



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/07827

Date and time of decision: 17 March 2020 18:40:00
G Ma, 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 Shia Sayed Pashtun Bangash from Parachinar, Pakistan. On 3 June 2017 he lodged an application for a safe haven enterprise visa (SHEV). On 30 January 2020, a delegate of the Minister for Immigration (the delegate) refused to grant 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).
3. On 24 February 2020, the IAA received a submission from the applicant's representative (the IAA submission). To the extent that it engages in argument with the delegate's decision by reference to case law, PAM3 guidelines and the claims and evidence that were before the delegate, I have had regard to it.
4. In the IAA submission, it was submitted that the delegate had wrongly concluded that the applicant will have no issues by the Pakistani authorities when returning to Pakistan. The applicant raised the new claims that he would potentially be charged, prosecuted, fined and/or imprisoned under the Pakistani Passport Act 1974 as he committed the offence of obtaining and using his Pakistani passport because he provided a false statement to obtain a passport. The false statement was said to be that he never stated to the authorities at the time of applying for his passport that he would go to Australia without a visa and seek protection for not having state protection from Pakistan. He claims that had he stated this, he would not have been issued with the passport. Also, he claims that he is likely to be jailed, fined, have his passport cancelled, impounded or confiscated, along with a blacklisting of passport for a lengthy period under the Passport Act if the authorities believe that he has engaged in activities which are subversive or prejudicial to the interest of Pakistan or Pakistan's relations with any foreign power. He asserts that the Passport Act gives authorities unfettered powers to prosecute people with failed claims of asylum overseas as they believe that Pakistani citizens applying protection abroad are responsible for defaming Pakistan across the globe. He claims that the authorities maintain record of people leaving and entering country, and as he left Pakistan [on] his valid passport and later reached Australia by boat, this would trigger the Passport Act to come into action and start criminal proceedings against him. He further claims that he could face potential cruel or inhuman or degrading treatment and punishment in line with the provisions of the Passport Act which gives powers to the authorities at the airport to treat him being a person involved in the activities subversive to the interest of Pakistan and also providing a false statement to obtain a passport. It was submitted that the IAA should consider this 'new information' because the applicant would be subjected to state prosecution and hardships upon return, which is relevant to his case.
5. The foregoing claims and information regarding State prosecution, punishment or harm for reasons relating to the perceived involvement in prejudicial or subversive activities or provision of false statement under the Passport Act 1974, were not matters that had been before the delegate. This is new information. Although the evidence that he applied for a passport to come to Australia, he left Pakistan legally using his passport and travelled by boat to [Australia]; and the claim to fear a greater risk of harm from the extremists because he spent time in a western country (a claim made in the written statement) were before the delegate,

the applicant has not previously expressly raised the above claims. Nor do I consider that this new information arises squarely on the materials before the delegate.

6. In my view, the submission that the delegate had concluded that the applicant will have no issues by the authorities when returning to Pakistan does not accurately reflect the basis for the delegate's findings. The delegate's finding in this regard was confined to the specific claim of 'being imputed as pro-Iran due to his race and religion of Shia Muslim Bangash from Parachinar'. Such finding was made in response to a claim raised in the post interview submission that he is at risk of harm by the government due to his imputed pro-Iran political opinion. It was not a general finding that he will have no issues from the authorities. I also note that the delegate had expressly rejected his claim to fear a greater risk of harm from the extremists due to him being a returnee from a western country.
7. I have listened to the audio recording of the SHEV interview. At the outset of the SHEV interview, the applicant was reminded about the importance of raising all protection claims and providing evidence in support of them. He was informed that if his application was refused, he might not have another chance to raise new claims or provide further information. He was also informed that if he would like to provide additional information as part of his visa application, he should do so during that interview. He was repeatedly encouraged to provide as much detailed information as possible during that interview. All the relevant issues were discussed during the SHEV interview. I also note that during that interview, he was specifically asked why he thought he would be targeted as a returnee from a western country. His response was that he worked for the [Employer 1] and they accused him and the [Employer 1] of getting funds from and working for the Americans, so if he returns from Australia, this will 'definitely tell them that a person who has lived in Australia... got the mentality, and his way of life has definitely changed... with ideology that he has lived with.' No mention was made about the new information. Just before the break at the SHEV interview, the delegate reminded him to take time to consider what was discussed during the break and to make sure everything that he wished to discuss were covered at the interview. Towards the end of the SHEV interview, he was given a further opportunity to add anything in regard to his visa application, to which, he responded 'No'. Opportunity was also given to his former representative to make oral submissions, and oral submissions were made on his behalf. Again, none of the new information was put forward.
8. Extensive post interview submissions together with supporting documents and country information of over 100 pages were provided by his former representative following the SHEV interview. The post interview submissions were also silent about the new information. I consider that the applicant has had ample opportunities to advance his claims and put forward his case. He was legally represented throughout the visa processes. Moreover, it is his responsibility to specify all particulars of his protection claim and to provide sufficient evidence to establish the claim: s.5AAA of the Migration Act. Further, apart from some references to the Passport Act provisions, no independent evidence has been presented to support the assertions that he would be prosecuted or otherwise harmed for reasons relating to the perceived involvement in prejudicial or subversive activities or provision of false statement. Having considered all the relevant circumstances, I am not satisfied that there are exceptional circumstances exist to justify consideration of this new information.
9. The IAA submission also attaches a copy of a letter from [Employer 1] and [another organisation] dated [February] 2020 and a letter from [Organisation 1] Parachinar dated [February] 2020. These letters were not before the delegate. They are new information.

10. The letters purport to support the applicant's claims he worked for the [Employer 1]; that the [Employer 1] and its workers received threats; that his house was attacked in 2007 and his father was injured; that his father worked for [Organisation 1]; and that his father had expertise in coordinating between Turis and the government, played an important role during the conflict, and consequently was threatened. It was submitted that the information contained in the letters are relevant to the applicant's claim and not considering this information would highly prejudice the dispensation of justice in its true spirit. It was also submitted that these letters were not available previously because the applicant had never thought that he would not be considered credible in his account, and the delegate did not require him to prove his claim.
11. The letters post-date the delegate's decision and to that extent the documents could not have been given to the delegate. But I am not persuaded by the explanations about why the letters were not previously available, or why they could not have been requested or obtained earlier from these organisations in order to be provided to the delegate. Especially given that a letter from [Employer 1] of 2013 and a letter from [Organisation 1] of 2019 were previously provided to the delegate. Also, having listened to the SHEV interview audio recording, I do not consider he would have been taken by surprise by the delegate's decision.
12. Nevertheless, I also note the new information contains specific details about the applicant, his father and the claimed past incidents which are said to establish a claim for protection. I note that the letter from [Organisation 1] previously provided to the delegate only contains general information about Turis, with no specific reference to the applicant's father or the claimed past incidents. In contrast, the letter from this organisation dated 2020 certifies that his father worked for their organisation, details his father's role and involvement, and specifically refers to the claimed home attack in 2007. The [Employer 1] letter dated 2020 contains more particulars about his role and duration of involvement, and information from the [Employer 1] itself regarding threats received by the organisation and its workers during that period. In the circumstances I am satisfied there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

13. The applicant's claims can be summarised as follows:
 - He was born in [year] in [Upper Kurram]. His father is deceased. His mother [and siblings] are now living at home in Parachinar city. He is a Pashtun Bangash Shia. He is also a Sayed. The Sayed name is very well-known and respected by the Shia community. Sayed is a descendant of the Imam, and this is linked to the ongoing conflict between Sunnis and Shias. His family is well known and respected amongst the Shia community.
 - He studied at [a] [School]. When he was younger, his father worked [overseas] for a [company].
 - In 2005, his father returned to Pakistan, and started working for an organisation called [Organisation 1], a Shia organisation that exists to improve the lives of Shia people in Parachinar. He was considered a senior person within the organisation.
 - There are [Shia] organisations in [Parachinar]. The Taliban has frequently targeted volunteers and workers of these organisations as they consider them infidels. [Organisation 1] has been central in trying to lobby the government into taking action against the Taliban. The Taliban does not like the organisation because they help Shias in Parachinar and have been very outspoken against them.

- The conflict between the Shia tribes and the Taliban in the Kurram Agency began after 2007, following years of sectarian tensions. The Taliban have been continuing to attack the Shias in the region. It is a dangerous and insecure area. The threat of generalized and sectarian violence is high, particularly against Shia tribes. Target killings also continue within the region.
- The Taliban first threatened his family in 2007, when his father received a threatening phone call. His father did not tell him about this phone call until after their home was attacked.
- [In] September 2007, their family home was attacked by the Taliban. A grenade was thrown over the fence. He was sleeping at that time and it was night time. He woke up when the grenade went off. His father was outside at the time and might have been preparing himself for prayer. His father was injured. After the attack, his mother took his father to the hospital for treatment. The incident was reported to the local police, and they investigated it but they did not hear anything from them.
- He believed that they attacked their home and threatened his father because of his father's role working with [Organisation 1]. His father previously spoke [against] the Taliban when they started moving into Parachinar in 2007. He remembered that his father was saying that the Taliban do not belong here and should leave. He believed that the Taliban therefore identified him and decided to target him for speaking out.
- In August 2011, his father had [a medical condition] and was admitted to [a] Hospital. They had to transfer him to Peshawar as there was not enough medicine or a properly qualified doctor. On the way to Peshawar, there was a bomb blast in front of their car. The driver who was transporting them made a U-turn back to Parachinar and refused to take them. They also heard gunfire. He was not sure what was happening but it was clear that they could not continue the journey. A lot of Shias have been targeted on the road between Parachinar and Peshawar, including his cousin. About a month or so later, his father died [as] they were not able to get him to Peshawar for treatment as the journey was too dangerous.
- Sometime during 2011, during school, he started volunteering at the [Employer 1]. The [Employer 1] was close to their home and he was interested in helping people from Parachinar. This organisation is similar to [Organisation 1] as they help Shia people, but they are more focussed on [certain activities].
- His role for the [Employer 1] involved campaigning for [certain activities]. He volunteered with them about [a few] days during the week for about [a few] hours at a time. Whenever there was a conflict, there was no school, and during these times, he would go to the [Employer 1] to help. Like the [Organisation 1], the Taliban believed that the [Employer 1] is against Islam because they work with western organisations.
- Towards the end of 2011, he received a phone call from the Taliban. The caller said that he was working for the [Employer 1], this was against Sharia law, and told him to stop working. If not, they would kill him. The call was received from a private number to his mobile. After this, he received about three to four phone threats in total, and they continued to threaten him about his work and stated that he should leave.
- In July 2012, he received a letter in Urdu language from the Taliban. The organisation itself and other workers also received similar letters.
- He discussed the letter with his mother as he was scared about what would happen. He also spoke to the [senior official] of the [Employer 1], who told him that even if he left the organisation he would still receive threats. Therefore, he realised it was not safe for

him to stay in Pakistan anymore and started making arrangements to leave. He obtained his passport in August 2012 from Islamabad.

- [In] March 2013, he left Pakistan.
- He fears harm from the Tehreek-e-Taliban (TTP) ('the Taliban') and other extremist groups, such as Lashkar-e-Jhangvi (LeJ), Sipah-e-Sahaba (SSP), Jamaat-ul-Ahrar, Haqqani network or Daesh for being a Shia Sayed Pashtun Bangash from Kurram. As a Shia Sayed Pashtun Bangash from Kurram, he fears being imputed with the political opinion of anti-Taliban, pro-US, pro-Iran, and active in armed conflict against Sunni extremist and militant groups. He also fears harm on the bases of his father's work, his volunteer work, and the past threats and attack. The risk to him is greater as a returnee who spent time in a western country.

Refugee assessment

14. 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

15. 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.
16. On the basis of a copy of the applicant's Pakistani passport, national ID card and domicile certificate, I accept that the applicant was born in [year], and he is a Shia Bangash Pashtun from Parachinar, Upper Kurram. I also accept that he is a national of Pakistan. Pakistan is the relevant 'receiving country'.
17. I accept that the applicant is a Sayed. This is supported by his identity documents and his convincing and coherent evidence about his Sayed identity. He said at the SHEV interview that his family history relates back to the Sayeds, who are grandsons of the Prophet, and they are respected by other Shias. Their great grandfather migrated from the Arabic region to Parachinar, and Bangash provided them with the name, treated them well and told them they

were brothers and neighbours' brothers; and they have properties and lands in Kurram. He said that he would be identified as a Sayed outside of [Kurram], and Sayeds are identified with dignity all over the world, especially with the Shias. Country information indicates that Sayeds (or Sayyids or Syeds) are descendants of the Prophet Muhammad. The name Sayed confers social prestige on an individual in South Asian Muslim society. Sayeds can be either Shia or Sunni, and are reported to be 'numerous' in Pakistan. Many sections of Sayeds live among the Turis in Kurram.¹

18. Country information relied on by both the applicant and the delegate indicates that the Bangash tribe is one of the major Pashtun tribe. Bangash lives mainly in Orakzai Agency, Peshawar, Kohat and Hangu districts of Khyber Pakhtunkhwa, but many of them also live in Upper Kurram. Significant numbers of Bangash are Shias. Shia Bangash is no more different from Shia Turis. They enjoy equal rights, they follow common religious and traditional leadership, and they are mostly referred together as 'Turi-Bangash'. They were both vulnerable to the historical sectarian violence by the Sunni militant groups in Pakistan.²
19. The applicant's former representative posited at the SHEV interview that being a Sayed puts the applicant in a different category from Bangash or Turis, and that Sayeds would be seen as closer to the category of Hazara Shias because of their elite status as decedents from the Prophet, perceived as highly educated and from high profile families.
20. I reject these propositions. The evidence, including those provided by the applicant, does not support that the Sayeds families who are Shia Pashtun Bangash, are considered to be in a different category to other Shia Pashtun Bangash or Turis in Pakistan. Nor does the information indicate that Sayeds are closer to the category of Hazara Shias in Pakistan. In fact, the above country information clearly indicates that Shia Turis and Shia Bangash are considered as having the same profile in Pakistan. Also, the evidence is that the Hazara ethnic group is of Eurasian descent, rendering them visibly distinct from other Shias and ethnic groups, which place Shia Hazaras in a different category.³ There is also nothing to indicate that Sayeds are targeted for harm for being Sayeds. Moreover, the country information concerning the situation of Shia Pashtun Turis in Pakistan appears to be equally applicable to the applicant, a Shia Sayed Pashtun Bangash in Pakistan.
21. As noted by the delegate in the primary decision, there is very little information about [Organisation 1], and it does not appear to have a website or online presence. Nevertheless, I am prepared to accept that [Organisation 1] is an organisation based in Parachinar.
22. I accept that the applicant's father worked [for] [Organisation 1] from 2005 to 2011 as claimed. I also accept that his home was attacked in September 2007 where a grenade was thrown over the fence and his father was injured (but I do not accept the claimed reasons for the home attack). The applicant gave clear, detailed and spontaneous evidence at the SHEV interview about how his father joined the [Organisation 1], the role of the organisation and his father's

¹ Nick Dowling, Tom Praster and Dana Stinson, "Kandahar Provincial Handbook: A Guide to the People and the Province", IDS International, 1 December 2008, CIS28175; <https://www.britannica.com/topic/sayyid>; "Honour Killers' Expect to Walk Free", British Broadcasting Corporation (BBC), 5 February 2007, CX170524; Tariq Rahman, "Names: A Study of Personal Names, Identity, and Power in Pakistan", Oxford University Press, 1 January 2015, CISEC96CF14242; Farooq Yousaf, Haroon Rasheed and Imtiaz Gul, "FATA Tribes: Finally out of Colonial Clutches? Past, Present and Future", Center for Research and Security Studies (CRSS), 1 June 2018, CIS7B839418820.

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Farooq Yousaf, Haroon Rasheed and Imtiaz Gul, "FATA Tribes: Finally out of Colonial Clutches? Past, Present and Future", Center for Research and Security Studies (CRSS), 1 June 2018, CIS7B839418820; "Tribes of the Kurram", Khyber.org, 16 June 2010, 20190829121124.

³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

role within that organisation. He said that the [senior official] of the [Organisation 1] was his father's close friend and gave him the job because he thought his father needed employment and income after his father returned from [overseas] in 2005. He said that the organisation would help poor [people]. He said that [Organisation 1] is still active and if people have any issues and do not trust the government with those issues, they would approach [Organisation 1]. His father's role was [details deleted].

23. The applicant also gave convincing evidence about the home attack in 2007 where he gave vivid descriptions about what he was doing when the attack occurred, how he became aware of the attack, his father's injuries and his mother's reactions. He said he was asleep and his father was getting ready for prayer, he woke up when he heard the explosion. And when he saw his mother, she was trying to cover his father's injury with some clothes. He said his father was [hit]. He saw his mother crying, she was calling for help, telling people that there has been an explosion and asking people to organise transport. She asked neighbours to look after them as they were children. She then took his father to the hospital. He drew on the map to show the location from which the grenade was thrown in their [house]. He said that the incident was reported to the political agent, and his mother told him that they received threat and they assumed that this was the Taliban.
24. The letter from the [Organisation 1] dated 2020 certifies that the applicant's father worked for their organisation during that period and actively performed a pivotal role accompanied by other elders of the Turi tribe against the rise of terrorism of Taliban and other linked terrorist organisations. It also states that his father routinely attended meetings, and had expertise of coordinating between the Turis and the government. It reports that there was a terrorist attack in 2007 on his house in which his father was injured.
25. However, I do not accept that his father received threats from the Taliban. While I am willing to accept that his home was attacked due to violence against Shias at that time, as noted above, I do not accept that the Taliban attacked his home for reasons relating to his or his father's profile, his father's work with the [Organisation 1], or his work with the [Employer 1].
26. The evidence is that the applicant did not become involved with the [Employer 1] until 2011, four years after the home attack in 2007. As such, I do not accept that the home attack was due to his work.
27. The letter from [Organisation 1] of 2020 states that 'a definite life-threatening situation does exist for the elders of the community'. But it does not state that its workers or volunteers received threats, nor does it state that the applicant's father was personally threatened. It also does not mention the reasons or the circumstances of the home attack in 2007. I do not consider that this letter establishes that his father received personal threats, or that his home was attacked for the reasons claimed.
28. The applicant was unable to give any detail about the claimed threat that his father had received in 2007 despite being asked at the SHEV interview. He said that he was quite young at the time; his father had mentioned the threat to his mother; and as far as he could understand, the nature of the threat was due to his father's work and his father was told what he was doing against them was not good. The very little evidence that he provided is in contrast to his detailed oral evidence and vivid descriptions of the home attack incident and his father's work. His evidence in the written statement was that his father told him about the threat after the home attack. In the circumstances, even noting that he was around [age] years old at that time, I consider that he would have been able to provide some detail about the claimed threats. Moreover, his evidence at interview that his mother had told him about the threat

appears at odds with his evidence in the written statement that it was his father who told him about the threat. Further, his evidence in the written statement and at the SHEV interview that his father received one threat is inconsistent with his claim in the post interview submission that his father received 'several threats'.

29. In the post interview submission, it was submitted by reference to an article [that] his father received threats from the Taliban regarding his role in the organisation and they finally attacked his home. This type of targeting was said to be a well-known tactic used by the Taliban to attack Shia activists and leaders. It was submitted that this recent attack on a Shia Sayed Bangash is a clear example of the type of threats that the applicant would face based on his family profile, being a Sayed and his family's active contribution in lobbying with the government to attack the Sunni extremists.
30. I reject this submission. The news article does not indicate that the deceased was a Bangash. It reported that the deceased was a renowned Pashto poet known for his romantic poetry and a prominent Shia leader, and he was shot dead by an unknown man in Mohallah Sayyedan in 2019. It is not clear who killed him or why he was killed. Nor does it indicate that the deceased received threats, or that his house was attacked previously. It does not support the argument that the type of claimed targeting against the applicant's family, that is, threats followed by home attack, was a 'well-known tactic' used by the Taliban. The applicant's father and the applicant are not renowned poets, and his father did not die as a result of being shot. This news article does not establish that his father and family were personally threatened or targeted, or that the Taliban attacked their house due to his father's profile or work.
31. The applicant's evidence at the SHEV interview was that he and his family assumed that it was the Taliban who attacked their home. It is unclear who or how the grenade was thrown over the fence. In the circumstances, I consider it speculative to conclude that his home was specifically attacked by the Taliban due to his father's profile or work.
32. The evidence is that the applicant's father continued to work for [Organisation 1] until 2011. There is nothing to indicate that his father received further threats, or that he was attacked or otherwise harmed after the home attack in 2007. In my view, it is not believable that the Taliban would have taken no further actions against his father or his family in the intervening period of four years following the home attack in 2007 to 2011 before his father ceased working for [Organisation 1], if the Taliban identified and targeted his father for his work and for speaking [out], threatened his family, demanded him to cease working, and attacked their home in 2007. This is particularly so given the information that Shia Turis (Bangash) in Kurram faced significant violence from the Sunni extremists between around 2007 and 2014; and that the Taliban and Al Qaeda have gained significant ground in the former FATA, killing many Pashtun Turi Shias in Parachinar in that period.⁴
33. Moreover, I do not find it plausible that the applicant's family would have continued to live in the same house, not only from 2007 to 2011, but up until now, if they received threats from the Taliban for any reason, and that the Taliban specifically targeted them by violently attacking their house in 2007.
34. Further, the applicant has not claimed, and the evidence does not indicate that his mother or siblings were harmed by the Taliban. I do not consider it plausible that they would have been able to live at home without harm over the last 13 years, if his father or his family have a

⁴ Ibid.

profile for the claimed reasons, such that the Taliban threatened and targeted them since 2007.

35. In addition, the evidence before me does not indicate that family members of those who worked for [Organisation 1] Parachinar are targeted by the Taliban or other Sunni extremist groups, or imputed with any political opinion or profile, by reason of their family members' work or link with this organisation.
36. For these reasons, I reject the claims that his father or family received threats, or that his home was attacked by the Taliban for the reasons claimed. I do not accept that the applicant or his family has ever come to the attention of the Taliban, other Sunni extremist groups or anyone for reasons relating to his father's association or work for the [Organisation 1], or his father's or his family's claimed profile.
37. I accept that in 2011 a bomb blast incident occurred in front of their car while they were taking his father from Parachinar to Peshawar for medical treatment, and they had to return to Parachinar and that his father later died [about] a month or so later given the lack of adequate treatment in Parachinar. This is supported by the applicant's detailed and generally coherent evidence at the arrival interview, in the written statement and at the SHEV interview. The explosion took place around [number] meters away from their convoy. He was with his father in the car, and he could not see who caused the explosion. He said that when the explosion happened, they did not know what to do and everybody kept their heads down and they made a U-turn to go back. Then they started hearing gunshots. They returned to Parachinar but father's condition got very serious and they could not get him treatment, as a result, he passed away.
38. The applicant did not claim to fear harm for reasons relating to his father's death or this bomb blast incident. He claimed in the written statement that a lot of Shias have been targeted on the road between Parachinar and Peshawar. He also gave the example that his cousin, who used to work with his father for [Organisation 1], was killed by the Taliban on his way back from Peshawar, where they killed [people] on the spot including his cousin and kidnapped [number of] people, and that the Taliban were specifically targeting Shias. He believed that his cousin also received threats prior to his killing. The country information indicates that between 2009 and 2014, a significant spike in profiling and targeted killings occurred along the Tall-Parachinar road, which links Kurram Agency and Peshawar, where militants frequently stopped and killed Shia Turis travelling on roads.⁵ I accept that during that period, Shias were targeted on the roads between Parachinar and Peshawar, and that his cousin may have been killed as a Shia while travelling on the roads. But I do not accept the assertions that his cousin used to work for [Organisation 1], or received threats. In any event, the applicant did not claim to fear harm for reasons directly relating to his cousin.
39. Turning to the claims relating to the [Employer 1], I accept that the [Employer 1] is a local organisation based in Parachinar, and its mission is to [help] the people of Parachinar.
40. However, the evidence does not support the assertions that the [Employer 1] is, or is perceived as an 'international NGO', or that the [Employer 1], its workers or volunteers, including the applicant, were or are perceived as working for, or receiving funding from the Americans. I reject these claims.

⁵ Ibid.

41. I accept that the applicant worked as a volunteer from 2011 to February 2013 for the [Employer 1] Parachinar. I accept that he volunteered on a part-time basis, [and] the [Employer 1] was close to his home. He gave specific and spontaneous evidence regarding his work at the SHEV interview. He did not work full time but would go there and help when he did not have to attend school. When invited to describe his role, he responded that he would write down the details of the [clients] who came to the [Employer 1] and when they went out for campaign. He would tell [them] that [they] would save people's lives. He said that people consented to providing their personal details because they trusted the organisation well, it was a privilege for them, and they were honoured to [help] given that they were already in crisis and facing violence. He showed the locations of his home and the [Employer 1] on a map at the SHEV interview, and said that the [Employer 1] was located in [an area], which was very close to his home. He provided two letters from the [Employer 1] in support.
42. The letter from [Employer 1] dated 2020 relevantly states that during 2011 to 2013, the '[Employer 1] and its employees and volunteers were threatened with death threats via phone calls to the [Employer 1] itself and via other means where specific individuals were also threatened of harm. The people making these threats identified themselves as fighters of the Tehreek-e-Taliban Pakistan and wanted us to cease our activities or face the consequences'.
43. I accept that [Employer 1] itself and its workers received threats from the TTP via phone calls to the [Employer 1], and some specific individuals were threatened via other means at that time. However, the letter does not mention that the applicant was one of the specific individuals who were threatened notwithstanding its specific reference to the applicant's role and involvement with the organisation. Also, the applicant's evidence was that the threat letter was delivered to the [Employer 1], and he had informed the [Employer 1] about the claimed threat against him. In the circumstances, it may reasonably be expected that there would be some reference in the letter to a threat against the applicant if he was in fact personally threatened. I do not consider that this letter and the evidence before me establish the applicant's claim that he received threats personally.
44. In contrast to the specific and convincing evidence about his work, the applicant's evidence regarding the claimed threats that he received was vague, lacking in detail and unpersuasive. When invited at the SHEV interview to give evidence about the claimed phone threats that he received, he was unable to give much evidence. He said it was towards the end of 2011 when he received the first phone call, but he was not sure of the exact date, and in the phone call they told him that the work he did was against the religion. When asked who called, he responded the caller identified themselves as coming from the TTP. When asked how they got his number, he replied that as he mentioned before, it is easy for them to find someone's address and number; they have connections at every corner of Pakistan; they operate in different names in different parts of the country; he was not sure how they found out his number. He also said that they threatened him to quit his job, and if not, they would target him and kill him.
45. Similarly, the applicant's evidence regarding the claimed threat letter was vague, lacked specificity, was hesitant and ultimately unpersuasive. At the SHEV interview, when invited to give evidence about the threat letter, he responded hesitantly that it was not only him that received that letter, other people who were working for the organisation had also received the letter; when he received and read the letter, it basically had the same content but in details; and the letter said that 'we would target your organisation as well, and we believed that you are being funded by a foreign country'. When asked how he received the letter and how it was delivered, he replied that the letter came to the [Employer 1] through the post office. When asked whether that letter was personalised to him and whether it has his name on it, he

responded hesitantly that 'I mean, member who had received a letter, their name was written; their details were written on the letter'. When asked about the [Employer 1]'s response to the threat letter, the applicant responded indirectly that he did not discuss the letter with the organisation immediately when he received it as he was frightened. He said he took that letter home, spoke to his mother and sought her advice about it. His mother was uneducated and could not read the threat letter so he read it to her, and she started crying and she was frightened. When asked, he said his other colleagues also received a threat letter and the organisation was aware of these letters. When asked what the organisation did about having received these threat letters, he replied that he secretly took the threat letter to the [senior official] of the organisation, everybody was sitting there, and the [senior official] said they have received threats in the past, it was not the first time that they received threats, there was nothing they could do about the letters, they could not help them with those letters given that they have reported the threats to the political agent in the past and no action was taken. Overall, the applicant's evidence did not give the impression that he had in fact personally received or read the claimed threat letter.

46. I am also of the view that receiving a death threat from the Taliban in 2011 to be a frightening, significant and memorable experience for the applicant has it occurred. This is particularly so given his claims that he fled Pakistan to seek protection in Australia due to these threats, and the country information indicates that Shia Bangash and Turis in Parachinar faced significant violence from the Taliban in around 2007 to 2014. It concerns me that the applicant claims to have received multiple phone threats and a threat letter from the Taliban, but his evidence in this regard was very deficient despite being probed at the SHEV interview. I consider that if he has in fact received death threats by phone or in writing, he would at least be able to give some meaningful details about them.
47. The applicant worked as a part-time volunteer for the [Employer 1] Parachinar from sometime in 2011 to February 2013. Even noting that he lived close to the [Employer 1], the evidence does not suggest that he was anything more than a junior part-time volunteer for the [Employer 1] who served for a relatively short period of time. I have difficulties believing that the Taliban would have taken the effort to make three to four phone threats to his mobile, followed by a threat letter, over several months, to personally target him due to his work.
48. Also, I find it implausible that the applicant would have decided to continue this volunteer work for some 14 months between the first threat in late 2011, and February 2013 when he stopped working for the [Employer 1], if he had received multiple threats from the Taliban. I am not convinced by the explanations at the SHEV interview that he continued to work after receiving the threats because the Taliban's intention was to spread terror amongst people and want workers like himself to quit work so they could take over and they want to demoralise people and to take this organisation; the he had the spirit that motivated him to help people and provide basic human assistance; or that he was told that he would remain a target regardless of whether or not he quit the job. The applicant's own evidence was that after he read the threat letter to his mother, his mother advised him to leave the organisation, not to go back, to apply for a national ID card and a passport to leave Pakistan. He also said that as soon as his mother told him to leave the country, he decided to leave Pakistan as he had no other option. His passport was issued in September 2012. In the circumstances, I do not find it believable that notwithstanding the claimed death threats, he would have decided to continue volunteering for the [Employer 1] until February 2013 for the reasons given.
49. I also do not consider it credible that following the claimed threats, the applicant would have been able to continue working for the [Employer 1] from July 2012 to February 2013 without any harm or further threats, if the Taliban had threatened the [Employer 1] itself and its

workers; This is particularly so if the Taliban had his number that he 'lived [close to] the [Employer 1] and had a role to play being the closest one to the [Employer 1] whenever it was required', and he has always lived at the same address.

50. In these circumstances, I also consider it highly implausible that the Taliban would not have escalated their actions against him or his family, who have the profile of being Shia Sayed Pashtun Bangash from Kurram, and who, on his evidence, were already in crisis and suffering violence from the Taliban at that time, if the applicant repeatedly ignored the Taliban's threats to quit his job for a year from the first claimed threat against him in late 2011 to February 2013 when he stopped working.
51. A copy of the claimed threat letter has not been provided to substantiate the claimed threat. I note that in the written statement, the applicant stated that he was not sure where the threat letter was and he could not provide a copy of it. He stated that he had asked his mother to look for it but she could not find it. He believed that she might have disposed of it due to the risk of keeping it in the house.
52. Although the information⁶ indicates that attacks on NGOs and health workers, such as polio workers, have occurred in Pakistan, and such attacks are more common in areas where the security is worse, the evidence before me does not indicate that there has been any reported attacks against the [Employer 1] or its workers by reason of the nature of their work or association with the [Employer 1].
53. For the above reasons, I do not accept that the applicant received any threats, that he was personally targeted by the Taliban or other Sunni extremist groups or anyone, or that he or his family was or is perceived to have a heightened profile for the claimed reasons.
54. The applicant is a Shia Sayed Pashtun Bangash from Parachinar. He is [age] years old. He is single. His mother and three siblings are living in the main city in Parachinar. His siblings are all studying at school. Their family home is under his mother's name. He described his home as a [house] with [number of] rooms. His evidence at the SHEV interview was that his family are still living there because they have help and support from their community and society as they are living amongst them. I consider it very likely that the applicant would return to his family home in Parachinar city if he returns to Pakistan, where he has family ties, tribal connection, social and community support.
55. It was submitted on behalf of the applicant that Kurram is a place that has been the site of war, conflict, attacks and dangers for Shias for over 50 years because of its strategic location near the Tora Bora Mountains and Afghanistan border, which is the home of the Taliban. Hence, Kurram will continue to be unstable and unpredictable. It was also submitted that the fact that the government had to create a red zone and hundreds of check points around the main city highlights the ongoing danger, and therefore, if it could be established that the applicant is a Shia, Turi, Pashtun from Kurram, then he would face a real risk of harm in his home region.
56. Also, it was submitted that a range of internal and global risk factors must be taken into account in assessing harm in the future including; the potential withdrawal of the US troops from Afghanistan and its impact on terrorist activity Pakistan; the increasing political relations between Saudi Arabia and Pakistan over time that may result in the persecution of Shias in Pakistan; the perception of Shia Turis and Bangash as supporting the Iranian regime and the

⁶ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; "Female polio aid worker killed in northwest Pakistan", Press Trust of India, Business Standard, 3 July 2013; "The struggle for a Polio-free Pakistan", New Statesman America, 25 June 2013,

possibility of increased motivation of Sunni militant groups in Pakistan to target Shia Turis and Bangash; the possibility that growing transnational strength of anti-Shia extremist groups might weaken the Pakistani government; that Sunni militant groups continue to operate and maintain presence throughout Pakistan; that there has been increasing attacks on political leaders and workers, and the risk of anti-Taliban groups such as the Awami National Party (ANP) should apply to the risk of Shia Bangash and Turis; the cyclical nature of the violence in Pakistan; the increasing repression of media and increasing religious extremism in Pakistan; and the growing global violence towards Shias. Extracts from various sources of information and documents have been provided to support these submissions. A link to a YouTube video published in September 2019 concerning the rise of religious extremism and Shias in Pakistan more generally, was also provided to support the point about increase in religious extremism. Further, it was submitted that much of the DFAT report relies on media reporting, and the existence of a media blackout in Pakistan relating to the reporting on sectarian violence means that the DFAT report should be given limited weight.

57. There has been a long history of conflict, danger and violence in Kurram, particularly for Shia Bangash and Turis in Kurram, and Sunni extremists groups maintain a presence in parts of Pakistan. However, the overwhelming evidence is that the situation in Parachinar and Kurram has continuously and dramatically improved in recent years. While past events can be a guide to the future, they are not a certain guide to the future. It is clear from the evidence that the significant, and now sustained, improvement in the security situation and general situation in Pakistan in the last couple of years was the result of the continuous anti-terrorism efforts by the government over the last six years from 2014 to date.
58. Having carefully considered all the claimed local and global factors and the evidence as a whole, I am not satisfied that the anticipated effects of these factors are anything more than mere assumptions. I also consider it speculative to suggest that these factors, or the anticipated effects of these factors, will impact on the security situation or general situation in Pakistan, such that it would give rise to a real chance of harm to the applicant in the present case. Although persons with certain profile or profession, such as political leaders and workers, activists, journalists, bloggers, students and human rights defenders may be subject to harassment and violence in particular areas of Pakistan, the applicant does not fall within these profiles.
59. I do not accept the submission that the Taliban's treatment of other anti-Taliban groups, such as the ANP, or the Pashtun Tahafuz [Protection] Movement (PTM), should apply to the risk to Shia Bangash and Turis. ANP is a Pashtun nationalist movement, secular political party that promotes opposition to the Taliban. The PTM coordinated large-scale demonstrations seeking protection against state oppression and human rights abuses against Pashtuns (who are predominantly Sunnis, but not exclusively). The ANP were also involved in these demonstrations. The Taliban's support base is primarily Pashtun, and the NAP and the military operations against the militant groups have reportedly led to official discrimination and racial profiling in terrorism-related arrests of Pashtuns. The Taliban has attacked ANP members due to its secular ideology, support for the military and the military operations.⁷ The information indicates that members of ANP and PTM have very different profile to ordinary Shia Sayed Pashtun Bangash or Turis. They also have a completely different profile to that of the applicant, who is a Shia Sayed Pashtun Turi, not a political leader, or a member of any political or anti-Taliban groups such as the ANP or the PTM. I reject that it is an analogous situation. I do not accept that the applicant or his family were specifically targeted, threatened or perceived by the Taliban or any other person as having an elevated profile for the reasons claimed.

⁷ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

Moreover, the evidence before me does not support, and I do not accept, that the applicant being a Shia Sayed Pashtun Bangash from Parachinar would mean that the applicant would be imputed by anyone as being pro-US, pro-NATO, pro-Iran, anti-Taliban or other militant groups, or active in armed opposition to Sunni extremist and militant group. I consider the submission in this regard to be speculative.

60. I reject the proposition that the applicant being a Shia Sayed Pashtun Bangash from Parachinar, without more, establishes that he faces a real chance of harm in his home area just because the creation of the red zone and check points highlights the ongoing danger.
61. I also reject the submission that the DFAT report should be given limited weight because it relies on media reporting, which is repressed by the Pakistani government. The DFAT report does not rely only on media reports. It draws on DFAT's on-the-ground knowledge and discussions with various sources in Pakistan. It also takes into account relevant information from a wide range of government and non-government sources, such as information produced by the UK Home Office, the US State Department, the Immigration and Refugee Board of Canada, Amnesty International, Human Rights Watch, the Human Rights Commission of Pakistan, International Crisis Group, the South Asia Terrorism Portal, the International Monetary Fund, the International Organisation for Migration, the UN Office of the High Commission for Human Rights, the UN Office of the High Commission for Refugee, the World bank, the Pakistani Government and non-government organisation, in addition to reputable news organisations. Also, the DFAT report was prepared for the specific purpose of protection status determination.⁸ Moreover, I have had regard to other authoritative reports.
62. Country information⁹ indicates that violence from militant groups in Pakistan is mainly caused by the separatist insurgency in Balochistan and the instability in the north-west of Pakistan resulting from the 2001 toppling of the Taliban regime in Afghanistan. The Afghan Taliban fled the invasion of an international coalition led by the US in Afghanistan, and settled in former FATA and the former North Western Frontier Province (now Khyber Pakhtunkhwa). Under their influence, some Pakistani groups with a similar ideology worked together and developed into a federation of armed groups, which resulted in the so-called 'Talibanisation' of the region. Taliban policies included a strict application of conservative Islamic principles, which resulted in violence against civilians and the authorities. From around 2007 to 2014, Shia Bangash and Turis faced significant violence. The Taliban and other Sunni militant groups targeted them for the Shia faith, especially in Parachinar. Militants frequently stopped and killed Turis travelling on roads, and a significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Tall-Parachinar road, which links Kurram Agency and Peshawar.
63. However, it is abundantly clear from the information that since the applicant's departure from Pakistan, there has been a significant change in the security situation in Pakistan, where the frequency and number of attacks in Parachinar as well as across Pakistan continued to plummet over the last couple of years. In 2014, the army launched a military offensive codenamed *Zarb-e-Azb* to eradicate 'foreign and local terrorists'. On 25 December 2014, the government took strong actions against the militants by announcing a comprehensive plan of action, the National Action Plan (NAP) to confront the insurgent threat. Operation *Zarb-e-Azb* continued in 2015 and 2016. In the first months of 2017, there was a series of attacks across the provinces. Kurram Agency did record an increase in violence in 2017 as compared to 2016, including three attacks against Shia Turis in Parachinar in the first six months of 2017 that killed

⁸ Ibid.

⁹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; EASO, "Pakistan Security Situation", 30 October 2019, 20191031160110; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019 – Forward and Overview", 5 January 2020, 20200107154503.

over 120 people. In response, the government announced a countrywide military operation *Radd-ul-Fasaad*. In July 2017, military operation *Khyber-IV* was launched, targeting the TTP, Lashkar-e-Islam, Jammatul Ahrar and Daesh connections across the board with Afghanistan's Nangarhar province. Since 2017, there has been a sustained decreasing trend in violence in Parachinar and Kurram. In 2018, the government announced its second National Security Policy and the Ministry of Interior was reportedly preparing NAP-2. In 2018, there was a significant reduction in violent incidents in Kurram compared to 2017. Overall, there was a 29 percent decline in the number of reported terrorist attacks in Pakistan in 2018, marking a nine-year downward trend. There were significantly fewer road attacks reported by Turis in 2018, as military operations forced militants into the mountains. This restored confidence within the community for individuals to travel on the Tall-Parachinar road between dawn and dusk. More recently there have been even fewer reports of violence. In 2019, there was a further decline in the number of violent incidents in Pakistan more generally, as well as in the Khyber Pakhtunkhwa province, including the former FATA. In Pakistan, terrorist attacks in 2019 reduced by 13 percent as compared to 2018. In Khyber province, terrorist attacks in 2019 declined by 26 percent as compared to 2018. The NAP and the military operations have led to Pashtuns (who are predominantly Sunnis, and that the TTP's support base is primarily Pashtuns) facing official discrimination in the form of terrorism-related and racial profiling by security forces in areas where they are a minority. Observers credit Operation *Zarb-e-Azb*, its successor *Radd-ul-Fasaad*, and the NAP with a significant decrease in the number of violent and terrorism related attacks throughout Pakistan. These anti-insurgency operations and security measures dramatically reduced the number and severity of attacks against Pashtun Shia Bangash and Turis in Kurram; and contributed to a higher level of security in the Khyber province, including former FATA, in the long-run.¹⁰

64. It has been reported that the confidence of the minorities and the security situation have been improved by the continuing security measures, the building of military fencing in Kurram and the tightening of Afghanistan-Pakistan border controls. The Turi community advised DFAT that the military implements a 20 to 30 square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located. Security forces have issued cards to access the red zones, which can be obtained by residents on presentation of identity documents (computerised national ID cards and passports). Shias faced some risk of violence while travelling by road to Iran and Iraq on religious pilgrimage, however, the government provided security assistance for such journeys.¹¹
65. The government and the military operations successfully disrupted the activities of militant groups and limited their access to former safe havens, and Military courts tried and convicted individuals with links to terrorist organisations. Nevertheless, at the beginning of 2019 DFAT assessed that Turis in Kurram faced a 'moderate risk' of sectarian violence due to their Shia faith although it also assessed that Shias in the former FATA faced a 'low risk' of sectarian violence (within the context of a moderate level of militant and criminal violence across the region). The term 'moderate risk' is defined as it is 'aware of sufficient incidents to suggest a pattern of behaviour', and the term 'low risk' is defined as it is 'aware of incidents but has insufficient evidence to conclude they form a pattern'. Notwithstanding this assessment, it is clear from other reports before me that there was a visible trend of decreased reports of attacks against Turis in 2018 due to the improved security situation in Parachinar and Kurram Agency. This trend has continued in 2019. DFAT does not report on specific incidents during this period that would indicate otherwise.¹² Notably, the multiple sources of recent country

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

information before me does not indicate that there were any significant terrorist attacks or attacks against Shia Bangash or Turis in Parachinar or the Kurram Agency reported in 2018, 2019 or to date in 2020.

66. The applicant provided various sources of information about the violence in the period before and around the time that he left Pakistan. He also provided a number of documents, submissions and evidence, including letters from prominent members of the community dated between September and October 2019, two news reports that were published in October 2019, and a video transcript of a speech by the Secretary of Anjuman-e-Hussainia in May 2019. The documents and information provided by the applicant contain information about the attacks against Shia Bangash and Turis in Kurram and general information about the situation in Pakistan. The information in these materials is broadly consistent with the abovementioned country information. Although some of the letters and the video transcript contain opinions that Shia Bangash Turis face serious threats and are not safe, much of these are unexplained subjective opinion, absent specific and contemporaneous data, facts or explanations to support such opinion. In the post interview submission, the applicant also sought to reply on AAT decisions to support his case. These AAT decisions are not binding on the IAA. I also do not consider that these AAT cases support the applicant's case. Moreover, my role is to focus on the unique circumstances of this applicant, and the relevant evidence and information before me.
67. The recent and authoritative country information above made plain that the significant, and now sustained, improvement in the security situation and general situation in Pakistan in recent years was the result of the continuous anti-militant efforts by the government over the last six years from 2014 to date. Further, the applicant's own evidence at the SHEV interview was that there has not been any specific issues for his family at home in Parachinar lately and that his [siblings] are able to go to school. This is broadly consistent with the country information that there has been a ten-year downward trend of violence in Pakistan.
68. I accept that [as] Sayeds, the applicant and his family enjoy social prestige. But the information before me does not support the assertions that Sayeds are specifically targeted or harmed by reason of their Sayed identity or status, or that being a Sayed would heighten the applicant's or his family's profile. I accept that their home was attacked in 2007, a bomb blast incident occurred in 2011 while they were travelling to Peshawar, and his father passed away a month later due to inadequate treatment. I also accept that his father worked for the [Organisation 1] and he worked as a volunteer for [Employer 1]. But I do not accept that he or his family has any profile, that they have received any threats, their house was attacked for the reasons claimed, or that they were ever personally targeted. I am not satisfied he is of interest to the Taliban or anyone by reason of his or his family's profile, his work or his father's work. Also, there has been a lengthy passage of time since his father passed away eight years ago in 2011, and since he left Pakistan seven years ago in 2013. There is nothing to indicate that his family members faced harm or that the Taliban has been looking for him after he left Pakistan. On the applicant's evidence, he practises his Shia faith, people identifies him as a Shia, being a Shia is a way of life for him, and while in Australia, he practises his faith by attending Friday prayers and participating in Muharram proceedings. He will also help and be active in the Shia community upon return. I accept that he is a practising Shia.
69. In light of the recent country information, and having considered the applicant's accepted profile, I am not satisfied that the risk of him facing harm from anyone as a Shia Sayed Pashtun Bangash from Parachinar to be any more than remote. I am satisfied that he would continue to be able to freely practise his Shia faith and involve himself in Shia activities in the same manner upon return to Parachinar or Upper Kurram, which is a Shia majority area, with no real chance

of harm. Given the significant and ongoing improvement of security situation and general situation, where counter-terrorism operations forced militants in to the mountains, and significantly fewer road attacks were reported in recent years, I also consider the chance of him facing harm when travelling on the roads to be remote. Although the above DFAT information notes that the NAP and the military operations have led to official discrimination and racial profiling of Pashtuns in terrorism-related arrests, the applicant is not a Sunni Muslim, and his own evidence was that he could easily be identified as a Shia through his name, his Shia practices, his ID card and other Pakistani documents that list his father's name. I consider the chance of him facing such harm to be remote. Moreover, I find that he will not face a real chance of harm for reasons relating to his or his family's profile, his past work for the [Employer 1] or his father's work for [Organisation 1].

70. In the written statement, the applicant stated that he is unsure whether he would continue working for the [Employer 1] upon return, but he believes that he would be compelled to help and be active in the Shia community upon return.
71. Even if he were to resume working for the [Employer 1] upon return, I am not satisfied that he will face a real chance of harm for this reason. First, I do not accept that he was threatened in the past or came to the adverse interest of the Taliban or anyone due to his work. Second, although the letter from the [Employer 1] states that during the years from 2011 to 2013 there were threats against their organisation and workers, the evidence before me does not indicate that the [Employer 1] or its workers faced ongoing threats. Third, given my findings above that there has been significant change in the security situation and landscape in Parachinar and throughout Pakistan, I consider the chance of the applicant facing harm for reasons of his future work for the [Employer 1], to be remote.
72. At the SHEV interview, the applicant claimed that he and his family are located in the centre of Parachinar. There is a red zone inside the Parachinar area, and they are surrounded by the army and they have got the check posts. He said he would not call that providing security and it just made life more difficult for people because anyone who wants to enter or exit Parachinar has to have their ID card with them. Otherwise they would not be allowed in Parachinar even if they were born there. He claimed that people's movement and their way of life have been restricted by these set up, and that his family's movements, such as going to and coming back from school, and in their day-to-day life, they are faced with difficulties.
73. The applicant has provided little detail to explain how the implementation of red zone, check points and the army's presence have practically affected his family's day-to-day life, or how these would affect him personally upon return. The applicant's own evidence, which is consistent with the country information, is that residents are able to access the red zones on presentation of their identity documents. I accept that the restriction of movements may cause inconvenience to the community, including the applicant and his family; and that they had to carry their identity documents with them in order to enter or exit Parachinar. However, I am not satisfied on the evidence before me that the applicant, his family or community's freedom of movements or access to opportunities would be restricted to the extent that would give rise to a threat to the applicant's life or liberty, any harm, or would otherwise threaten his capacity to subsist. He completed [study] in Pakistan. He speaks the Pashto language. He could also speak, read and write the Urdu and English languages, which are the official languages in Pakistan. I note that he has a reasonable command of the English language, as demonstrated at the SHEV interview where at times, he answered questions directly in English. He worked in Australia [in various industries]. He is now working as [an occupation] in Australia earning an average salary of [amount] a week. I am not satisfied that he would be unable to access employment upon return.

74. The information¹³ before me indicates that returnees who left Pakistan on valid travel documents do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are typically processed like any other citizens returning to Pakistan. The government issues 'genuine returnees', that is, those who exited Pakistan legally, with temporary documents when they arrive. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return. Involuntary returnees may be questioned by the authorities upon return to determine whether they left Pakistan illegally, are wanted for crimes in Pakistan or committed any offences while abroad. Citizens who departed Pakistan on valid travel document and have not committed any other crimes are 'typically released within a couple of hours'. There is no information to indicate that returnees face mistreatment during this process. Returnees are typically able to reintegrate into Pakistan community without repercussions stemming from the migration attempt. There is nothing to indicate that individuals would be subject to discrimination or violence as a result of them having spent time in western countries, or as a result of their attempt to migrate. There is also nothing to indicate that returnee failed asylum seekers who are Shia Sayed Pashtun Bangash from Kurram face harm from the extremists or anyone because they are returnee failed asylum seeker who spent time in the west. Nor is there anything to indicate that Shia Sayed Pashtun Bangash returnee failed asylum seekers from Kurram who lived in Australia are perceived as having changed their way of life, their mentality or ideology.
75. The applicant left Pakistan legally with his own passport. I do not consider that he will be perceived as having committed any criminal offence. I am not satisfied on the evidence that the processing on arrival at the airport would give rise to a real chance of any harm to him. DFAT noted that the authorities have detained returnees for several hours in Karachi airport, at times without citing a reason, but I am not satisfied that the applicant would return to Pakistan via Karachi airport. He left Pakistan via Lahore airport, and there is no apparent reason why he would not return to Pakistan via Lahore airport. There is nothing to indicate that he would not be able to safely and legally access Parachinar, Upper Kurram upon return. I am not satisfied on the evidence that he would be imputed as having changed his way of life, his mentality or ideology for being a returnee failed asylum seeker who lived in Australia.
76. I am not satisfied that there is a real chance of the applicant facing any harm for the reasons claimed now or in the reasonably foreseeable future if he returns to Pakistan.
77. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

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

Complementary protection assessment

79. 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.

¹³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

Real risk of significant harm

80. 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.

81. 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.

82. I have found above that the applicant does not face a real chance of harm for any reason now or in the reasonably foreseeable future. As the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons detailed above, I find that the applicant does not have a real risk of suffering harm if he returns to Pakistan for the purposes of s.36(2)(aa).

Complementary protection: conclusion

83. 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.