add to and increase his chances of being seriously harmed, as he would be perceived to be deviating from Islam being in a relationship with a non-Muslim woman. The applicant has not provided any material to corroborate his claim that this relationship may create difficulties for him in Pakistan, nor has he sought to explain how anyone in Pakistan would come to know of his relationship in Australia.
26. The applicant is not a credible witness I am not prepared to accept his assertions in respect of his religious beliefs and practise at face value. Despite some suggestion that the applicant wished to stop practising and possibly leave that faith while in Pakistan, the information before me indicates that he has voluntarily continued to engage in Islamic practises over a number of years while resident in Australia and whilst under no obligation to continue doing so. I am not satisfied the applicant is a non-practicing Muslim as claimed. I do not accept he wishes to leave Islam, or that he may do so in the foreseeable future, or that he may be perceived an apostate

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<sup>2</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

or kaffir for this reason. on the vague, limited and unconvincing evidence before me, I am not satisfied that he ever previously attracted adverse attention or experienced harm while in Pakistan because of his religious views or practise, nor do I accept he was ever forced to practise his faith in a certain way for fear of harm from the Taliban.

### **Westernised**

27. The applicant claims to have been westernised in the time he has lived in Australia. He asserts he has pierced his ear, wears his hair in a modern style and that his attitudes have changed. He has not elaborated further on the last claim, for instance it is not apparent what attitudes have purportedly changed or how they have changed. The delegate suggested to the applicant that Pakistan has a large population of people who returned after living in the West and that Western hairstyles and piercings are not uncommon in Pakistan given the large number of Pakistanis returning from abroad. When asked why returning from a western country would put him at risk, the applicant simply asserted: "My problems are that if I was returned I will be killed". His lack of meaningful detail in respect of these claims and failure to engage with the substance of the delegate's questioning causes me to doubt the extent to which he sincerely fears harm for this reason.
28. In post interview submissions it was claimed that the applicant adheres to beliefs and behaviours consistent with living in a western and secular society. Again, there is no detail on the relevant beliefs and behaviours that he claims could attract adverse attention in Pakistan. Submissions to the IAA contend that after spending about seven years in Australia, the applicant's perception, thinking, and mentality have all greatly been influenced by the western values and culture. His lawyer submits that it is about the inner changes in his ideologies, mentality and way of liberal thinking. It is asserted that now he has spent time in Australia, [applicant] says he would express himself freely, would stand up to his rights and would not be feared to oppose those that are wrong. It would be difficult for him to control himself not expressing himself freely, which would expose him to serious harm by the conservatives and militants. He has not explained what he matters he wishes to express himself in relation to or which rights he will now stand up for and if or how he was restricted from doing these things when previously resident in Pakistan. My assessment of the various efforts to articulate these claims is that they are imprecise and generally unpersuasive. They offer no insight into how the applicant's thinking or beliefs have altered in anyway while in Australia, if or how this may become known were he to return to Pakistan, or why this would cause problems for him.
29. I accept he has resided in Australia for a number of years. I am not satisfied that he has 'beliefs' and 'behaviour' have become 'westernised' or otherwise altered in any way that may attract any adverse interest in Pakistan in the foreseeable future. I am not satisfied the applicant has become innately westernised, in any visually discernible manner and therefore did not consider his dress sense defines the applicant as a member of a particular social group of westernised persons, and nor has the applicant provide corroborative material suggesting such persons are targeted in Pakistan.

### **Refugee assessment**

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30. 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**

31. 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.

32. At various instances the applicant as alluded to general insecurity within Pakistan I have not accepted that the applicant was ever threatened by the Taliban or pressured to join them, as these events were purportedly occurred in Parachinar during the conflict and the applicant as since admitted he was not resident in that area at that time. The security situation in Pakistan has varied over time and across different regions. In December 2014, following an attack on army school in Peshawar, the Pakistani Government introduced the National Action Plan (NAP) which has had a significant impact on Pakistan's security environment. The NAP and associated military operations are credited with significantly reducing violent incidents and terrorist attacks in Pakistan. In 2018, there were 11 sectarian related attacks in Pakistan, a marked decline from the previous year and a significant reduction from the 2013 levels.<sup>3</sup> The Pakistan Institute for Peace Studies (PIPS) assessed that a nine-year downward trend in terrorist attacks across Pakistan continued in 2018 and that sectarian violence also reduced significantly by 40 percent compared to 2017 levels.<sup>4</sup> Similarly, serious crime "has reduced significantly" since the introduction of the NAP and associated military operations.<sup>5</sup> A significant majority of terrorist attacks in Pakistan in 2018 targeted security and law enforcement, with politicians and political workers also a focus of attacks. These groups accounted for around 490 of the approximately 595 deaths from terrorist activity in 2018.<sup>6</sup> On balance the material before me indicates an improvement in the general security situation since the applicant departed Pakistan.

33. I accept that the applicant is a Sunni Muslim. Country information does not support a conclusion that Sunni Muslims, who constitute the majority of Pakistan's overwhelming Muslim population, are targeted for harm for reasons of their religion.<sup>7</sup> I have found above that the applicant did not previously experience any harm or adverse attention for reasons of

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<sup>3</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>4</sup> Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

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

<sup>6</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409

<sup>7</sup> UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan ", 1 January 2017, CISED50AD3775; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409

his religious practise while in Pakistan. Information before me indicates that while in Australia he has continued to engage in some Sunni Islamic activities, though I note he has provided conflicting narrative in respect of his ongoing beliefs and practise while in Australia. This applicant is not credible and as such I am not prepared to accept his assertions at face value. I am satisfied that were he to return to Pakistan he would continue to practise his religion in a similar fashion to how he did when he previously resided there. I have found above that he previously attracted no adverse attention before of his religious beliefs or practise. Like before, I am satisfied that this would not attract him to any adverse interest or any chance of harm from any group.

34. I have found the applicant will return to Attock, in the Punjab Province, should he return to Pakistan as he has extensive familial connections there. The applicant has not claimed to fear harm for reasons of his Pashtun ethnicity were he to return to Pakistan, but did suggest this could restrict his ability to relocate. I note that the applicant's family have now resided in that city for around 6 years. I also consider it possible the applicant may have resided in Attock for a period prior to coming to Australia, noting he has been dishonest in respect of his residential history whilst in Pakistan. I note DFAT assesses that Pashtuns face a medium risk of official discrimination in the form of terrorism-related and racial profiling by security forces in areas where they are a minority, particularly in Punjab, where Attock is located.<sup>8</sup> However DFAT also assessed that Pashtuns in locations where individuals have family or social connections face a low risk of official discrimination.<sup>9</sup> The applicant suggested it was hard for his family to find a house there, but has not otherwise suggested they experienced difficulties in that area for reasons of their ethnicity. Despite alluding to some challenges, there is no indication his family have gone without housing or otherwise been unable to access essential services. In light of DFAT's assessment I accept that there is a real chance of ethnic discrimination for the applicant in Attock, however on the material before me and given his family's extended residence seems to have been relatively incident free, I am not satisfied that such discrimination amounts to serious harm as defined in subsection 5J(3) of the Act.
35. I accept the applicant has resided in Australia for some years, though on his evidence I am not satisfied he has become 'westernised' or that he may be regarded as such were he to return to Pakistan in the foreseeable future. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country.<sup>10</sup>
36. Having regard to the applicant's circumstances as a whole, I am satisfied the applicant does not have a real chance of serious harm for any reason now or in the foreseeable future in Attock. The applicant's fear of persecution is not well founded.

### **Refugee: conclusion**

37. 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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38. 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

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<sup>8</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>9</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>10</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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**

39. 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.

40. I have accepted that Pashtuns face a risk of official discrimination and racial profiling in Punjab, and I consider this applicant would reside in Attock in the Punjab Province were he to return to Pakistan. The material before me does not support a conclusion that such discrimination or profiling will amount to significant harm as defined. The reports before me do not indicate there is a real risk of Pashtuns in Attock being arbitrarily deprived of their lives, subjected to the death penalty, or tortured for reasons of their ethnicity. Nor does it suggest any discrimination or profiling carries a real risk of the applicant being subjected to severe pain or suffering, or extreme humiliation which is unreasonable, and as such I am not satisfied there is a real risk he would be subjected to cruel or inhuman treatment or punishment, or degrading treatment or punishment, respectively. There is no real risk of significant harm for reasons of the applicant's ethnicity in Attock.<sup>11</sup>

41. I have found above that the applicant does face a real chance of any harm for any other reason advanced or arising were he to return to Pakistan. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.<sup>12</sup> For the same reasons as given above, I am not satisfied that there are substantial grounds for believing that, as a necessary consequence of his removal to Pakistan, there is a real risk he would experience significant harm.

### **Complementary protection: conclusion**

42. 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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<sup>11</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; Dawn News Group – Pakistan, 'HRCF condemns 'racial profiling' of Pashtuns by Punjab govt officials', 28 February 2017, CXC9040662646; Pakistan Today, 'Punjab police's blatant racial profiling', 21 February 2017, CXC904066745.

<sup>12</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

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.