



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/07939

Date and time of decision: 26 March 2020 20:05:00
D Hughes, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Pakistan. He applied for a protection visa on 6 June 2017. A delegate of the Minister for Immigration refused to grant the visa on 24 February 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. The applicant has made one submission to the IAA. In that submission he states as follows:
 - *My interview was very stressful for me as I could not understand the interpreter. The interpreter was an Afghani Pashto speaker which is a different dialect to Pakistani Pashto. I struggled during the interview for this reason. I speak Pashto from Pakistan and the interpreter was from Afghanistan. The languages were significantly different. I believe there were many occasions where I have said yes without fully understanding the question and the situation. My health is deteriorating and having difficulty to listen. I have provided all the medical reports.*
4. The applicant has consistently claimed that he has some hearing issues. While the evidence before me is limited, I consider his evidence about his health concerns was consistently and freely given and I accept he has issues with his hearing (at least in one ear) and equilibrium, as well as other complications. Based on the audio of the interview, I accept there may have been some misunderstanding between the applicant and the interpreter at times, whether that it is attributable to dialect or his hearing issues (or both) is unclear, but I have weighed both considerations. In terms of the interpreting, I note the interpreter spoke clearly (and quite loudly), appeared to take a number of steps to ensure that there was understanding between her and the applicant, and indicated at times she repeated words in Pashto or Urdu to assist the applicant. I note he confirmed at the commencement of the interview that he understood the interpreter and did not object to the interpreting during the interview itself. The applicant has not identified specific examples of problems with the interpreting that arose during the interview, or explained how those issues impacted the assessment of his claims. I have weighed the applicant's submissions in assessing his claims and evidence, however having considered the audio recording, and the applicant's submissions, I am not satisfied the interview miscarried in any way material to his claims. Perhaps the most important consideration here is that I do not have concerns with the applicant's credibility. His specific claims are discrete, and while there has been some variance in that evidence, I do not consider his evidence to have been particularly problematic.
5. I have considered whether the IAA should exercise its power to obtain information from the applicant, including at interview. Having regard to the above circumstances, and the discrete nature of his specific claims (which I accept), I am not satisfied there are exceptional circumstances, nor is it reasonable or necessary in the circumstances, to seek further information from the applicant.
6. In addition, the applicant has made broad reference to uncited country information about the situation in Pakistan. The country information already before me is comprehensive and up to date, and refers to (or at least factors in) the history and incidents referred to in the

submission to the IAA. To the extent this is 'new information' I consider it is more than adequately accounted for in the country information already before me. None of the incidents advanced predate the delegate's decision, nor are they personal to the applicant or his circumstances. To remove any uncertainty, I am not satisfied there are exceptional circumstances to justify consideration of the new information.

7. Lastly, the applicant has provided some additional context to his personal circumstances, highlighting that his younger brothers and sisters are still living in Kurram because there is no other choice for them to move, they cannot afford to live somewhere else, and his father's income is not sufficient to provide for their escape. The evidence about his family's whereabouts was before me, as was his father's occupation. I am satisfied this is not new information, and have weighed those matters in this assessment.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He is from a village in Parachinar, Khyber Pakhtunkhwa (formerly FATA) in Pakistan. His parents, [and a number of siblings] continue to live in Pakistan.
 - He is a Shia Muslim from the Bangash (Pashtun) ethnicity/tribe. He actively practices his Shia Islam faith, observes festivals such as Muharram and Ramadan, and engages in daily prayer.
 - He was born in Parachinar and lived there his whole life prior to coming to Australia. He studied at [School 1], completing his year [level] studies.
 - He left Pakistan as it had become too dangerous to live there. He was in danger from the Taliban because he is a practising Shia and member of the Bangash tribe, who are all Shias.
 - The Taliban have been attacking his home area since 2007. They have been fighting for control of the Parachinar area and are at war with the people of Parachinar. The area has been virtually under siege due to fighting, and the roads between the area and Peshawar have been blocked by the Taliban. Even with the protection of a convoy, the journey between the two cities is dangerous and subject to ambush by armed gangs of Taliban. It is necessary to travel between Parachinar and Peshawar for food, supplies, and medication. Convoys are also not always available.
 - His father works as a [Occupation 1] at a [workplace] in Parachinar. The majority religion in the [workplace] is Shia Islam and he was one of them. The Taliban are against education and Shia Muslims, and aim to inflict violence on Shias and anyone involved in the education system.
 - When he walked to college, the applicant would get scared because there were frequent explosions and kidnappings in his area. The Taliban would kidnap Shias, torture and kill them, cutting off their limbs and leaving them in the street.
 - In or about 2011, while he was walking to his college, a car stopped near him. Two men with their faces covered started walking towards him. He ran away and hid in a house. He did not know who those people were, but he believed they were Taliban because of what they were wearing. From that point, he stopped going to the college as he was scared for his life. He realised he could not remain in Pakistan and decided to leave the country.

- If he returns to Pakistan, he fears he will be killed by the Taliban and other Sunni extremist groups. He would have no religious freedom in Pakistan. If he prays and worships openly in Pakistan, he will be targeted. There have been several bomb blasts and suicide attacks directed at Shia Muslims and Shia areas in Pakistan. He would be unable to practise his Shia faith.
- He could not move to another part of the country to seek safety. He is clearly identifiable as a Shia from Parachinar from his identity documentation, and is at risk from Sunni extremists (including the Taliban) throughout Pakistan. He also does not have any family support or social network outside Parachinar, to protect him or assist him in re-establishing himself in a new area.
- The authorities are unable to protect him, as there is no protection for Shias in Pakistan, and local police are corrupt and do not have the power to stop the Taliban.

Factual findings

9. The applicant has been consistent about his background throughout this process and has provided a range of documentation that supports his claims. Based on his documentary and consistent oral evidence, I accept the applicant is a Pashtun Shia, of the Bangash tribe, from a village ([Village 1]) in Parachinar, Upper Kurram, Khyber Pakhtunkhwa (KPK, formerly FATA), Pakistan. I am satisfied that, based on his appearance, dialect and identity documents, he would be identifiable as a Pashtun (Bangash) Shia from Parachinar or Parachinar Shia.
10. I accept he is a practising Shia, however based on his oral evidence I find he does not attend mosque regularly. I consider he mostly prays privately, but accept he does participate in religious commemorations, such as Ashura.
11. The applicant's past experiences relate to fear and insecurity from living, studying and travelling within Parachinar. He claims to have been endangered by (or at least have proximity to) security incidents perpetrated by the Taliban. As discussed below, I consider the applicant's broader claims about insecurity in Parachinar are consistent with the country information discussed below.
12. The applicant has referred to one specific incident while he was walking to college in 2011. He claims the Taliban, or at least men he suspected were Taliban, stopped their vehicle where he was walking. They came out of their vehicle and started walking towards him. Fearing he was at threat, the applicant fled. The delegate expressed some concerns about the applicant's earlier omission of this claim. Having regard to the applicant's hearing issues and earlier evidence, I am less concerned. I consider his evidence also has support in the country information that indicates ongoing insecurity in his home area at this time.
13. I do however agree with the delegate that the applicant was around [age] years old at the time. There is no contention he had any specific profile, perhaps beyond his religious and ethnic profile more generally. I accept the incident occurred, and that the applicant may have been at threat from a group, possibly Sunni extremists or even the Taliban, however I am not satisfied that the threat continued, that he was specifically targeted or that he was personally at any chance or risk of being targeted in the aftermath of the incident, from the Taliban or any other person or group. In this regard, I give weight to the fact that the incident occurred in 2011 and the applicant left Pakistan in December 2012, yet it appears he faced no further concerns during this time. I am satisfied the applicant had no specific adverse profile. I have assessed his claims accordingly.

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. I have found applicant is a Pashtun Shia from the Bangash Tribe, and that he is from a village ([Village 1]) in Parachinar in Upper Kurram, Khyber Pakhtunkhwa (KPK). There is no claim the applicant has links to other parts of Pakistan. His family continue to live in this area. I find this is the area he would seek to return and live in Pakistan.
17. Consistent with the applicant's claims and submissions, the reports before the IAA confirm a dramatic rise in sectarian violence in Kurram District in 2006-07, spearheaded by the Taliban – specifically Tehrik-i-Taliban Pakistan (TTP). I accept that between 2007 and 2014, the Shia population in Kurram faced significant violence and insecurity, including suicide bombings, blockades and targeted killings along the Thall-Parachinar road, which links Parachinar and Peshawar. Between 2008 and 2014, thousands of Shia were killed, roads were blockaded, villages burned and many displaced in sectarian clashes, including bombings and targeted attacks.¹ I am satisfied this was the context the applicant found himself in when he left Pakistan.
18. The security situation has changed markedly since he left Pakistan. In 2014, the Pakistan military commenced operations (Operation Zarb-e-Azb) targeting terrorist groups, including the TTP, extending into the former FATA and Khyber Pakhtunkhwa. These operations resulted

¹ M.A Zahab, 'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan', Hurst & Company, 1 January 2013, CIS29402; A.S. Rafiq, 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', Middle East Institute, December 2014, CIS2F827D91993; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; 'DFAT Thematic Report - Shias in Pakistan - January 2016', Department of Foreign Affairs and Trade, 15 January 2016 CIS38A801265; New America Foundation, 'The Battle for Pakistan: Militancy and Conflict in Kurram', 1 April 2010 CIS18543.

in a significant reduction in the number of civilian casualties from attacks against the Shia populations in Kurram, and a period of relative calm in Parachinar. However, in the first half of 2017, there was a spike in targeted attacks in the area – including three high profile and coordinated sectarian attacks against Shia civilians in Parachinar. In July 2017, the Pakistan military extended its successor operation (Operation Radd-ul-Fasaad) to target the TTP and other Sunni extremist groups (such as Lashkar-e-Islam and Islamic State).²

19. These operations have been credited with bringing a significant reduction in the number of violent and terrorism related attacks in Pakistan and allowing roads to reopen. In 2018, local observers and officials in Khyber Pakhtunkhwa reported a trend of increased security, a reduction in reported killings, and reduced fear within the community.³
20. In 2017, DFAT stated that Operation Zarb-e-Azb and associated anti-terrorism activities had led to a significant decrease in the number and severity of attacks on Shia (referencing the Turi⁴ tribe) through 2015 and 2016. In 2017, DFAT assessed that Shia in the (former) FATA typically face a low risk of sectarian violence overall, in the context of a moderate level of militant and criminal violence across the region. Shias are most vulnerable during large gatherings, such as Ashura processions. Heightened state protection measures during these events partly mitigate the threats associated with this greater exposure. However, DFAT also assessed that the risk of sectarian violence for civilians in Kurram, particularly in Parachinar, was higher than in other parts of the FATA, noting the 2017 attacks. Having regard to the three large-scale attacks targeting Shia in Parachinar in the first six months of 2017, DFAT assessed that the risk of sectarian violence for civilians in Kurram Agency, particularly in Parachinar, was higher than in other parts of the former FATA. DFAT assessed that the region's Shia Turi population in Parachinar faced a moderate risk of sectarian violence from militant groups, because of their Shia faith.⁵
21. Consistent with that advice, in its 2019 report, DFAT assessed that Shia in the former FATA face a low risk of sectarian violence, within the context of a moderate level of militant and criminal violence across the region. While noting attacks against civilians can occur in any part of the former FATA, DFAT again assessed that the risk of sectarian violence for civilians in Kurram Agency, particularly in Parachinar, is higher than in other parts of the former FATA. DFAT continued to note a trend of decreased reports of attacks against Shia (Turis) in 2018 due to the improved security situation in Parachinar and Kurram Agency. However, notwithstanding its analysis of the improved situation, and the limited evidence of recent attacks, DFAT again assessed in 2019 that Shia (Turi) in Kurram Agency faced a moderate risk of sectarian violence from militant groups, because of their Shia faith.⁶
22. DFAT's analysis must be considered in the context of other data and analysis before the IAA. DFAT defines 'moderate risk' as 'it is aware of sufficient incidents to suggest a pattern of behaviour'. I consider that DFAT's assessment that Shia (Turi) face a moderate risk of sectarian violence does not necessarily indicate that Shia (Turi or otherwise) face a real chance of serious harm within Kurram. DFAT's 2017 and 2019 assessment is obviously influenced by the three serious incidents in Parachinar in the first half of 2017. However,

² DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

⁴ The applicant is not from the Turi tribe, but being from a Shia Pashtun background and resident in Parachinar, as the Turi are, I consider the specific analysis has relevance to his profile.

⁵ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

⁶ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

scrutiny of the other reporting, analysis and data about recent security incidents, and the impact of Pakistan military operations, also confirms DFAT's overarching analysis of a continuing trend of improvement within the security environment in Kurram, both for Turi and Shias and in general. All evidence indicates that Sunni extremist groups (including the TTP) have been driven out of the area, and their capacity to undertake attacks in Parachinar and Upper Kurram has been significantly reduced, if not almost completely.

23. I accept Shias within Parachinar and Kurram have been targeted in violent attacks by Sunni extremist groups in the past. While I accept the applicant's home area has been the subject of considerable sectarian violence in the past, on the basis of the information before me, I find the security environment in Parachinar and Kurram has improved significantly over the last six years, and even allowing for the spike of violence in the first half of 2017, I consider security continues to be maintained through Pakistani military security operations and local security improvements (e.g. the implementation of fence lines and the red zones in Parachinar). While 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, I consider these reports also highlight a significant improvement in the area, both in 2017 and 2019.⁷
24. I consider that is consistent with the gamut of other reporting before the IAA. The reports before me do not indicate a resurgence or increase in violence, or recent confirmed attacks against the area's Shia population. Through 2018 and 2019, the number and extent of other incidents has remained low, and no high casualty attacks have been reported.⁸ It would appear the Pakistan Government and security forces have secured the area, and that DFAT's 2019 projection of a continuingly improved security situation in Parachinar and Kurram was correct.⁹ Data from the FRC also confirms the significant reduction in security incidents in this area since 2017.¹⁰
25. I accept that that sectarian and insurgent violence continues in other parts of Pakistan. I also accept the applicant's submission that the TTP have settled in neighbouring provinces in Afghanistan, and note there have been border clashes,¹¹ and an IED explosion that killed civilians,¹² however there have not been confirmed incidents involving the targeting of Shias in Parachinar and Upper Kurram or other complex attacks. I have weighed his contentions about the volatile and future potential for conflict in the region. I accept that the risks cannot ruled out completely and there remains some degree of insecurity, however when having regard to the range of analysis and data before me, I consider the chance or risks of such attacks and other violence from the TTP and other Sunni extremist groups in the applicant's home region of Parachinar and Upper Kurram, KPK in Pakistan, in the reasonably foreseeable future, is more than remote.

⁷ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

⁸ Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2019', 5 January 2020, 20200107154503; Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; EASO, 'Pakistan: Security Situation', 30 October 2019, 20191031160110; 20200122140652; Pakistan Institute for Conflict and Security Studies (PICSS), '2019 Annual Security Assessment Report', 9 January 2020.

⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

¹⁰ FATA Research Centre (FRC), 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2018', 15 January 2019, 20190117094912; FRC, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019', 13 January 2020, 20200122123739. See also EASO, 'Pakistan: Security Situation', 30 October 2019, 20191031160110.

¹¹ Tribal News Network (Pakistan): 'Two Soldiers Martyred, Five Injured In Attack From Across Afghan Border', 15 April 2018, CXBB8A1DA25627; Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

¹² EASO, 'EASO Country of Origin Information Report - Pakistan Security Situation', 16 October 2018, CIS7B8394110560. It is not clear whether this was targeted.

26. In terms of his broader profile, DFAT assessed in 2017 that Pashtuns do not face a higher risk of violence than other groups based on their ethnicity. In 2019, DFAT stated that Pashtuns who are not Turis, or are not linked to the ANP, face a similar risk of violence as other ethnic groups in Pakistan in the same locations. In terms of discrimination, DFAT states that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination. DFAT does not provide specific analysis of the risk profile of the Bangash population, although it observes that Turis face a moderate risk of societal discrimination based on their historical animosity with the Bangash tribe,¹³ however it appears this relates to tensions between Bangash Sunni and Turi Shia,¹⁴ which would not appear to affect the applicant as a Shia.
27. There is little concrete analysis regarding discrimination against Shias.¹⁵ DFAT states that it has no evidence of systemic discrimination against Shia in gaining employment in the public service, police, military or the private sector. However, some Shia perceive discrimination against Shia gaining roles at higher levels of some organisations. Overall, DFAT assesses that Shia who are not Hazara or Turi (which the applicant is not) generally do not face discrimination based on their religious affiliation when seeking employment. Anti-Shia discrimination does occur at the community level, and can manifest in violence or damage to property, however DFAT assesses it as low level.¹⁶
28. According to DFAT, the population of Khyber Pakhtunkhwa is mostly Pashtun. Shias comprise around 40 percent of the population of Kurram Agency; Upper Kurram Agency is estimated to be around 80 per cent Shia. Most Shia in Kurram Agency are from the Turi tribe, particularly in Parachinar. The Bangash tribe is around 40 percent Shia.¹⁷ I am satisfied the applicant will return to live in his village ([Village 1]) in Parachinar in Upper Kurram. I am satisfied this is a majority Shia and Pashtun area, and that there is a defined Bangash community. In this context, I consider the chance of the applicant facing religious, ethnic or tribal discrimination is remote, and that any discrimination he may experience would not amount to serious harm.
29. It is apparent that the applicant would have to travel from an international airport to return to Parachinar. The information before me indicates that residents from Kurram can only access Parachinar from Peshawar (the closest major Pakistan city) via the Thall-Parachinar road, which passes through Sunni-dominated Lower Kurram. DFAT has stated that travellers in KPK and districts in the former FATA are at greater risk of criminal or militant violence due to their isolation and the limited presence of security forces. Many roads fit this profile. In its 2017 report, DFAT advised that the use of security convoys mitigated the risk of attacks. In its 2019 report, DFAT stated that Shia (Turi) reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. This has restored confidence within the community for individuals (although not large groups) to travel on the Thall-Parachinar road, although only between dawn and dusk.¹⁸
30. I accept that the applicant will likely return to Parachinar via the Thall-Parachinar Road, but I give weight to the fact that there have been few recent reports of attacks against Shia from

¹³ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

¹⁴ The Naval Postgraduate School (NPS) Institutional Archive - 'Bangash Tribe', 2016, CIS38A80128178.

¹⁵ UK Home Office, 'Country Police and Information Note - Pakistan: Shia Muslims', January 2019, 20190522151230.

¹⁶ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

¹⁷ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

¹⁸ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

Parachinar on this road. I consider the chance or likelihood of any such attack is present, but remote. In view of the improved security on the roads, I am satisfied the applicant could safely access his home area, particularly if he travels in a convoy (which he has previously) and in daylight hours

31. In terms of his health and ear issues, DFAT states that healthcare in Pakistan is generally free and accessible to all Pakistanis, but the quality of healthcare often suffers from a lack of funding and limited capacity.¹⁹ I accept there may be limits to the quality of healthcare in Pakistan (particularly when compared against Australia), but I do not consider he would be unable to access the available health care in relation to his medical concerns in Parachinar, or that he would be discriminatorily denied access, or otherwise face discrimination or harm in relation to his health concerns.
32. In terms of his studies, I accept DFAT's assessment that access to education is also affected by a poor security environment. According to the former FATA Secretariat, more than 550 schools were attacked between 2004 and 2017 in the former FATA (now Khyber Pakhtunkhwa) alone.²⁰ DFAT provides no specific assessment of the risk profile for those involved in education. The number of incidents is concerning, however I consider the risk assessment for students in Parachinar is informed by the overall assessment of the security situation in Parachinar and Upper Kurram more broadly. While incidents involving schools have occurred in recent years,²¹ the reports referenced above do not refer to incidents involving schools or students in Kurram in recent years. While I accept there may be elevated risks for those attending schools in some areas of Pakistan, particularly for girls and women, on the information before me, I consider that Parachinar and Upper Kurram have been and remain secure, and I am not satisfied there is a real chance of the applicant facing harm in the context of any future schooling he may undertake in Parachinar, now or in the reasonably foreseeable future.
33. In sum, I consider the applicant would be able to live, study, practice his religion freely (including prayer and attendance at religious commiserations), eventually work (and subsist) and remain in Parachinar with his family. Given the improved security on the roads, discussed above, I accept he could travel occasionally outside of the area to Peshawar for health care or supplies. In all the circumstances, I am satisfied that it would be reasonable for him to return and remain there given the security this would afford the applicant and his family. In any event, even if he needed to travel outside of Parachinar (e.g. for medical treatment), based on the assessment above and the infrequency with which I consider he would travel, I consider the chance or risk of him being harmed in any travels between Parachinar and Peshawar would be remote.
34. In view of all the evidence and information before me, I am satisfied the applicant would not face a real chance of harm in his home village of ([Village 1]), in Parachinar or Upper Kurram District, now or in the reasonably foreseeable future on the basis of his religious, ethnic and tribal profile as a Pashtun Shia from the Bangash Tribe, in the context of his education or health, or on the basis of any related imputed profile, from the TTP, Sunni extremist groups, or any other person or group. I consider his fears in this regard are not well founded.

¹⁹ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

²⁰ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

²¹ Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

Refugee: conclusion

35. 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

36. 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

37. 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.
38. 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.
39. I have found the applicant would not face a real chance of harm for any of the above reasons should he return to Pakistan now or on in the reasonably foreseeable future. Having regard to that assessment, and all the information before me, I am also satisfied that there is not a real risk he would face significant harm on return to Pakistan for any of these reasons, including in returning to live in his village ([Village 1]) in Parachinar or Upper Kurram in KPK. I consider his profile is limited, even when considered cumulatively, and in the context of the information and analysis above, I am also satisfied there is no real chance or risk of the applicant facing serious or significant harm on the basis of any cumulative profile.
40. To remove any uncertainty, I have considered the impact of any discrimination he may face on return to his home area on the basis of his ethnic, religious and tribal profile. Having regard to the same information above, I am also satisfied any societal or official discrimination he may face would be low level, and would not affect his life in any material way. It follows that I am also satisfied this would not constitute significant harm as defined.
41. I have accepted the applicant has some health concerns and that these issues may require continued treatment or medicine on return to his home area in Parachinar, but I have found he would be able to access health care, that he would not face a real chance of discrimination within Kurram, nor is there the evidence before me that he would be denied or unable to access what health care is available. I accept that the quality of healthcare in Pakistan is limited, and not to the standard available to him in Australia. In relation to complementary protection, I do not consider any deficiencies in Pakistan's health care system, or any challenges he may face in relation to his health would amount to significant harm as defined,

or that there is any real risk of him facing discrimination that would constitute significant harm in relation to his physical health or any ongoing medical treatment he may require in Pakistan.

Complementary protection: conclusion

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

Decision

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.