



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/07557

Date and time of decision: 9 January 2020 10:21:00
S MacKenzie, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Pakistan. He arrived in Australia [in] November 2012 as an unauthorised maritime arrival. On 21 December 2016 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 19 November 2019, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Pakistan.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. On 23 December 2019, the IAA received a written submission from the applicant's representative (IAA submission). The IAA submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material. I have had regard to these aspects of the submission.
5. In the IAA submission, the representative refers to several sources of country information¹ not before the delegate. It pre-dates the delegate's decision and is new information.
6. In respect of the country information from Professor Thomas Barfield and Stanford University, the applicant's representative indicates it is relevant because it evidences that Sunni extremism continues to exist in Pakistan. However, I note the information from Professor Barfield was published in 2014. The Stanford University report is undated and neither the report nor an extract is provided.²
7. There are no reasons advanced as to why the new information was not previously provided or why it should be considered credible personal information. There is no suggestion in the IAA submission that the applicant was unaware of this information earlier, and nor is there any indication that the applicant only learned of it since the delegate's decision. Further, there is no suggestion that any of the sources were not publically accessible until recently. As noted in the IAA submission, the applicant's former representative provided a post-interview submission which I note referred to numerous sources of country information. In the circumstances, I am not satisfied that this information could not have been provided to the Minister before the delegate made his decision. I am also not satisfied that, as general country information, it is credible personal information.
8. On page 2 of the IAA submission, the representative provides an extract of country information about the Taliban in Pakistan that does not appear to be before the delegate. The extract is footnoted 'Country Advice PAK39807 of 16 February 2012 Stanford University Tehrik-i-Taliban

¹ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions, 28 January 2014; Stanford University Tehrik-i-Taliban Pakistan; South Asia Terrorism Portal Weekly Assessments & Briefings Volume 17, No. 48, 27 May 2019; Ali, Imtiaz, United States Institute of Peace Special Report 421 Mainstreaming Pakistan's Federally Administered Tribal Areas Reform Initiatives and Roadblocks March 2018

² The IAA Practice Direction under section 473FB states that if an applicant provides or refers to new information they must provide a copy of that information or extract part(s) of the information on which they rely.

Pakistan...'. The footnote appears to relate to two sources: 'Country Advice PAK39807 of 16 February 2012' and an undated report from Stanford University. The delegate had before him Country Advice PAK39807.³ However, that report is dated 11 January 2012 and the extract provided in the IAA submission does not form part of that report. It is therefore not clear as to the source of the extract and it appears to be new information. As noted above, I have not considered the undated report from Stanford University. I am mindful that I have before me other credible reporting about the Taliban in Pakistan including in the applicant's home area. In all the circumstances, I am not satisfied that exceptional circumstances exist to justify considering this information.

9. The representative also refers to reports from 'locals and Pakistani publications' that she states indicate that as recently as October 2019 Sunni militants attempted to infiltrate Parachinar and harm Shias. It is new information that pre-dates the delegate's decision. There are no reasons advanced as to why the new information was not previously provided or why it should be considered credible personal information. I note that neither a copy of the information from the unspecified publication nor an extract is provided. I also find that the IAA Practice Direction has not been complied with in respect of this information and under s.473FB(5) I have decided to not accept it. However, if it could be said that the IAA Practice Direction has been complied with in respect of the new information, I am not satisfied it could not have been provided to the Minister before the delegate made his decision. Nor am I satisfied the information is credible.
10. I have obtained new information about missiles that landed in [Town 1] in 2017.⁴ I consider it necessary to obtain that new information in order to determine the applicant's claim about this issue and in my view, there is insufficient information before me regarding the incident for me to be able to properly assess the claim. For these reasons, I am satisfied there are exceptional circumstances to justify my considering that new information under s.473DD.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:

- The applicant is a Shia Turi male of Pashtun ethnicity from [Town 1] (near Parachinar) in Kurram District, in the province of Khyber Pakhtunkhwa (KP);
- He is well-known in his local area;
- Living in and around Parachinar was difficult due to the conflict in the region;
- In 2008 or 2009, his friend was injured in a mine attack;
- In 2010, his [Relative A] was [shot] by the Taliban. He is also well-known and has affiliations to Shia organisations Anjuman-e-Hussaini and the Alamdar Foundation;
- In 2018, a different [relative] was kidnapped while visiting Peshawar;
- The applicant has been diagnosed with depression and anxiety and is not confident he will be able to get his medication regularly in Pakistan;
- If returned to Pakistan, the applicant fears he will be harmed by the Taliban due to his [Relative A]'s role in the community;

³ Country of Origin Information Section (COIS), "Pakistan – PAK39807 – Anjuman-e-Hussainia – Maliks – Political Agent – Targeted Harm – Tehrik-e-Taliban Pakistan", 10 January 2012, CR0DEDD73544

⁴ [Deleted.]

- He also fears that if the Taliban discover he resided in Australia they will perceive him as a supporter of the west and harm him;
- He further fears harm from Sunni extremist groups such as the Taliban, SSP (Sipah-e-Sahaba Pakistan) and LeJ (Lashkar-e-Jhangvi) in the neighbouring [villages]. These groups are targeting Shia Turis from Parachinar because they opposed their presence in that area. A missile recently landed in his home area;
- He fears he will be targeted due to a perception he is 'pro-US' and 'pro-Iran'. He will face harm due to his Pashtun ethnicity.

Refugee assessment

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.

Identity

14. Since his arrival in Australia, the applicant has consistently claimed to be a Shia of Pashtun ethnicity and a member of the Turi tribe. He has also consistently claimed to be a Pakistani citizen from [Town 1] (near Parachinar) in Kurram District. In his protection interview on 23 August 2019 (SHEV interview), he stated that Parachinar city is about [specified distance] from his village. He has provided a number of documents as evidence of his identity, including a copy of his Pakistani national identity card. On the evidence before me, I accept that the applicant's identity is as claimed and that he originates from this part of Pakistan. I find Pakistan to be the receiving country for the purpose of this decision.

Events in Pakistan

15. In a statutory declaration dated 16 March 2016 (SHEV statement), the applicant outlined written claims for protection.
16. I accept the applicant's claims in respect of the historical security situation in and around his home area and the broader region. I accept that his friend was injured in a mine attack in around 2008-2009 and that his [Relative A] was [shot] by the Taliban in 2010. Country information indicates that the Kurram region has a history of violence between Sunni and Shia groups. The Department of Foreign Affairs and Trade (DFAT) reports that between 2008 and 2014 Turis, who mostly live in Parachinar, faced significant violence. As noted by the delegate in his decision, the information indicates that the Thall-Parachinar road, which links Parachinar to the rest of Pakistan, was closed at various times due to the conflict. I accept that the conflict destroyed much of the area's health, education and agriculture infrastructure, while the closure of the Thall-Parachinar road devastated trade and development work in Kurram, severely damaging the economy. I accept the applicant and his family were negatively impacted by the conflict and that the applicant decided to cease his driving work prior to leaving Pakistan due to the dangers of road travel.
17. In his SHEV statement, the applicant stated that his [Relative A] was [an office bearer] of the Alamdar Foundation and part of the Anjuman-e-Hussaini. He claimed that his [Relative A] [frequented] the Alamdar Foundation headquarters in Parachinar city. However, in the SHEV interview he clarified that his [Relative A] ceased holding these positions in around 2014 and 2016. He also said that his [Relative A] resided with his family in [Town 1]. Following the SHEV interview, the applicant provided a statutory declaration, dated 23 September 2019 (September 2019 statement), where he addressed a number of concerns raised by the interviewing officer during the SHEV interview. He also confirmed that his [Relative A's] tenure with the Anjuman-e-Hussaini had concluded and I accept this to be the case. On the evidence before me, I accept that the applicant's [Relative A] may remain affiliated with these Shia organisations and that he is well-known in [Town 1] village and surrounding areas.
18. In the SHEV interview, the applicant claimed that a [Relative A] had been "kidnapped" by an unknown person or group in December 2018 (a different [Relative A] to the one discussed above). He said that the [Relative A] had travelled to Peshawar for medical treatment and did not return. The interviewing officer asked the applicant how he knew that his [Relative A] had been kidnapped. In response, he said that after arriving in Peshawar his [Relative A] contacted family in Parachinar to advise he had arrived at the hotel and was seeing a doctor the following day. He said that the following morning family attempted to contact the [Relative A] but the calls went unanswered. Another [relative] travelled to the hotel in Peshawar where he was advised that [the Relative A] was not there. He then reported the matter to the police. The applicant advised the interviewing officer that since December 2018 his family had not heard from his [Relative A] or any kidnapers.
19. Following the SHEV interview, the applicant provided a copy of the police report ('First Information Report') dated [in] December 2018. According to the report, the applicant's [Relative A] reported that he was 'certain' that [this Relative A] had been 'kidnapped' by 'unidentified persons' because his mobile phone was switched off and he had not been able to establish contact following his medical check-up.
20. Overall, I find the applicant's claim that his [Relative A] was kidnapped unconvincing. While I am prepared to accept his [Relative A] travelled to Peshawar for medical treatment in December 2018, I am not satisfied he has been kidnapped. There is no credible evidence

before me to indicate that the applicant's [Relative A] has been kidnapped or that he is a person of adverse interest to any person or group and I am not satisfied this is the case. Although I have concerns, I am willing to accept that the applicant's [Relative A] travelled to Peshawar in December 2018 for medical treatment and did not return. However, on the information before me, I am not satisfied he has been kidnapped or otherwise come to the adverse attention of any person or group.

21. At the beginning of the SHEV interview, the applicant indicated that a missile had landed near his home. His former representative stated that this incident had occurred after he had completed his SHEV statement and it was for this reason it had not previously been mentioned. The former representative also stated that the applicant was in the process of getting more information which he indicated would be provided later. However, no further information was subsequently provided in respect of the claim including in the September 2019 statement, post-SHEV interview submissions, or in submissions to the IAA.
22. I have obtained new information from [a media source] about missiles in the applicant's home area since he completed his SHEV statement in March 2016. According to [this source], [missiles] were fired into the Kurram Agency from across the Afghan border in early April 2017. A spokesperson for the local administration stated that one missile struck a [building] in [a specified] area, another landed near a mosque, and two others in a [location] at [Town 1]. There was reportedly no loss of life. I have reviewed the country reports before me including from DFAT, Pakistan Institute for Peace Studies, European Asylum Support Office, South Asia Terrorism Portal and Centre for Research and Security Studies, and can find no reports of similar incidents in or around the applicant's village in recent years. It appears to have been an isolated incident. On the country information, I accept missiles fired from across the Afghan border landed in a [location] in [Town 1] in April 2017. However, on the information before me, I am not satisfied the applicant's family were personally targeted or harmed in this incident, or that the missiles damaged their home. I note the applicant's evidence in the SHEV interview that his family, including the majority of his [family members], all remained living in the same home that he lived in before coming to Australia.

Medical issues

23. In his SHEV statement, the applicant claimed that he had been diagnosed with depression and anxiety. In support of his application he provided a letter, dated 18 January 2016, from his general practitioner confirming a history of anxiety and depression. The doctor stated that the applicant gets stressed, anxious, and depressed. He was prescribed antidepressants and advised to see a psychologist for a CBT session.
24. In the SHEV interview, the applicant said that he was suffering from back pain and stomach problems. He left work because of his back pain. He said he was taking medication for his mental health and that he was suffering from stress. He provided a handwritten list of medications: [specified]. The applicant's former representative said that the applicant was taking [one medication] for reflux but that [another medication] was "full on" so he would seek a letter from the applicant's general practitioner about his condition. In an email to the interviewing officer on 30 August 2019, the former representative stated the applicant was in the process of obtaining further medical evidence relating to his medication. However, no letter or updated medical information was subsequently provided. Further, there was no further mention of the applicant's health issues in the post-SHEV interview submission of 30 September 2019 other than to state that it was not reasonable for him to relocate due to his mental health.

25. On the information before me, I accept the applicant has a history of anxiety and depression and I am prepared to accept he may continue to be prescribed medication for this. I am also prepared to accept he may suffer from back pain and reflux.

Return to Pakistan

26. In the SHEV interview, the interviewing officer asked the applicant why he feared returning to Pakistan. In response, he stated he is well-known in his home area and that Sunni people in neighbouring villages have contacts with militant groups such as the Taliban, SSP, LeJ, and Daesh (Islamic State).
27. In his SHEV statement, the applicant claimed that Shia Turis from Parachinar were being targeted by Sunni extremist groups based in neighbouring villages due to the historical opposition of Shia Turis against those groups. He also claimed that he feared harm from the Taliban due to his [Relative A's] role in the community. He noted that he and his family were known to two prominent Taliban leaders. He also claimed he would be targeted because he had travelled to Australia. He further claimed that he could not relocate to a different area because he is not confident he will be able to get his medication.
28. In the post-SHEV interview submission, the applicant's former representative reiterated the applicant's claims and raised a number of new claims. Specifically, it was submitted that Shia Turis have been historically targeted for being perceived 'pro-US' and 'pro-Iran', and that the applicant faced harm in part due to his Pashtun ethnicity.
29. In its most recent report, DFAT assesses that Shias continue to face a threat from anti-Shia militant groups including LeJ, SSP, and factions of the Tehreek-e Taliban Pakistan. DFAT also assesses that most Shias in Pakistan face a low risk of sectarian violence, but that the risk varies depending on geographical location and for members of specific groups. For example, DFAT assesses that 'high profile' Shias in Pakistan face a 'moderate risk' of violence. DFAT defines 'moderate risk' as it is aware of sufficient incidents to suggest a pattern of behaviour. In the former FATA (Federally Administered Tribal Areas) of which Kurram Agency is a part, DFAT assesses that Shias face a 'low risk' of sectarian violence. DFAT defines 'low risk' as it is aware of incidents but has insufficient evidence to conclude they form a pattern. In respect of KP, DFAT assesses that the province has a low level of sectarian violence, within the context of a moderate level of militant and criminal violence across the region, but notes that the risk of sectarian violence for civilians in Kurram Agency, particularly Parachinar, is higher than in other parts of the former FATA. I accept the applicant's evidence that Parachinar is about [specified distance] from his village.
30. As noted in the post-SHEV interview submission, there were insurgent attacks in Parachinar in 2017. DFAT reports that in the first half of 2017 there were three attacks targeting members of the Turi tribe in Parachinar due to their Shia faith, with more than 120 people killed. However, in 2018 there was a decrease in reports of attacks against Turis due to the improved security situation in Parachinar and Kurram Agency. DFAT assessed that this trend would likely continue in 2019, noting that KP had seen a significant reduction in militant violence in recent years and that the security situation in Parachinar has improved. DFAT assesses that Turis face a similar risk of official discrimination as other Pashtuns based on ethnicity, and no additional risk of official discrimination based on their religion. DFAT also refer to unnamed media that reports that discrimination and violence towards Shia tribes, particularly Turis, remains significant in Kurram Agency due to state concerns regarding Iranian influence and greater presence of the Taliban and Al Qaeda, and that Turis face some risk of violence if travelling for pilgrimage on

the road to Iran or Iraq. Overall, DFAT assesses that Turis in all of Kurram Agency face a 'moderate risk' of sectarian violence from militant groups due to their Shia faith.

31. In the post-SHEV interview submission, the former representative submitted that the country information indicated rising tensions within urban centres with a mixed ethnic population, particularly towards Pashtuns originating from tribal areas. In 2019, DFAT reported that Pashtuns were the second largest ethnic group in Pakistan, comprising 15.4% of the population. DFAT assessed that Pashtuns in Pashtun majority areas, like KP, or locations where individuals have family or social connections face a 'low risk' of official discrimination.
32. The applicant's former representative claimed that Shia Turis are perceived as 'pro-US' and 'pro-Iran' and are targeted for this reason. In respect of the 'pro-Iran' claim, he stated in the post-SHEV interview submission that Turi/Bangash tribesmen are fighting Iranian-backed militias in Syria and footnotes a February 2017 article from 'The News'. However, having reviewed that article I note it makes no reference to Turi or Bangash tribesmen fighting militias or being involved in the Syrian conflict. The article reports that Islamic State threatened Shia in the FATA districts of Hangu and Dera Ismail Khan and that Member National Assembly Sajid Hussain Turi and elders of the Turi-Bangash tribes condemned the threats. The article also states they said they were not frightened by the threats due to the presence of strong contingents of the Pakistan Army in the area. The former representative also refers to a blog from atlanticcouncil.org and indicates it evidences that Turis and other Shia tribesmen from Parachinar, particularly Bangash, have been recruited by the Iranian government and are particularly active in the conflict in Syria in support of the Assad regime. He also stated that this had contributed significantly to the Turi and Shia Bangash tribe being imputed as being highly engaged in the sectarian conflict in the region and ideologically aligned with the Iranian regime. However, having reviewed the blog I note that it makes no reference to persons from the Turi or Bangash tribes being recruited by the Iranian government, or being imputed as such. I am not satisfied that Shia Turis are being imputed in Pakistan as 'pro-Iran' solely on the basis of their faith and/or tribal identity and being harmed on this basis. Nor am I satisfied that the applicant holds any actual or imputed links to Iran.
33. In respect of the 'pro-US' claim, the applicant's former representative asserts in the post-SHEV interview submission that because the Shia Turi tribe of Parachinar are the only non-state actors to have been in open armed conflict with the Pakistani Taliban they are perceived as being politically pro-United States and NATO. The former representative references numerous news articles from credible sources in support of this claim. However, having reviewed the articles, I note that none of them refer to Turis, or Turis from Parachinar, being perceived as politically pro-United States on the basis of a common enemy, or for any other reason. I am not satisfied that Shia Turis or Shia Turis from Parachinar are being imputed in Pakistan as 'pro-US' or NATO solely on the basis of their faith, their tribal identity, or their place of origin, and being harmed on this basis. I note the applicant has not claimed that he or any of his family has links to the United States and his evidence in his SHEV statement is that his involvement during the conflict in Parachinar against the Taliban amounted to him bringing food and water to soldiers.
34. In his SHEV statement, the applicant stated that he feared harm from 'Sunni extremists' who were from neighbouring villages who knew him and his family well. He claimed that these people have now fled to different parts of Pakistan. He claimed that two of these people, JM and T, were 'prominent leaders in the Taliban'. In the SHEV interview, the applicant reiterated that he was personally known to JM and T. He initially indicated they were leaders of a terror organisation and said that in 2007, before the conflict, he drove them and/or their family [once] or twice a week and worked for them using his [equipment]. However, later in the interview, he described them as leaders of the neighbouring villages. He also said that they

resided in those villages, which appeared to differ from his SHEV statement. The interviewing officer put to the applicant that his written claims were that JM and T were prominent leaders in the Taliban and that he had not been able to verify this with country information. In response, the applicant said JM and T were part of the Sunni leadership who were 'attached' to the Taliban.

35. Having had regard to all of the information before me, including the country information, I accept that Shia Turis have been targeted and attacked in Parachinar by anti-Shia elements in the past. However, considering the weight of independent reports before me about the attacks on members of the Turi tribe and/or Shias, the improved security situation, and the implementation of security measures in KP and across the country, I am not satisfied the applicant faces a real chance of harm for the reasons claimed.
36. The country information does not indicate that Shias in [Town 1] or Parachinar are unable to practise their religion or travel safely between the two areas. I also give weight to the applicant's evidence in the SHEV interview that his family continue to live in Parachinar without apparent difficulty. In particular, I note his [Relative A] lives in the applicant's village and is an active member of the Shia community. While I have accepted that the applicant's [Relative A] was [shot] by the Taliban in 2010, there is no claim or evidence before me to indicate the [Relative A] has faced any further difficulties from the Taliban, including in connection with his past or current involvement with Anjuman-e-Hussaini or the Alamdar Foundation. Even accepting the applicant's claim in the SHEV interview that he and his [Relative A] are known to the Taliban and other groups, I note the applicant last had contact with these people in 2007 and did not appear to face any difficulty from them in the period that he remained living in his home area until he departed for Australia. I also note the applicant advised the interviewing officer that his [Relative A] resided with his [family] in [Town 1] and there is no claim or evidence that they have faced difficulty due to these past connections or as a result of any affiliation or activity with Anjuman-e-Hussaini or the Alamdar Foundation. The applicant claimed in the SHEV interview that the persons he fears know where his wife and children live, yet he has advanced no claim, including in the post-SHEV interview submission, that they have faced any threat or harm since he departed Pakistan in 2012. On the information before me, I am not satisfied the applicant is a person with an adverse profile in Pakistan on account of his previous interactions with Sunni leaders or due to his [Relative A's] current or previous involvement with Anjuman-e-Hussaini or the Alamdar Foundation. I am not satisfied the applicant holds an adverse profile with the Taliban or any other extremist group for these reasons, or that his profile is elevated due to his time in the west (discussed below) as argued in the IAA submission. Nor am I satisfied he holds an adverse profile with persons who have connections to such groups. Further, I am not satisfied that the applicant's other [Relative A's] disappearance in December 2018 is connected to previous events or family in Parachinar, or that the applicant faces harm on this basis.
37. I note the arguments in the post-SHEV interview submission about the cyclical nature of violence in Pakistan, which I note relates to the country as a whole. I also note the submissions about the repression of the media in respect of reporting sectarian violence in Pakistan and I accept not all incidents of violence in Pakistan are reported. However, I have before me a range of country information (including that provided by the applicant) about the situation in his home area and the country more broadly. These reports are from within and outside Pakistan, including from DFAT, Pakistan Institute for Peace Studies, European Asylum Support Office, South Asia Terrorism Portal and Centre for Research and Security Studies. The former representative also presents arguments about global and internal factors that may lead to the applicant facing harm in Pakistan. This includes factors such as the effect of a US withdrawal from Afghanistan, the conflict in Syria, and the growing influence of the Iranian government in

the region. Overall, I find these arguments speculative and, given the weight of country information before me, I am not persuaded these factors would lead the applicant to face a real chance of harm in his home area.

38. I acknowledge DFAT's assessment that the risk of sectarian violence for civilians in Parachinar is higher compared to other parts of the former FATA. I also acknowledge there has been a history of sectarian violence in Kurram Agency, including near the applicant's home area, and I cannot discount the possibility that further attacks may happen in the future. However, on the information before me, I find the chance that the applicant would be harmed by a militant group like the Taliban, Islamic State, or other Sunni extremist groups like SSP and LeJ in [Town 1] or Parachinar now or in the foreseeable future due to his religion, his ethnicity, his tribal identity, his place of origin, as a Shia Turi, as a Shia Turi from Parachinar, as a Shia Turi from Kurram Agency, or any combination of these profiles, to not rise to a real chance. I note DFAT's assessment that there exists a moderate level of militant and criminal violence in the wider province of KP; however, there is no indication in the country information that this is an issue affecting the applicant's home or surrounding area. I am not otherwise satisfied that applicant faces a real chance of harm on this basis. The applicant has not claimed to have experienced harm or discrimination on account of his Pashtun ethnicity previously and, on the information before me, I am not satisfied he faces a real chance of harm in his home area, where Pashtuns form a significant majority, for this reason. Nor am I satisfied that, in [Town 1] or Parachinar, the applicant will be imputed as a person opposed to the Taliban and other Sunni militants on account of his faith, his ethnicity, his tribal affiliation and/or his area of origin, or due to the role played by Shia tribes against the Taliban or any other group, or any combination of these factors, and be harmed on this basis. I am not satisfied that the applicant faces a real chance of harm in Pakistan due to an imputed political opinion. Further, I am not satisfied that Shias or Turis are being targeted for harm in Parachinar on account of a perception that they are 'pro-Iran', 'pro-US', or pro-NATO.
39. In his decision, the delegate found that the applicant faced a real chance of serious harm in Kurram Agency on account of his 'race and religion'. However, he was not satisfied that the real chance of harm extended throughout Pakistan and found that the applicant could relocate to Islamabad, Lahore or Karachi. I have come to a different conclusion. I have determined that the applicant does not face a real chance of serious harm for these reasons and, for reasons outlined in other parts of this decision, I have also found that he does not face a real chance of serious harm or a real risk of significant harm for any of the other reasons claimed, and therefore I have not found it necessary to consider the issue of relocation. I am also mindful that the issue of return to the applicant's home area versus relocating to a different area was squarely at issue throughout the SHEV application process, including in the SHEV interview. Further, the applicant's former representative provided comprehensive submissions about the harm the applicant faced in Parachinar and addressed in some detail the issue of relocation. I am satisfied that the applicant was able to provide information and respond to these issues throughout the SHEV process, such that I do not consider it necessary to exercise my discretion to obtain new information from him under s.473DC(3).
40. I accept that prior to coming to Australia the applicant worked as a driver and that he ceased this work to due to the dangers of road travel. I also note his evidence in his SHEV application that in Australia he has worked as a truck driver. I therefore consider it plausible that if returned to Pakistan he may continue in this line of work which would involve road travel. As noted above, in the past the roads around Parachinar have been intermittently closed. In its most recent report, DFAT state that the overall security situation for all Pakistanis has improved in line with increased security across Pakistan, including in Parachinar and Kurram Agency. However, DFAT assess that travel in parts of the country is dangerous for all persons,

regardless of sectarian, religious or ethnic affiliations. It assesses that in remote areas, such as KP and the former districts of FATA, persons are at greater risk of criminal or militant violence due to their isolation and the limited presence of security forces. In respect of road travel in and out of Parachinar, DFAT report that between 2009 and 2014 Turis were frequently stopped along the Thall-Parachinar road linking Kurram Agency and Peshawar, but that by 2018 these attacks had significantly declined due to military operations that forced militants into the mountains. This restored confidence within the community for individuals to travel on the Thall-Parachinar road during daylight hours. DFAT's 2019 reporting on incidents involving Shias on the Thall-Parachinar road is consistent with its 2016 report about Shias in Pakistan, which indicates that there have been no major incidents on that road since 2014. The country information before me does not indicate that Shias and/or members of the Turi tribe are being targeted on the roads to Kurram from areas like Peshawar where the applicant claimed in the SHEV interview he previously travelled in capacity as his work as a driver. While the absence of recent attacks by militants against the Shia or the Turi population on the roads leading to Parachinar does not preclude the possibility of future attacks, when I consider the frequency of such attacks, and the improved security situation and security measures in the country, I consider the chance that the applicant will be involved in an incident or attack on the road, or put at additional risk because of his tribal, ethnic, religious, or other claimed profile, to be remote. Having had regard to the recent country information above in relation to road travel and the overall security situation in and around Parachinar, and the road linking Parachinar to Peshawar, I am not satisfied the applicant would face a real chance of harm (and nor has he claimed that he would) if on return he chose to drive a taxi or a truck now, or in the foreseeable future.

41. In his SHEV statement, the applicant stated that he feared that if the Taliban discovered he resided in Australia they would perceive him as a supporter of the west and harm him. The delegate considered whether the applicant would face harm due to his profile as a 'returnee from a western country'.
42. In 2017, DFAT reported that western influence is pervasive in many parts of Pakistan. DFAT also reported that western films and music are widely available, and western-branded retail chains operate throughout the country. Both Urdu and English are official languages, and English is taught in many schools and is widely spoken among Pakistan's elite. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assessed that persons aren't subject to additional risk of discrimination or violence on the basis of spending time in a western country or because of perceived western associations, despite a generally increasing conservatism and religiosity across the country. Similarly, in 2019, 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 they lived in a western country. DFAT note that many wealthier families pursue overseas education opportunities for their children, particularly in western countries. DFAT also indicate that returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt.
43. Country information from DFAT indicates that those who return voluntarily and with valid travel documentation are typically processed like any other citizen returning to Pakistan. DFAT states that the government issues 'genuine returnees' with temporary documents when they arrive. A genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered destination countries. DFAT states that those who are returned involuntarily or who travel on emergency travel documents are likely to attract attention from the authorities upon arrival. The Ministry of the Interior will interview failed returnees and release

them if their exit was deemed to be legal. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return, irrespective of whether they departed legally or not. DFAT understands that people returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours.

44. The applicant's evidence, which I accept, was that he departed Pakistan legally on his own passport. I accept on return to Pakistan he may be identified as a person who sought refuge in Australia. According to his SHEV application, the applicant has not been charged with criminal offences in Pakistan and he has not indicated at any time throughout the SHEV application process that he has been suspected of committing any offences. On the information before me, I find that on return to Pakistan the applicant would be questioned and released within a couple of hours and I am not satisfied this administrative process for returnees amounts to serious harm. When I consider the applicant's personal circumstances, the country information about the treatment of those who return having departed Pakistan legally, about those who attempt to migrate, and about the numbers of Pakistanis who have lived in or visited western countries, I am not satisfied the applicant faces a real chance of harm for these reasons. On the evidence before me, I am not satisfied he faces a real chance of harm due to his time spent in Australia or as a 'returnee from a western country'. I find the chance he will be persecuted due to his asylum attempt abroad remote.
45. Having considered all of the information before me, I am not satisfied that the applicant had an adverse profile with the Taliban, or any other person or group, prior to his departure from Pakistan in 2012, and nor am I satisfied he will have such a profile now or in the foreseeable future for the reasons claimed. On the information before me, I am not satisfied that, on return to Pakistan, there is a real chance that the applicant will be imputed with pro-western and/or anti-Taliban views due to his time in Australia/the west or as a result of his asylum application abroad now, or in the foreseeable future.
46. Although raised in the context of relocation, in his SHEV statement, the applicant stated that he is not confident that he will be able to get his anxiety and depression medication regularly in Pakistan. There was no further mention of the claim in the SHEV interview or post-SHEV interview submission. In his decision, the delegate referred to country information from August 2018 that indicated the applicant's anti-depressants were available in Pakistan. Other than taking anti-depressants, there is no evidence before me to indicate the applicant is undergoing any other treatment for his mental health. As noted above, the applicant's former representative advised in August 2019 that the applicant was seeking further medical evidence pertaining to his medication but nothing was provided. The IAA submission is silent on the matter.
47. In 2019, DFAT report that basic health care in Pakistan is free despite factors that reduce quality and accessibility. Many religious and secular charities are said to provide health services and focus their support on the specific needs of their community or sect. In the SHEV interview, the applicant mentioned there was a hospital in Parachinar. The information in the review material does not indicate that health factors like anxiety and depression, back pain or reflux, would contribute to a person having a risk profile, or that treatment for such conditions in Pakistan is intentionally withheld on the basis of a person's religion, ethnicity, or any other profile. On the evidence before me, I am not satisfied that the applicant faces a real chance of harm in Pakistan due to any health condition. I am not satisfied he will not be able to obtain anti-depressants in Pakistan, if required.

48. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

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

Complementary protection assessment

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

Real risk of significant harm

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

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

52. I have found that the applicant does not face a real chance of any harm in Pakistan for the reasons claimed. Based on the same information, and for the reasons set out above, I find he does not have a real risk of suffering significant harm in Pakistan.

53. 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

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.