



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/07692

Date and time of decision: 7 February 2020 09:35:00
R Mikhail, 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 an 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. On 29 March 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 19 December 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (review material).
3. The IAA received a submission (IAA submission) on behalf of the applicant from his legal representative on 16 January 2020. The submission includes legal argument and references to the delegate's decision and evidence that was before the delegate. I do not consider the above to be new information.
4. Attached to the submission was a letter purported to be from the Secretary of [Organisation 1] in [City 1] dated 6 January 2020 which certifies that "[Mr A]", the applicant's father, has been a member of this organisation [since] May 2011 and that his father, "[Mr B]" also served with the organisation up and until 2011. I am satisfied this letter is new information as it was not before the delegate and is relevant to this application. The submission states the applicant was not in possession of this document until after the delegate's decision and, therefore, could not provide it to the delegate. It submits that the letter corroborates the applicant's claim that his father and grandfather were involved with this organisation and should be viewed as personal credible information which may have affected the consideration of his claims and, given the centrality of these claims, exceptional circumstances exist.
5. On its face the letter corroborates the applicant's claims that his father and grandfather were members of this organisation. Although the letter post-dates the delegate's decision it is not clear from the IAA submission why the applicant could not have requested this letter from this organisation prior to the delegate's decision particularly given he raised these claims in his 2017 application for protection and his father still lives in [City 1] and is allegedly still a member of this organisation and has been so since 2011. During the protection visa interview held on 26 August 2019 the delegate also raised concerns about the credibility of these claims to the applicant including the fact that he did not raise this claim in an earlier interview with the Department of Immigration. Yet there is no evidence before me that the applicant sought to obtain such evidence in support of this claim and provide it to the delegate even though the delegate did not make his decision until nearly three months after that interview. I note it is the applicant's responsibility to provide sufficient evidence to establish his claims. The applicant was legally represented in his application before the delegate and would have been advised of the importance of providing corroborative evidence in support his claims. The fact that he did not obtain and provide this letter earlier causes me to doubt the genuineness of this document. I also do not consider that the provision of new information that is central to an applicant's claims for protection amounts to exceptional circumstances as this is normally encountered in such applications. Nor have I been able to identify any other factor or circumstance in this matter that I am satisfied amounts to exceptional circumstances to justify considering this new information. I am not satisfied there are exceptional circumstances to justify considering it.

6. The IAA submission notes that, in the event that the IAA has concerns with the applicant's credibility, the applicant should be afforded an interview with the IAA to discuss these concerns.
7. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. This is subject to other provisions of Part 7AA. Pursuant to s.473DC the IAA is under no duty to get, request or accept any 'new information' whether requested to do so by a referred applicant, by any other person, or in any other circumstances. This discretionary power must be exercised reasonably having regard to the IAA's statutory framework and all the circumstances of each case. If the IAA decides to get or accept new information, it can only consider that information in exceptional circumstances.
8. There is no obligation on the IAA to interview an applicant to discuss credibility concerns. I note that the submission to the IAA addressed credibility concerns the delegate had about the applicant's claims about his family involvement with [Organisation 1] which I have considered and I am not satisfied an interview is necessary to assess these claims or the new information the applicant has provided in relation to this claim.
9. The submission also notes that the delegate found that the applicant would be at a real risk of serious harm in Kurram District due to his religion and if the IAA does not concur with this finding, it requests that the applicant be afforded the opportunity to comment on any information the IAA may rely on.
10. Although I have come to a different conclusion to the delegate and found the applicant would not face real chance of serious or significant harm in Kurram District, I have done so on the information that was before the delegate and there is no obligation on the IAA to seek the applicant's comment on such material prior to relying on it. Further, this issue was central to the applicant's claims for protection which he outlined in his application for protection and which he was questioned about extensively by the delegate. These claims were also addressed comprehensively in post-interview written submissions to the delegate, all of which I have considered in my assessment. I am satisfied the applicant has had an opportunity to present these claims in writing and orally at the protection visa interview and has had an opportunity to provide his response to the delegate's decision to the IAA. I do not consider it necessary to seek comment from the applicant on such information before making my assessment.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - He was born in [City 1], Khyber Pakhtunkhwa and is a citizen of Pakistan.
 - He is of Pashtun ethnicity and Shia faith and from the Turi tribe.
 - His grandfather and father are both senior members and leading figures in [Organisation 1].
 - In 2001 there was fighting in his family village of [Village 1] between the Shia and Sunni Mangal tribe and his family moved to [City 1]. After the conflict settled down his family returned to their village but would maintain residence in both [City 1] and their village.

- Fighting in his village occurred again in 2007 after the arrival of the Taliban who destroyed the village. His family then permanently moved to [City 1]. The Taliban anti-Shia campaign targeted prominent members of the Shia community like his grandfather and father and his father began receiving threatening phone calls from the Taliban and [Mr C]. His father could no longer travel to Peshawar to obtain goods for their shop because of these threats.
- He fled his Pakistan in 2012 due to heightened levels of danger following a bomb blast in [February 2012] and the road to Peshawar became too dangerous to travel which impacted his family business.
- He fears being targeted in Pakistan as a Pashtun Shia Turi from [City 1] and because he is from a prominent Shia Turi family as a result of his family's role in [Organisation 1] and because of his residence in a western country.

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.
14. Country information before me indicates that the majority of the Shia population in the former Federally Administered Tribal Areas (FATA) is concentrated in Kurram and Orakzai Agencies. Shias account for 40 per cent of the population in Kurram, which is estimated to number approximately 935,000 people and Upper Kurram (where [City 1] is located) is predominantly

Shia (approximately 80 per cent) and most of these Shias are from the Turi tribe, an exclusively Shia Pashtun tribe.¹

15. I accept the applicant's claimed identity. He has provided a number of original identity documents from Pakistan confirming he is from Kurram Agency and resided in [City 1], he speaks fluent Pashto and was able to describe his local area in Upper Kurram in detail and his Turi tribe with ease during his protection visa interview.
16. I am satisfied the applicant is a citizen of Pakistan and that Pakistan is the receiving country for the purpose of this assessment.
17. The applicant has claimed to have been born in [City 1] and that his family permanently relocated there from 2007 from their village and that his parents and brothers continue to live there. I accept these claims and I am satisfied that if the applicant were to return to Pakistan he would return to [City 1] in Kurram District.
18. Country information before me notes that Kurram is home to a number of Pashtun tribes, including the Mangal, which are mainly Sunni, and the Turi tribe.² Country information confirms that sectarian violence is not a new phenomenon in Kurram and there are longstanding disputes over ownership of forests, hills, land and water resources between Sunnite and Shiite tribes and sporadic incidents of communal violence have taken place since the 1930s. The nature and the dimension of the sectarian conflict changed when the conflict was instigated by the Taliban who wanted access to Afghanistan.³ During the early 2000s, Sipah-e-Sahaba Pakistan, an anti-Shia sectarian group with members who were involved in the occasional Sunni-Shia clashes across Kurram, also established a strong base in the region.⁴ Sources also confirm that the conflict erupted again in 2007 in Kurram after Sunnis chanted anti-Shiite slogans during a procession in Parachinar. Local Sunnis were joined by al-Qaida fighters and Taliban from Waziristan who targeted the paramilitary forces. Villages were destroyed and over a thousand people killed and thousands of families displaced.⁵
19. I accept the applicant's claim in his statement attached to his application for protection (applicant's statement) that there was fighting in his family village of [Village 1] in 2001 between the Sunni Mangal Tribe and the Shia tribe. I also accept that there was further conflict in that area in 2007 infiltrated by the Taliban and other Sunni militant groups and I accept as plausible that his village was destroyed and his family permanently relocated to [City 1] and that fighting also spread to [City 1] at this time.
20. The applicant has also claimed that his grandfather and father were prominent members of [Organisation 1] and that his father received threatening phone calls from the Taliban and someone by the name of [Mr C] as a result of their involvement with these organisations.

¹ Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265

² Arif Rafiq, "Sunni Deobandi Shia Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

³ Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402

⁴ Mansur Khan Mahsud, "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543

⁵ "Tribe: Turi", Program for Culture and Conflict Studies, Naval Postgraduate School, 1 January 2011, CIS20497; Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402

21. Country information before me describes [Organisation 1] as a Shia political organisation in [City 1]⁶ and another source refers to it as a 'supreme council of elders' of the Shia Turi tribe.⁷ Reports before me also refer to a person named [Mr C] who is from [Village 1] and was the former leader of Sipah-e-Sahaba Pakistan's (SSP) and who has been accused of inciting sectarian conflict in [City 1] in the past.⁸
22. For reasons I have outlined below, I do not accept the applicant's claim that his father and grandfather were members of this organisation and received threats as a result of their involvement.
23. During the protection visa interview the applicant claimed that, since 2007, his father was unable to travel to Peshawar to conduct business for their shop because of the threats he has received and the applicant also claimed he was targeted due to his association with the family business. This seems at odds with the applicant's claim that, when the applicant started working in the family shop in 2009, he would regularly travel to Peshawar himself to order goods for the shop.
24. Further, although the applicant claims that his father received threats from the Taliban from 2007, he and his father continued to live and run a well-known business in [City 1] without coming to any harm. When this was raised by the delegate during the protection visa interview, the applicant claimed that they live in their community in [City 1] and cannot leave otherwise they will be targeted but again this is at odds with the applicant's claim to have travelled regularly to Peshawar for their business from 2009.
25. The applicant has claimed that they had to sell the family business in 2015 because of the threats they received but, as noted, the threats began around 2007 and yet they continued to run their business for another eight years so it is not evident to me why they waited until 2015 to sell it. Given this, I am not satisfied the family business was sold in 2015 due to threats they received from Sunni groups/individuals.
26. The delegate also pointed out to the applicant that he did not mention his family's role in [Organisation 1] during his Irregular Maritime Arrival Entry Interview (Entry Interview) held in 2012. The applicant said that he felt he did not need to mention it and thought he would mention it in future interviews if asked. In post-interview written submissions to the delegate, in addressing this concern, it claims that it is plausible the applicant was traumatised but I note no supporting evidence of this has been provided. It also suggests that the use of an interpreter may have impeded the accuracy of information the applicant provided but the applicant has acknowledged that he did not raise these claims during his Entry Interview so I am not convinced of this explanation. I appreciate the limitations of Entry interviews and that they are not conducted for the purpose of assessing an applicant's claims for protection and are conducted shortly after they arrive to Christmas Island after a difficult boat journey and prior to an applicant receiving legal advice. Nonetheless, I find the applicant's explanation difficult to believe given his family's alleged involvement in this organisation is now one of his main claims for protection. I also note that, when the applicant was asked why he left Pakistan during this interview, he referred to other specific claims he has raised in his application for protection such as the 2012 suicide [attack] and the blocking of the road to Peshawar so I am not convinced of the reasons put forward for why the claims about his family involvement in [Organisation 1] were not mentioned during the Entry Interview.

⁶ [Source deleted]

⁷ [Source deleted]

⁸ [Source deleted]

27. The applicant has also claimed that because of the threats his father received, they cannot go back to [Village 1] and he fears harm from the Sunni Mangals there. He also claimed that the Sunnis, who had left [City 1] due to the conflict in 2007, cannot return to [City 1]. This does not correspond with country information before me. Although I accept his claims about conflict in his village between the Sunni Mangals and Shias in 2001, I note that his family were able to return and reside in that village after the conflict subsided. Country information also indicates that, during the conflict from 2007 involving the Taliban, it was the Mangals of Upper Kurram who were extremely vulnerable to the Shia majority and were even unable to travel due to fear of violence from the Shia which suggests they were being targeted and not the other way around. In any event there is no country information before me to indicate that tensions still exist between the religious communities there.⁹ Further, country information before me indicates that thousands of displaced families (including Sunnis) had returned to [City 1] in 2014 and 2015 and Sunnis and Shia Tribal leaders were cooperating with one another. There is no recent evidence before me of tensions between the Sunnis and Shias in [City 1] and one commentator noted that the Sunnis from Kurram later came to regret their former collaboration with the Taliban during the 2007-2011 conflict.¹⁰
28. On the evidence before me I do not accept that the applicant's grandfather and father were members of [Organisation 1] and that they or the applicant received threats from the Taliban, [Mr C] or any other group or person. I do not accept that his father stopped travelling to Peshawar for business and the family limited their movements and are unable to return to [Village 1] because of such threats or fear of harm from the Mangal villagers there. I do not accept the claim that the applicant comes from prominent Turi Shia family. I am not satisfied the applicant has a well-founded fear of persecution in Pakistan in relation to these claims.
29. In the post-interview written submission to the delegate it claims that the applicant also fears harm in Pakistan due to his Shia religion, Pashtun race, area of origin, and Turi tribal affiliation and his imputed political opinion emanating from all these factors. The applicant claims that government presence in the tribal areas is weak and there is very little law and order apart from that administered by local tribal groups. The post-interview submission also refers to country information in support of their claim that the Pakistani authorities are corrupt and inefficient in curbing the influence of extremist groups.
30. I accept the applicant's claim that he started to work in his father's shop in [City 1] after completing his schooling and that he would have to travel to Peshawar to order goods for the shop and that such trips became dangerous due to violent incidents, attacks and kidnapping on the road. Country information before me confirms that, since 2007, Shia Turis from Upper Kurram had been denied access to Peshawar via their sole land route: the Thal- Parachinar road that passes through Sunni-dominated Lower Kurram and that Shias were targeted by Sunni militant groups on this road during the conflict in Kurram.¹¹ The applicant also states that in 2012 the road to Peshawar became too dangerous to travel and this had a major impact on his father's business. Country information also confirms that in 2012, people were still being killed by roadside bombs and other types of attacks on the Parachinar to Thal Road.¹² Country

⁹ Arif Rafiq, "Sunni Deobandi Shia Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993; Mansur Khan Mahsud, "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543

¹⁰ DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265; Arif Rafiq, "Sunni Deobandi Shia Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

¹¹ Arif Rafiq, "Sunni Deobandi Shia Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

¹² "Death toll rises to 36 in Pak bombing", The Sunday Indian, 18 February 2012, CX0D38E8E20487; "Blast at Pakistan town 'kills 26'", BBC, 17 February 2012, CX316847

information before me also confirms the applicant's claim that in February 2012 there was a major bomb attack in Kurrami Bazaar in Parachinar City.

31. Although the security situation in Pakistan is complex and extremist groups are still active in Pakistan, it appears the security situation in Kurram District has improved in recent years. In 2011 the Sunnis and Shias in Kurram reached an agreement to end the conflict and this accord is still in place.¹³ According to a 2016 report published by the Australian Department of Foreign Affairs and Trade (DFAT report), since the commencement of the counter-terrorism military operation named "Zarb-e-Azb" in June 2014, Pakistani military operations against terrorist and militant groups in the former FATA and Karachi have substantially reduced the level of generalised and sectarian violence throughout the country.¹⁴ Other source noted the same and that most of the areas were cleared of militants due to this operation.¹⁵ The security situation in the former FATA also improved in 2016 as a result of military actions in North Waziristan and Khyber Agencies. The Fata Research Center (FRC) stated in its annual report of 2016 that violent incidents in FATA decreased by 25 % in 2016 compared to 2015.¹⁶
32. Despite these measures, in the first six months of 2017, Sunni militants such as the Lashkar-e-Jhangvi (LeJ) and Tehrik-i-Taliban Pakistan (TTP) carried out several attacks against the Shia community [which] killed over 120 people.¹⁷ The government of Pakistan then announced another countrywide military operation called "Radd-ul-Fasaad" aimed at eliminating the threat of terrorist attacks. Radd-ul-Fasaad focused on coordinated raids conducted by the paramilitary Punjab Rangers and civilian law enforcement. At the beginning of April 2017, those raids led to the arrest of 1300 persons and the seizure of caches of ammunition, weapons, computers and Improvised Explosive Devices (IED). In July 2017, the military also launched operation Khyber-IV in the Rajgal Valley, targeting a number of militant groups. Khyber-IV also targeted Islamic State of Iraq and the Levant (ISIL) connections across the border with Afghanistan's Nangarhar province.¹⁸ The post interview written submission to the delegate refers to an assessment of Pakistan in 2019 by the South Asia Terrorism Portal which noted that there was an overall sharp fall in terrorism related fatalities since 2015. It stated that in Khyber Pakhtunkhwa, while the fruits of successful military operations are visible in terms of declining terrorism and related fatalities, "irritants" persists, with violence disrupting tranquility at regular intervals but I note the report did not elaborate on this further. In a February 2019 report by DFAT (DFAT 2019 report) it noted observers credit Operation Zarb-e-Azb, its successor Radd-ul-Fasaad, and other government measures with a significant reduction in the number of violent and terrorism related attacks in Pakistan. In 2018, up to 262 reported terrorist attacks killed 595 people. This is a significant decrease from 2013, when the terrorist death toll included 3,000 civilians and 676 security force personnel.¹⁹
33. In the 2019 DFAT report, DFAT also commented that these government operations and associated counter-terrorism activities significantly decreased the number and severity of attacks on Turis. It reported that the Pakistan government had started fencing the border with Afghanistan and by February 2018, the Turi community estimated 40% of military fencing in Kurram was complete, decreasing border permeability. Turis also advised that the military

¹³ Arif Rafiq, "Sunni Deobandi Shia Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

¹⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265

¹⁵ European Asylum Support Office (EASO), "EASO Country of Origin Information report Pakistan Security Situation", 7 August 2017, CISED50AD5088

¹⁶ EASO, "EASO Country of Origin Information report Pakistan Security Situation", 7 August 2017, CISED50AD5088

¹⁷ [Source deleted]

¹⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; EASO, "EASO Country of Origin Information report Pakistan Security Situation", 7 August 2017, CISED50AD5088

¹⁹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

implements a 20 to 30 square kilometre area red zone for [City 1], and a second, smaller red zone inside the outer red zone, in which markets and schools are located. On 24 May 2018, the government also passed a constitutional amendment that merged the former FATA with Khyber Pakhtunkhwa. Tribal areas are now known as 'tribal districts,' and these amendments brings the former FATA under the legislative authority of Khyber Pakhtunkhwa and the Constitution of Pakistan.²⁰

34. Despite an improved security situation in [City 1] and Kurram and the overall declining trend in sectarian violence since 2014 in Pakistan, in its 2019 report DFAT observed that societal intolerance and religious extremism appear to have increased, suggesting the underlying causes of violence remain and armed groups remain a threat to Pakistan's domestic security. It assessed that attacks and violence against Turis can, and may still occur and Shias in Pakistan continue to face a threat from anti-Shia militant groups. It assessed that Turis in Kurram still face a moderate risk of sectarian violence from militant groups because of their Shia faith and the risk of sectarian violence for civilians in Kurram, particularly in [City 1], is higher than in other parts of the former FATA.
35. However, the 2019 DFAT report did not refer to any credible and confirmed attacks against the Turi community in Kurram in 2018 or 2019. It reported that in the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device (IED) that reportedly targeted women and children. No further details about these incidents have been included in this report. Another report that was cited in the post-interview submission refers to an incident where six members of a family were killed when an explosion hit their car Kurram in January 2018 but no group had claimed responsibility and it is unclear if the victims were Shia or Sunni so I am not satisfied the victims were Shia Turis and were targeted by militant groups as a result of this profile.²¹ The applicant has also not provided any credible reports of attacks against the Turi community in Kurram in 2018, 2019 and 2020.
36. The applicant claims that many attacks are not reported and DFAT in its 2019 report also noted journalists covering security issues receive threats from militants, Taliban and government officials. Yet the applicant has not provided credible supporting evidence from alternative sources of recent militant attacks in Kurram District. I have also given consideration to the fact that there is no credible evidence that the applicant's remaining family in [City 1] have come to any harm.
37. Given the lack of reported militant attacks against the Turis in Kurram in recent years I am satisfied the security situation in Upper Kurram has improved significantly as a result of the government measures noted above.
38. The post-interview submission to the delegate argues that, despite the presence of the army, the situation in Kurram remains precarious. While a red zone has been created in [City 1], they submit that it does not provide protection to individuals outside the city zone including in the villages, where the applicant originates from and prevents such people from accessing services. However, the applicant has claimed that his family originated from [Village 1] but relocated permanently to [City 1] in 2007 where they continue to reside and where I have found he will likely return. Even if he were to travel to the outlying villages, there are no credible reports before me of recent sectarian or other militant attacks directed to the applicant's community in these areas.

²⁰ Ibid.

²¹ "Blast kills at least six family members in northwestern Pakistan", Radio Free Europe / Radio Liberty (RFE/RL), 30 January 2018, 20190930093904

39. It is also argued in the post-interview submissions that the increase in security measures is greatly impacting the lives of Shias in the Kurram and the applicant claims that his family feel like prisoners, with limited movement and restricted access to services. No further detail has been provided in relation to these claims and so I give this assertion little weight.
40. I accept that the applicant is a practising Shia Muslim and that he will continue to practise his faith if he were to return to Pakistan. Recent reports referred to in the delegate's decision indicate that the 2017 and 2018 Ashura commemorations in Pakistan passed without incident and there are no reports before me of attacks in [City 1] during such occasions in 2019.
41. In its 2019 report DFAT also noted that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination and that Turis a face similar risk of official discrimination as other Pashtuns based on ethnicity and no additional risk of official discrimination based on their religion. It notes that Turis tend to live in enclaves with other Turis, mitigating societal discrimination and I have given weight to the fact that Upper Kurram is a majority Turi area.
42. In the same report DFAT stated that, according to the media, discrimination and violence towards Shia tribes, particularly Turis, remains significant in Kurram due to state concerns regarding Iranian influence and greater presence of Taliban and Al Qaeda. No further detail about the source of this information or form of the alleged discrimination and violence is provided in this report so I give this statement little weight.
43. The post-interview submission to the delegate refers to reports about the alleged enforced disappearance of Shia youth in Pakistan. The reports suggest that most of those who had been detained or gone missing had returned from a pilgrimage to the Middle East and had been suspected of being engaged in some form of militant activity in Syria or "IS" fights across the region. I am not satisfied the applicant fits the profile of those allegedly targeted.
44. The post-interview submission to the delegate refers to previous decisions of the Administrative Appeals Tribunal (AAT) but I am not bound by such decisions so I have not given them any weight in my assessment.
45. In his statement the applicant claims that if he attempted to travel home to [City 1] it would be dangerous as he would be targeted on the way. I have not accepted that his family have been previously threatened and targeted by Sunni militant groups or individuals. In July 2011, the Pakistan Army launched an offensive to open the Thal-Parachinar road. In 2016, DFAT indicated that the Thal-Parachinar Road remained open and there had been no major security incidents on the road in 2015. Federal security forces maintained armed checkpoints along the road, which is used by both civilian and military vehicles.²² In its 2019 report, DFAT stated that travel in parts of Pakistan is dangerous for all travellers, regardless of sectarian, religious or ethnic affiliations and travellers in remote areas of Pakistan including Khyber Pakhtunkhwa and districts in the former FATA are at great risk of criminal or militant violence due to their isolation and the limited presence of security forces and many roads fit this profile. However, in the same report DFAT also stated Turis reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. This indicates a much improved severity situation on these roads with no recent reported attacks on the applicant's community on these roads before me. I also note the applicant claims that he travelled from [City 1] to

²² DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265; Arif Rafiq, "Sunni Deobandi Shia Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

Islamabad by bus when he last departed Pakistan in 2012 and did not claim to have come to any harm.

46. It is claimed the applicant's imputed political opinion is exacerbated by his time abroad in the west. If he was to return to Pakistan now he would be considered to be a supporter of the west and extremists are against western ideology.
47. I have not accepted that the applicant's family were involved with [Organisation 1] and directly threatened by militant groups or individuals in the past. I am not satisfied he or his family have a personal profile of adverse interest to these or any other groups or individuals in Pakistan. DFAT has also stated in its 2019 report 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. Country information does not support the claim that someone of the applicant's profile would be at additional risk or targeted by Sunni militant groups or any other group because he spent time in a western country.
48. Taking into account the general improved security situation in Pakistan and in Kurram District and the applicant's profile, I am not satisfied the applicant would face a real chance of any harm if he were to return to Pakistan in the reasonably foreseeable future.

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. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
53. For reasons already given, I have not accepted that the applicant's grandfather and father were members of [Organisation 1] and that they or the applicant received threats from the Taliban,

[Mr C] or any other group or person. I am not satisfied the applicant will face a real risk of significant harm in Pakistan for these reasons.

54. Having considered the improved security situation in Kurram District and Pakistan and taking into account the applicant's profile, I have found the applicant will not face a real chance of harm in Pakistan. Consequently he will also not face a real risk of any harm in Pakistan.²³ I am not satisfied the applicant will face a real risk of significant harm in Pakistan.

Complementary protection: conclusion

55. 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.

²³ *MIAC v SZQRB* (2013) 210 FCR 505.

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.