



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

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA20/07842

Date and time of decision: 3 March 2020 16:52:00  
M Simmons, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Pashtun Shia from Pakistan who belongs to the Bangash Tribe. On 23 January 2017 he lodged an application for a safe haven enterprise visa. A delegate of the Minister for Immigration refused to grant that visa on 31 January 2020.

### 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 26 February 2020 the applicant's migration agent made written submissions to the IAA. These contained legal argument and responded to findings of the delegate. The submissions did not convey new information and I have considered them.
4. I have listened to a recording of the interview between the applicant and the delegate. As noted in the delegate's decision record, the audio record is incomplete and stops at 1h 04m 04s, despite the audio file indicating that the interview continued for approximately another 20 minutes. The decision record and the delegate's interview notes indicate that during the part of the interview that was not recorded the applicant was asked: *"to explain why he has higher degree of risk compared to other people in his home region; why he cannot be returned to his home region safely if I find no real chance of serious harm; and why he cannot be relocated elsewhere in Pakistan if I find no real risk of significant harm"*.
5. I considered whether it was necessary in the circumstances to invite the applicant to provide information, however I have decided not to do so for the following reasons. The delegate's decision record clearly sets out that the final part of the audio recording from the interview is missing and sets out the topics that were discussed. With assistance from his migration agent the applicant made submissions to the IAA addressing various concerns in the delegate's decision record. These did not comment on the final part of the interview not being recorded and did not request an interview before the IAA. A section of those submissions is entitled 'Natural Justice' but only comments on the delegate's findings and does not comment on the audio recording or the IAA review process. The applicant was squarely on notice that the final part of the interview was not recorded but has not taken issue with this. Furthermore, the omitted topics relate to the applicant's risk of harm relative to others in Kurram District and his ability to relocate away from Kurram District. These matters do not arise as live issues in my review. Whether a person's risk of harm is relative to the general population is not the question to be determined. The issue before me is whether the applicant faces a real chance or risk of harm in Kurram District. That matter was well ventilated in the interview, for which there is a recording, and submissions made. Furthermore, the issue of relocation is not one that ultimately arises. For the reasons set out below, I am not satisfied there is a real chance or real risk of harm to the applicant in Kurram District. As such the question of relocation does not arise. Moreover, I note that the applicant and his lawyer made extensive submissions of over 70 pages and gave a further statement to the delegate after the interview. Much of this material addressed the issue of relocation, meaning he was afforded an opportunity make arguments and present evidence in relation to this matter despite that part of the interview not being recorded. In these circumstances, and in the interest of

providing a quick and efficient review, I do not consider obtaining further information from the applicant is warranted.

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

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6. The applicant's claims per his visa application can be summarised as follows:
  - He is a Pashtun Shia Muslim from the Bangash tribe. He originates from [Village 1] in Kurram District, which is around [number] minutes' drive from Parachinar.
  - The Bangash tribe has been at war with the Taliban since 2007. The Taliban are Sunnis and they consider Shia infidels. The Shia Bangash tribe supported the Turi tribe, who are also Shia, in fighting the Taliban and preventing them from accessing Afghanistan via Kurram. During the sectarian war the Taliban kidnapped and killed Shia Bangash. They were easily identifiable as their identity cards shows Shia names. Shia Bangash were also targeted during Shia religious ceremonies such as Moharram.
  - The Taliban had a presence in a nearby village called [Village 2], where Sunni Muslims resided. It was around [number] km from [Village 1]. From there they would launch mortars and rockets towards Shia areas. Approximately [number] people in his village died as a result of these attacks since 2007. The Taliban also blockaded the road from Peshawar to Parachinar for three years, during which time people in his area went without various supplies.
  - The attacks against Shia Turi and Bangash tribe from Sunni militant groups continue in the Kurram District. The applicant's family continues to live in [Village 1] and their Shia community is surrounded by militant groups. They also told him that the Pakistani authorities had told the community to be prepared to fight ISIS, who could come from Afghanistan into Kurram District at any time.
  - While resident in Pakistan he [worked as Occupation 1]. This included [working with children and other Sunni people]. Because of this Sunni people will recognise him.
  - If he returns to Pakistan, he fears harm from Taliban and other Sunni militant groups. He fears that he would be killed or kidnapped by Sunni militants as these groups continue target Shia men like him. He fears harm due to his religion, and imputed political opinion as a member of Shia Bangash tribe from Kurram District.
  - He would not be able to safely relocate outside the Kurram District in Pakistan because he would have no support network. Without tribal support, he would be vulnerable. Since authorities in Pakistan do not provide security and support as the Australian government do, he will have to rely on the tribal and family support.
7. In a written statement to the delegate after the interview the following additional protection claims were raised:
  - For many years the applicant [worked in Occupation 1] every morning and afternoon [at various locations] in Parachinar. Those children included both boys and girls. This helped girls to get education and Taliban strongly opposed education of girls and co-education of boys and girls. He thinks people would still remember that he did this work for many years and he will be targeted.
  - Although many years have passed since he came to Australia, the Taliban and Moqbal Sunnis can still identify the applicant on social media. They use social media to target

popular members of the applicant's community who reside abroad, such as doctors or teachers. They use fake Facebook IDs with the surname Hussain and Ali.

8. In a written submission to the delegate the applicant's migration agent claimed that Pashtun Shia Turi and Shia Bangash from Parachinar have been historically targeted for their Shia religion, Turi ethnicity, being active in armed opposition to Sunni extremist and militant groups, being perceived as pro-America and perceived as pro-Iran.

### **Factual findings**

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9. The applicant claimed he is a national of Pakistan and he has provided copies of documents issued by the Pakistani authorities including a national identity card, birth certificate and passport. The details of these documents corroborate his claims regarding his identity, nationality and place of origin. The applicant has also provided consistent details regarding his family composition, religion, ethnicity, tribal affiliation and area of origin. During the interview with the delegate he further elaborated in detail and with spontaneity on some of these matters. The applicant was questioned as to how he would be identifiable as a Pashtun, a Bangash and Shia. He responded, and I accept, that he may be identifiable through his identity documents, and while practising his religion including through prayer, attending imam bargah, and engaging in religious events such as Moharram and Ashura.
10. I accept his identity is as claimed. I accept that the applicant is a Pakistani national. Pakistan is the receiving country for the purpose of this review. I am satisfied that he is a Pashtun, a Bangash Tribesman and that he is adherent to Shia Islam.
11. I accept that he originates from [Village 1] in Kurram District and that his family continue to reside there. I accept that while resident in Pakistan the applicant [worked as Occupation 1]. I can accept that he may have [undertaken specified work with children]. However, I have some concerns in relation to the claim raised following the interview with the delegate that for 'many years' he [assisted] school children, both boys and girls [and] because of this he fears being harmed as a supporter of education for girls and coeducation of boys and girls. Firstly this was not raised in his safe haven enterprise visa application, or an earlier invalid protection visa application. The statement accompanying the safe have enterprise visa application expressly states that he already explained he reasons for leaving Pakistan in two statements from November 2013 which were submitted with his invalid visa application. The statements from the November 2013 invalid protection visa application were also resubmitted with the safe haven enterprise visa application. This means the applicant prepared three separate statements in support of his protection visa applications all of which failed to mention his claimed fear from [assisting] school girls. When the school girls claim was raised in a statement to the delegate following their interview, the applicant's migration agent also provided voluminous written submissions of more than 70 pages, divided into 'legal submissions' and 'country information submissions'. There is no discussion, elaboration or even mention of the claim to fear harm because of having [assisted] school girls in these documents. Nor is the any corroborative material indicating that other people who have [assisted] or otherwise similarly supported school girls having attracted any adverse treatment or attention in Kurram or Pakistan generally. In the context of such extensive written submissions in respect of the claims relating to the applicant's ethnicity, tribe and religion, that the only material before me in respect of the school girl claim is three sentences in a brief statement from the applicant is striking. I do not accept that he [assisted] female students for many years as claimed and I am not satisfied on the evidence before me that he would for any reason have ever been regarded as a proponent of female education in Pakistan or that he ever attracted any adverse interest for that reason.

12. The applicant's account of prevalent violence in his area of Pakistan in the years preceding his departure generally accords with country information before me.<sup>1</sup> I accept that there was extensive sectarian unrest and violence at that time as claimed, I accept that there were likely casualties in his area of Kurram District as he asserts.

### Refugee assessment

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13. 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

14. 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.
15. The security situation in Pakistan has varied over time and across different regions. Between 2008 and 2014, Kurram District experienced significant violence largely along religious and tribal lines.<sup>2</sup> In December 2014, following an attack on army school in Peshawar, the Pakistani Government introduced the National Action Plan (NAP) which has had a significant impact on Pakistan's security environment. The NAP and associated military operations are credited with significantly reducing violent incidents and terrorist attacks across the country. In 2018, there were just 11 sectarian related attacks in Pakistan, a decline from the previous year and a significant reduction from the 2013 levels.<sup>3</sup> The Pakistan Institute for Peace Studies (PIPS) assessed that a nine-year downward trend in terrorist attacks across Pakistan continued in 2018 and that sectarian violence also reduced significantly by 40 percent compared to 2017 levels.<sup>4</sup> Similarly, serious crime reduced significantly after the introduction of the NAP and associated military operations.<sup>5</sup> A significant majority of terrorist attacks in Pakistan in 2018 targeted security and law enforcement, with politicians and political workers also a focus of

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

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

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

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

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

attacks. These groups accounted for around 490 of the approximately 595 deaths from terrorist activity in 2018.<sup>6</sup> The applicant does not belong to, and is not associated with, any of these groups.

16. Similar to other parts of Pakistan, Khyber Pakhtunkhwa province, which encompasses Kurram District from where the applicant originates, has seen a significant reduction in militant violence in recent years. According to the South Asia Terrorism Portal (SATP), one incident of sectarian violence in 2017 killed three people, and no incidents of sectarian violence occurred between 1 January and 6 May 2018. Credible sources have reported on the Pakistani government's tough stance and relative success in combatting terrorism activities across Pakistan, including in Kurram District. Since 2014 the Pakistani government has taken significant measures to address sectarian and other violence, including by operations targeting terrorist groups such as the Taliban in Khyber Pakhtunkhwa. Observers credit these measures and also the 2014 NAP with a significant reduction in the number of violent and terrorism related attacks in Pakistan.<sup>7</sup> PIPS reported in early 2019 there has been a nine-year downward trend in terrorist attacks across Pakistan, although they also reported that Khyber Pakhtunkhwa, including the former Federally Administered Tribal Areas, reported the highest number of terrorist attacks and lowest number of decreased attacks when viewed across in Pakistan for 2018. Nonetheless, when viewed in context, it also evidences a downward trend. From 2017 to 2018, terrorist attacks in Khyber Pakhtunkhwa also fell and the number of persons killed and injured fell significantly in comparison to 2017.<sup>8</sup>
17. The applicant has established social, tribal and familial networks Kurram District. The applicant is Pashtun and submits that he fears harm for this reason. DFAT confirms that Pashtuns are the dominant group in Khyber Pakhtunkhwa province and assesses that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination.<sup>9</sup>
18. DFAT assesses Shia continue to face a threat from anti-Shia militant groups in some areas of Pakistan.<sup>10</sup> Sectarian violence in Pakistan has historically targeted individuals; places of worship, shrines and religious schools, and Shia have traditionally represented a higher proportion of the casualties. Shia make up around 80 per cent of Kurram District's population and Parachinar is the largest town.<sup>11</sup> During 2017, militants carried out mass-casualty attacks in Parachinar, including three bombings in Shia areas. Sunni extremist groups claimed responsibility and said that they had deliberately targeted Shia. Notably, since June 2017, there have been no further attacks on Shias reported in Parachinar or further major attacks in Kurram District.<sup>12</sup>
19. The delegate had regard to DFAT's February 2019 assessment but found that there was not a real chance of harm to the applicant in Kurram for reasons of his religion and tribe. The applicant's representative refers to the historical targeting of 'Pashtun Shia Turi and Shia Bangash' and notes that the Shia Turi and Bangash Community both opposed the Taliban. His extensive country information submissions mostly refers to Turis and is entitled 'Turi Shias in Pakistan'. I note that the delegate similarly the referred to Turi/Bangash tribesmen. I agree that there is overlap between the Bangash and Turi tribes, including in respect of

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

<sup>7</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>8</sup> PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

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

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

<sup>11</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>12</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

geographical location and religion. DFAT states that Pashtun Turis in Kurram District, including from either the Bangash or Turi tribe, face a moderate risk of sectarian violence from militant groups, although the reasons for this is specified as being because of their Shia faith rather than due to their ethnicity or tribe.<sup>13</sup> The applicant's migration agent submitted that the only logical conclusion to be drawn from DFAT assessment that Turis in Kurram Agency face a moderate risk of sectarian violence because of their Shi'a faith is that there is more than a remote chance that a Turi/Bangash faces persecution in Kurram and that the IAA should give significant weight to the DFAT assessment. Much of the risk assessment in the material before me concerns the mass-casualty attacks from 2017. DFAT assessed in 2017, and repeated this assessment in 2019, that the risk to civilians from sectarian violence is higher in Kurram District than other parts of the former FATA.<sup>14</sup> However this risk assessment is not borne out by the detailed reporting on this area before me. It does not demonstrate any increase in violence, or any ongoing or systematic attacks against Shias or Pashtuns in the Kurram District during 2018 or 2019, and the number and extent of violent incidents has remained low.<sup>15</sup> A roadside bomb attack in January 2018 in Upper Kurram killed six members of the same family, although the motive and identity of the perpetrators is unknown.<sup>16</sup> There were no other reported terrorist attacks in Kurram in 2018.<sup>17</sup> DFAT indicated in February 2019 that the trend of decreased reports of attacks against Shia in 2018 due to the improved security situation in Parachinar and Kurram was likely to continue in 2019.<sup>18</sup> The applicant's migration agent made submissions as to the cyclical nature of violence in Pakistan, and I can accept over a protracted period of time there has been peaks and troughs in violence in that country. However, it is now early 2020 and there are no more recent reports provided or before me indicating the security situation in Kurram has deteriorated or materially altered. The applicant provided letters and reports of several instances of violence or threats of in 2019, but as explained below, I do not consider these evidence a material shift in the security situation in Kurram District.

20. The applicant was expressly asked by the delegate whether he or his family were ever targeted by Sunni militants or the Taliban and he responded 'no'. While he described his father being injured in a bombing that occurred prior to his arrival in Australia in a bazaar during the lead up to Ramadan he indicated that this incident was part of the broader sectarian unrest at that time. He did not refer to any other incidents involving any of his relatives since his departure. I am satisfied the applicant will very likely return to [Village 1] in Kurram District where his family continue to reside, which is in a majority Shia area and where he has tribal affiliations. His relatives there share a common ethnic, tribal and religious identity with the applicant and that is no indication that that they have recently experienced any threats of harm. Ultimately, while I accept the region from which the applicant originates has been the subject of considerable violence in the past, the weight of the evidence very clearly demonstrates that there has been a notable shift in the security situation since the applicant departed Pakistan.
21. Following his interview with the delegate, the applicant provided a collection of reports and letters discussing the situation in Pakistan describes as 'Letters from prominent members of

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<sup>13</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>14</sup> DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>15</sup> PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>16</sup> The News International, 'Six of a family martyred in Kurram roadside blast', 31 January 2018, CXBB8A1DA25475; PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

<sup>17</sup> PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

<sup>18</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

the community'. This included letters from Shia organisations, political leaders, social activists, a PhD candidate, and a retired police inspector, which provide comment on the ongoing security challenges in Pakistan and the risks faced by Shia and Turi in Kurram District and in Pakistan generally. These letters mostly contain generalised assertions and opinions without, in most instances, offering specific examples or explaining the basis of the conclusions drawn. A number reflect upon the experiences of the Shia and Turi communities over many decades with little comment on the situation in recent times, which I consider is of little benefit in assessing what might occur in the reasonably foreseeable future. Notably one letter from the Hussainia Society in Parachinar specifically reports on a thwarted attack on a Moharram procession in 2019. Also provided were media reports, one discussing the October 2019 murder of two men charged with kidnaping by a mob which turned into sectarian unrest in lower Kurram, the other discussing local tribes in Parachinar detaining a group of extremists in October 2019; and transcript of a May 2019 speech in which a Hussainia leader warns of Taliban movement. The sources I have cited including PIPS, SATP and DFAT provide a more detailed and recent assessment of the security situation in Kurram compared to these mostly very general letters.

22. The applicant has raised a variety of claims that are derived from his interrelated religious, ethnic and tribal features. In addition to claims to fear harm for reasons of these attributes, he has suggested he fears harm as a member of the particular social group of Shia Pashtun from Kurram, or that he will be imputed with an anti-Taliban or anti-Sunni extremist, pro-Iran or pro-American political opinion due to being a Shia Bangash. In submissions to the IAA the applicant's migration agent contends that the delegate's assessment of these claims was erroneous as he conflated his assessment of political opinion with the applicant's ethnicity and religious claims when they should have been considered separately. Submissions to the delegate dated 22 September 2019 raised the imputed political claims, and relevantly stated that Turis are perceived as being politically pro-United States due to preventing the Taliban from accessing Afghanistan via Kurram, and that Turis and Shia Bangash are perceived as being politically pro-Iran because of their Shia faith. That is, it is claimed these opinions are imputed because of their religion and tribe. I consider these claims are in essence different manifestations of the claims to fear harm for reasons of the applicant's religious, ethnic and tribal background, and that formulations of either particular social groups based on these attributes or opinions imputed for these reasons are adequately captured in my consideration of the applicant's claims to fear harm for being a Pashtun, Shia and a Bangash from Kurram District. In any event, I note that country information before me does not support the propositions being put forward. That is, there reports I have referred to above including from DFAT and PIPS do not support a conclusion that Shia Bangash Pashtun from Kurram District face a real chance of harm for any reason, including owing to any political opinion that may be imputed upon them because of their tribe, religion, ethnicity, or geographic location, or because of any particular social group deriving for any or all of those attributes. Taking his claims regarding his religion, ethnicity, tribe, political opinions and the identified social groups individual and cumulatively, I do not consider this applicant faces more than a remote chance of harm in Kurram District in the foreseeable future. The applicant does not face a real chance of harm in Kurram District in the foreseeable future because he is a Pashtun and a Shia from the Bangash tribe.
23. The delegate's decision record notes that he located separate reports of Taliban attacking [Occupation 1] and female school students but could not locate country information to suggest that [people in his occupation] who [assisted] female students, or otherwise help them to receive an education, are specifically targeted or attacked. The sources cited by the delegate are four media articles dated between October 2012 and April 2014. Two of these seemingly describe the same incident in an attack on three university students returning to



Parachinar after sitting exams in Kohat, though one suggesting three females were injured while the other reporting it was one female and two males. In submissions to the IAA the applicant's migration agent contended that the delegate's approach was illogical, as it is well established that the Taliban oppose female education and target schools and female school students. It was argued that such militants would similarly be motivated to target individuals who assist females to receive an education, and that it is unreasonable to require specific reports of the targeting of individuals who [assisted] students. The migration agent provide any corroborative material suggesting the targeting of persons who [assisted] female students. Sources before me note, and I accept, that militant groups such as the Taliban have attacked women and girls, particularly female teachers and girls attending school, due to ideological opposition to female education.<sup>19</sup> I note the applicant did provide more than 50 pages of country information in support of his claims regarding his ethnicity, tribe and religion after the delegate's interview. The only material before me in respect of the school girl claim is three sentences from the applicant, and in those brief remarks the applicant does not indicate whether he ever experienced any adverse consequences from this claimed work.

24. I accept that the applicant [is employed in Occupation 1] and that from time to time he may well have [assisted] school children including female students. I note the employment history set out in his visa application refers only to working as a [Occupation 1] and does not refer to the [assistance] of students. I am not satisfied that for 'many years' he [assisted] school [children]. His failure to mention this until after the interview with the delegate, and in only in his forth written statement, suggests it was not recounted earlier because he is not recounting a lived experience. The applicant claims this previous work would expose him to a future risk of harm as people will 'still want to harm him'. Despite claiming to have [assisted] school girls for 'many years' he has not suggested that he was ever harmed or threatened in any way at any time while carrying out this work or while still resident in Pakistan. Nor has he suggested that this claimed work was of any consequence to his family who continue to reside in the [Village 1]. On the evidence before me, I am not satisfied that through his work as a [Occupation 1] and occasionally [assisted] school children that he was ever regarded as a supporter of education for girls or co-gendered school education. I am satisfied that this claim is an embellishment of his work as a [Occupation 1]. The applicant has not indicated he was ever threatened or harmed because of his work [as Occupation 1] specifically. He alluded to some Sunni people potentially recognising him because of this work. He did not previously come to harm as a result of any such possible recognition and the evidence doesn't support that there is a real risk he would do so in the future in connection with his past work. I am satisfied that this previous employment would be of no adverse consequence to him in the foreseeable future in Pakistan. As previously explained that he may be recognised as a Shia Bangash from Kurram also does not give rise to a real risk of any future harm.
25. Also raised for the first time in the fourth written statement, provided after the delegate's interview, was the assertion that the Taliban and Moqbal Sunnis can still identify the applicant on social media, that they target popular members of the applicant's community who reside abroad via social media, such as doctors or teachers, and that to do this they use fake Facebook IDS with the surname Hussain and Ali. No further details or corroborative material have been provided in support of this claim. The large country information submission provided by the applicant's migration agent refers to social media in the context of restrictions on media in Pakistan and as a platform for Pashtuns to mobilise peacefully.<sup>20</sup>

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<sup>19</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>20</sup> Committee to Protect Journalists, 'Acts of Intimidation - In Pakistan, journalists' fear and censorship grow even as fatal violence declines', 12 September 2018, CXBB8A1DA35297; The New York Times, 'In Pakistan, Long-Suffering Pashtuns Find Their Voice' 6 February 2018, CXBB8A1DA21759; Al Jazeera, 'Pakistan's Pashtuns march for justice', 25 February 2018, CIS24236.

There is no reference to the targeting of Shia Bangash by Sunnis and/or the Taliban using fake Facebook accounts. The applicant has not provided any Facebook evidence suggesting any threat or targeting of himself or any member of his community. Beyond his assertion about the potential for social media to be used as a platform for Shia Bangash to be targeted, there is no corroborative material before me to evidence this actually occurring. I note that the applicant was expressly asked by the delegate whether he or his family were ever targeted by Sunni militants or the Taliban and he responded no. I am not satisfied that there is a real chance of the applicant being targeted by Sunni militants or the Taliban via Facebook in the foreseeable future.

26. The delegate at interview mentioned to the applicant that he had claimed the Pakistani authorities informed his community to be prepared to fight Islamic State if they entered Kurram District from Pakistan. The applicant responded that he has made no such claim. That claim does appear in the statement prepared on 26 July 2016 and provided with his safe haven enterprise visa application. However given the applicant was adamant that he did not make this claim I have not considered it in my assessment and the evidence because me does not support it in any event.
27. The applicant does not face a real chance of any harm, including any treatment amounting to serious harm, for any reason were he to return to return to Kurram District in the foreseeable future. This includes for any reason related to his ethnicity, tribe, religion or previous employment. His fear of persecution is not well founded.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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29. 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**

30. 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.
31. 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.

32. I have found above that the applicant does not face a real chance of harm for any reason on return to Kurram District. The requirement for there to be a “real risk” of significant harm applies the same standard as the “real chance” test.<sup>21</sup> Accordingly, for the same reasons I have concluded this applicant does not have a real chance of harm, I find that there is not a real risk of significant harm to him in the foreseeable future were he to return to Pakistan.

**Complementary protection: conclusion**

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

**Decision**

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

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<sup>21</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

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

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

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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