



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08049

Date and time of decision: 29 April 2020 10:32:00
G Ma, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Pashtun Turi Shia from Parachinar, Upper Kurram, Pakistan. On 31 March 2017 he lodged an application for a safe haven enterprise visa (SHEV). On 20 March 2020, a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). On 15 April 2020, the IAA received a submission from the applicant's representative (the IAA submission). It attaches a statement from the applicant. It contains reasons for why the applicant disagrees with the delegate's decision, and arguments in favour of his case by reference to case law and material that was before the delegate. I have had regard to these aspects of it.
3. The IAA submission also refers to extracts from the 2017 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan. It purports to support that there is a lack of adequate state protection for Shias in Pakistan. This was not before the delegate. It is 'new information'.
4. This information pre-dates the delegate's decision and can be described as general country information rather than personal information in the relevant sense. The applicant has been represented by the same lawyer at the primary level and before the IAA. All the relevant issues under consideration were canvassed at the SHEV interview. A post-interview submission was provided by his representative to the delegate. The applicant has had ample opportunities to present evidence and put forward his case. Moreover, this information is now quite dated and there is a range of more recent information concerning the situation for Shias in Pakistan before me – some of it presented in the applicant's post-interview submission. This 2017 report is of very limited value. I am not satisfied that s.473DD is met.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Pashtun Turi Shia from [Village 1], Parachinar. His family belongs to the [Name] sub-tribe - a 'prominent' family or a 'royal' sub-tribe as they have been around for generations and are well-known to others in the area. His parents [and siblings] are now living at home in Parachinar.
 - In 2007, the war commenced. Although the war is now over, there is still violence and fighting. Between 2007 and 2012, there were bomb blasts, including 10 bomb blasts by the Taliban in public places in his area. They could not go to other cities due to road closures. They were isolated in their village, vulnerable to attacks and unable to move around. The Taliban wanted access to Afghanistan via their town. But the local authorities would not give them access, so they blocked roads, attacked and killed people travelling on convoys. The authorities brought back the remains to his village to be identified by the families, and he saw these bodies on numerous occasions in 2008 or 2009. One night in

2008, the Taliban came to his village and killed about 170 people. They targeted the Turi tribes due to their Shia faith and because they did not give them access to the roads.

- In 2011 while he was a student, he was involved with protests against the government in Parachinar. They were protesting that the government could not protect them against the violence.
- One day in 2012 at around 5pm, he was at the bazaar in Parachinar. A bomb exploded around 200 metres away. He was hit by small stones, the shrapnel caused a wound to his hand, and his hearing was affected. His father took him to the hospital. He is traumatised by these events. He has trouble sleeping, and has irritation to his eyes as a result of insomnia. He had one or two counselling sessions in Australia for trauma, and he goes to the doctor for a check-up for both physical and mental health.
- In 2012 or 2013 before he left Pakistan, an extended cousin from his father's side was captured and beheaded by the Taliban while travelling from [Town] to [Village 2].
- He left Pakistan for Australia [in] March 2013.
- In around 2017, his mother told him that people in his village received threat letters from Daesh saying they would kill the Turis and clear the area of all infidels.
- He heard from friends and family in Pakistan that extreme violence is being carried out regularly, for example, in 2016 (he was unsure about the year) insurgents attacked an army school and killed around 140 students and teachers. He often hears about disturbing episodes of violence in news reports and from friends and family, which makes him fearful about what might happen to him if he returns.
- He fears harm from the Tehreek-e-Taliban (TTP) and other Sunni extremist groups such as Daesh, Lashkar-e-Jhangvi (Lej), Sipah-e-Sahaba (SSP) because he is a Pashtun Turi Shia from Kurram. His family's prominence and his uncles' involvement in *jirga* (tribal council) and fighting against the Taliban during the war would elevate his profile and he would be imputed with pro-US, anti-Taliban and anti-Sunni extremists' political opinion. He may be called upon to take a leadership role in village affairs like his uncles, which would increase the risk of him being targeted by the extremists. He also fears harm on the bases of real and imputed political opinion because he will speak out on social media against the government and the extremists, and involve himself in protests. Together with the perception with regard to his education, he will be perceived as having a high profile within the Shia community. Further, he fears harm as a returnee who spent time in a western country.

Refugee assessment

6. 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

7. 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.
8. I accept the applicant's explanations at the SHEV interview and in his statutory declaration of 25 November 2019 as to why some of his identity documents bear a different year of birth. Based on his explanations and the various identity documents provided by him, I accept that he was born in [Year] and he is a national of Pakistan. Pakistan is the relevant 'receiving country'. I also accept that he is a Pashtun Turi Shia of the [Name] sub-tribe from [Village 1], Parachinar, Upper Kurram. This is supported by his Domicile Certificate and Bona fide Residential Certificate.
9. The Turi tribe is a Shia Pashtun Tribe of about 500,000 people. Most Turis live in Parachinar, lower and upper Kurram Agency, Orakzai, DI Khan, Kohat and Hangu. Nearly all Turis are Shias. Shias live throughout Pakistan in urban areas. Kurram Agency has a significant Shia population. Upper Kurram Agency is estimated to be around 80 percent Shias. Shias generally do not face discrimination in gaining employment in the public service or the private sector and in accessing education. Shias are well represented in parliament and there are no barriers preventing Shias from actively participating in democratic processes in Pakistan due to their sectarian affiliation. Generally, Shias are able to practise their Shia religion without official interference or discrimination. Turis tend to live in enclaves with other Turis, mitigating societal discrimination. Shia and Sunni communities are generally well integrated in Pakistan.¹
10. The applicant is a Pashtun Turi Shia from [Village 1], Parachinar. He claims the [Name] sub-tribe has been in the area for much longer than the others, so they are 'well-known' / 'prominent', or considered as a 'royal' sub-tribe. His parents, [siblings] and his uncles are living in their home village. His sister is engaged and doing chores at home. His other siblings are now attending school. His father worked in [Country] for over 20 years from 1995 to 2016, and his father has been supporting his family with some savings and by growing crops and doing farming work in Parachinar. His local community and his uncles defended their villages and fought against the Taliban during the conflict in 2007. I consider it very likely that he would return to his home village, where he has familial links, tribal support and community protection.
11. I accept that Shia Turis have faced a long history of violence, and that there was violence against Shia Turis particularly in the period before and around the time the applicant left in 2013. Between around 2007 and 2014, Turis faced significant violence from Sunni extremist groups, such as the TTP, who targeted them for their Shia faith, especially in Parachinar. Militants frequently stopped and killed Turis travelling on roads, and a significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Tall-Parachinar road, which links

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Conflict and Security Studies (PICSS), "2019 Annual Security Assessment Report", 9 January 2020, 20200122140652.

Kurram Agency and Peshawar. The materials provided by the applicant regarding the violence in this period are broadly consistent with the country information. I accept that in 2008 to 2009 there were bomb blasts in public places, the Taliban killed people in his area, that the applicant witnessed bodies that were brought back to his village, but he was unharmed in these incidents. I accept that his uncles were involved in jirga and fought against the Taliban along with the local community during the conflict in 2007 to defend their villages; and that his father was not involved in jirga and would go to meetings at the Central Imambargah as an attendee.

12. I also accept that the applicant happened to be around when a bomb exploded in a bazaar in Parachinar in 2012, that he was hit by small stones and injured his hand as claimed. He gave specific, consistent and spontaneous evidence about this incident. He stated in the written statement that it was 5pm and he was walking in front of the shops when he heard a loud bang. He described what happened, what he saw and how he felt after the explosion. He elaborated on this incident at the SHEV interview. He said he was returning home from a private English tutor class at the time. In 200 meters away, a bomb exploded. I accept that he may still feel anxious and stressed about this incident, and has trouble sleeping if there is any noise. He stated in the written statement that he had one or two counselling sessions in Australia for his trauma and he went to the doctor for check-ups for his physical and mental health. His doctor has given him some suggestions to deal with anxiety. No medical evidence has been provided. His evidence at the SHEV interview about his mental health was that he had trouble sleeping, especially with the noise from the fan that he put on when it was hot. He went to his GP for a check-up on his mental health, his GP told him that he needed to “relax... stay happy and do some things like that”. He had not seen the GP for this after 2016 or 2017. In any event, he did not claim, and I am not satisfied on the evidence that he currently has mental health issues beyond his anxiety.
13. However, I am not prepared to accept that the applicant was involved with any protest. His evidence on this was vague, lacked detail and incoherent. He stated in the written statement that in 2011 he was involved with protests while he was a student, and they were protesting that the government would not protect them against the violence. He said at the SHEV interview that he and some boys protested in front of their college because it was safe for the army to get food and medicine but their convoys could be attacked while travelling, and about road closures. He also said he obtained his national ID card in 2009 because the conflict started in 2007, and he stayed at home for two years even though he has been taking part in the protests, and then his parents told him to obtain a national ID card to leave Pakistan to avoid harm from the government and secret agencies. His evidence that he was already involved with protests in or before 2009 differs from his other evidence that indicated he was only involved with protests in 2011. His claim that he was involved in protests near his college is also at odds with his claim that he stayed home for those two years. Overall, his unconvincing and very limited evidence is in stark contrast to his specific and persuasive evidence about the bombing incident.
14. I also do not accept the assertions that he has or will share any online contents critical of the authorities or the extremists, or that he will be politically active in any way upon return. He asserts that having lived in Australia, he believes in justice and the law. He would not accept injustice. He will speak up against the extremists. His awareness of the corrupt and ineffective political system in Pakistan has grown, and he does not trust the government. He says his feelings of outrage at the corrupt government system, his own expectation to contribute to the Shia community, and community expectation to take up a leadership role would mean that he would have to speak out whenever he saw injustice or corruption upon return.
15. However, the applicant has never been politically active in Australia, despite having the freedom to do so. He gave evidence at the SHEV interview that he does not want to be politically active in Australia because he does not need to do so, he is safe here. He also said if he were politically

active here, his family could face harm because of him. But when asked why then, he will be politically active upon return, he responded it was because of his family. Because his family is well-known, and if anything took place again in the future, people will eventually come and ask him to join a jirga. He said that he 'probably did comment, like or dislike' posts on social media, but the comments were 'not particularly against any party', and he has 'not engaged with anyone' due to privacy reasons. He added that to speak out on social media against the government, he will need help from the US as he does not speak perfect English, and therefore, he will be perceived as pro-US and an infidel.

16. I find his reasons for why he will be politically active upon return totally unconvincing. In my view, if he genuinely feels outraged at the government or the extremists such that he has to speak out whenever he saw injustice or corruption, he would have done so in the last seven years while living in Australia. His evidence that he felt safe and need not do so here, to me, indicates that he has no genuine interest in these issues, and has no desire to speak out or be politically active. He says that his family could face harm if he were politically active here, but no reasonable explanation was proffered as to why he will still become politically active upon return despite this. I do not accept that he was involved in any protest in Pakistan. His family may be prominent, but his father was never involved in jirga. In fact, his evidence was that his father told him to leave Pakistan and did not want him to participate or join his uncles in fighting against the Taliban through the Central Imambargah. I am not convinced that there will be community expectation for him to take up a leadership role or that he expects himself to contribute to the Shia community upon return. Although he asserted in the post-interview submission that he shared online articles about the plight of Shias in Pakistan and a video about a young soldier who speaks critically of the authorities, such materials have not been provided. No other evidence, such as any social media posts or online contents, has been provided to substantiate his claim. I note that his representative submitted that he gave her photographs from Pakistan and a video on a social media platform of the young soldier speaking about his experiences in the army, but they were unable to get the video translated so it was not provided. This, of itself, does not establish that he shared these items online.
17. For the above reasons, I am not satisfied that the applicant holds any anti-government, anti-extremist group or pro-US political opinion, or will be perceived as such. I do not accept that he shared any social media or online materials that are perceived as against the government or the extremists, or considered controversial. Nor do I accept that he will do so upon return. I also do not accept that he will take up a leadership role, or speak out against the government, or involved in protests or any other political activity upon return. This is not due to fear of harm, but because he lacks genuine interest or commitment to do so.
18. I am also not prepared to accept the assertion that an extended cousin from his father's side was captured and beheaded by the Taliban while travelling through a convoy in 2012 or 2013 before he left Pakistan. This claim was raised at the SHEV interview in response to the delegate's question about whether his family has been personally targeted by the Taliban after he arrived in Australia. This question was posed by the delegate in order to seek confirmation from him about his earlier evidence that his family members have not been targeted by the Taliban. The way in which this claim (which one might consider quite significant) emerged gave an impression that it was contrived in an attempt to address the delegate's question. His evidence about this claimed incident is deficient. No other evidence, such as a copy of death certificate, has been provided to substantiate the claim.
19. Although the applicant stated in the written statement that his mother told him recently that people in his village received threat letters from Daesh, he clarified at the SHEV interview that it was the management of the Central Imambargah who received threat letters. His family has not

received any threats, and (except the extended cousin above) they have not been targeted or harmed by the Taliban or other extremists.

20. There has been a significant change in the situation in Pakistan since the applicant left Pakistan in 2013. As evidenced by the submissions and materials provided by the applicant, extremist groups have maintained a presence in parts of Pakistan, the situation is complex, the threat of terrorism has not been completely eliminated, and that some incidents of violence do occur, such as the army school attack incident noted below. However, the overwhelming weight of information before me is that there has been dramatic, and now sustained, improvement in the situation in Parachinar, Kurram (particularly since 2017), and throughout Pakistan more generally. The frequency and the number of attacks in Parachinar and across Pakistan have dropped in the last few years. It is clear from the evidence that the significant and ongoing reduction in violence was due to the continuous anti-terrorism efforts and the security measures implemented by the government over the last six years since 2014. I reject the speculations that the government supports the Taliban, conspired with the terrorists, or that the extremist groups work for the government. I do not accept the assertions that the government's efforts were not effective in countering the violence. I consider these aspects of his claims to be unsupported by evidence.
21. In 2014 the Pakistani government launched military operation *Zarb-e-Azb* to eradicate 'foreign and local terrorists'. In response, the militants carried out several attacks, including gunmen affiliated with the TTP entering an army school in Peshawar and opened fire on staff and children on 16 December 2014, killing 145 people, mostly children of army personnel. The government took strong actions against the militants nine days after by announcing a comprehensive plan of action, the National Action Plan (NAP) to confront the insurgent threat. Operation *Zarb-e-Azb* continued in 2015 and 2016. Although there was an increase of violence in 2017 in Kurram as compared to 2016, military operations *Radd-ul-Fasaad* and *Khyber-IV* were launched in response to this violence. This resulted in a sustained declining trend of violence in Parachinar and Kurram since 2017 to date. Significantly fewer road attacks were reported by Turis in 2018, as military operations forced militants into the mountains. This restored confidence within the community for individuals to travel on the Tall-Parachinar road during day time. More recently there have been even fewer reports of violence. The confidence of the minorities and the security situation have been improved by the continuing security measures, the building of military fencing in Kurram and the tightening of Afghanistan-Pakistan border controls. The Turi community advised DFAT that the military implements a 20 to 30 square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located. Security forces have issued cards to access the red zones, which can be obtained by residents on presentation of identity documents (computerised national ID cards and passports). The DFAT report notes that while the military operations have improved the security situation in Parachinar and Kurram Agency, they have also restricted freedom of movement and limited the community's access to essential services and trade opportunities. Shias faced some risk of violence while travelling by road to Iran and Iraq on religious pilgrimage, however, the government provided security assistance for such journeys. The anti-insurgency operations and security measures have considerably weakened the operational capacity of militant organizations, and substantially reduced the number and severity of attacks against Pashtun Shia Turis in Kurram. A loss of terrorist training infrastructure, hideouts and loss of local support within the Pashtun communities has deprived them from local recruits and sources of terror financing. These contributed to a higher level of security in Khyber, including former FATA.²

² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Irfan U Din and Mansur Khan Mahsud, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", FATA Research Centre, 3 January 2020,

22. Nevertheless, at the beginning of 2019 DFAT assessed that Turis in Kurram faced a 'moderate risk' of sectarian violence due to their Shia faith although it also assessed that Shias in the former FATA faced a 'low risk' of sectarian violence (within the context of a moderate level of militant and criminal violence across the region). The term 'moderate risk' is defined as it is 'aware of sufficient incidents to suggest a pattern of behaviour', and the term 'low risk' is defined as it is 'aware of incidents but has insufficient evidence to conclude they form a pattern'. Despite this assessment, it is clear from the other authoritative reports before me, such as publications from the Pakistan Institute for Peace Studies (PIPS) and the Pakistan Institute for Conflict and Security Studies (PICSS), which contain detailed statistical information on events over the years, that there has been a visible trend of decreased reports of attacks against Shia Turis after 2017, which continued into 2019 and to date. This was due to the ongoing improvement in the security situation in Parachinar and the Kurram Agency. DFAT does not report on specific incidents during the relevant period that would indicate otherwise.³ Notably, these other publications do not indicate that there were any significant terrorist attacks or attacks against Shia Turis in Parachinar or the Kurram Agency reported in 2018, 2019 or to date in 2020.
23. The applicant claims that he read in the news that well-educated Shia people such as doctors, prominent Shia leaders and university students are specifically targeted and often killed. However, he is not a doctor, a prominent Shia leader or a university student, and does not fall within these profiles, or perceived as such. Even noting his claim that he wishes to pursue further study in the future, in view of the significant improvement in the security landscape in Pakistan, I am not satisfied that he will face a real chance of harm for reasons relating to his study, or actual or perceived education profile upon return. He also claims that he heard about a 'disturbing episode' of violence from others, such as an incident of honour killing and enmity between two families that turned into a protest that resulted in a blockage of the Tall-Parachinar road in around September 2019. But the applicant does not claim to be related to these families, nor directly affected by this claimed incident. Also, no independent information about this incident has been provided. I am not satisfied that he faces a real chance of any harm on this basis.
24. I do not accept that the applicant's extended cousin was killed by the Taliban. I also do not accept that he holds anti-government or anti-extremist views. I reject that he was involved, or will be involved in any political activity (including any protest, speaking out against the government or the extremists by sharing online or social media materials) in the reasonably foreseeable future. I do not accept that he will be perceived as having a high profile within the Shia community upon return. I accept that he was injured in a bombing incident at a bazaar in 2012 as he happened to be there at the time. I accept that his uncles and the local community fought against the Taliban and defended their community during the conflict, that his uncles have been involved in *jirga*, and that his father attends meetings at the Central Imambargah. But the applicant, his father, uncles and family have not faced past harm for these reasons, and he and his family have not been personally targeted or threatened by any extremists. The evidence does not support, and I am not satisfied, that he or his family will face a real chance of harm for these reasons. His evidence at the SHEV interview was that his family has been staying at home and has not experienced any specific problems since he left. His siblings are attending school in Parachinar city. He also said that about a month ago, 30 terrorists were captured by the local people and handed over to the army who took them away. He did not provide any supporting material for this incident. I note that the delegate stated in the primary decision that the department has a translated article from 'Daily Jang' dated 10 October 2019 that describes a similar incident, but

20200122123739; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2019", 5 January 2020, 20200107154503; PICSS, "2019 Annual Security Assessment Report", 9 January 2020, 20200122140652.

³ Ibid.

the veracity of the information in this article cannot be established despite the searches conducted by the delegate. In light of the recent country information above, even noting his claims that he is from a 'royal' sub-tribe and a 'prominent' family, and his village is located near the mountains and about [distance] km from the Parachinar city, I am not satisfied that the chance of the applicant facing harm by anyone as a Pashtun Turi Shia to be any more than remote. I consider that he would continue to be able to freely practise his Shia faith in the same manner upon return to Parachinar or Upper Kurram, which is a Shia dominant area, without a real chance of harm. Given the significant and ongoing improvement of the security situation and the general situation, I am also not satisfied that upon return, there is a real chance of him facing harm when travelling on the roads. I am not satisfied he would be prevented from undertaking further studies, if he wishes to do so upon return. I am not satisfied that he will face a real chance of harm for reasons relating to his profile or that of his family. At the SHEV interview, he asserted that he will be harmed by Pashtun Sunnis and a couple of his Sunni classmates who studied in the same high school as him, because Sunnis were displaced from his village during the war in 2007, and therefore, they will seek revenge of his Turi tribe. I consider this speculative and not supported by the materials before me. The evidence is that Upper Kurram is a Shia majority area. Shia and Sunni communities are generally well integrated in Pakistan and that Turis live in enclaves with other Turis. Given the recent information, including the significant improvement in the security situation and general situation in Kurram, I am not satisfied there is a real chance of him facing any harm by the Sunni community, including former classmates, upon return.

25. The applicant claims that the military presence severely restricted the local people's movement and access to services. No detail has been provided to explain how the security measures have practically affected his family's and the community's freedom of movement and access to services, or how these will affect the applicant personally on return. The information is that residents are able to access the red zones on presentation of identity documents. I accept that the restriction of movements may cause inconvenience to the applicant, his family and the community. But I am not satisfied on the evidence that his, his family or his community's freedom of movement or access to services or opportunities would be restricted to the extent that would give rise to a threat to the applicant's life or liberty, would threaten his capacity to subsist or otherwise give rise to a real chance of any harm to him. He completed year [number]. He withdrew from his studies in year [number] due to the unrest in Pakistan. He also attended private English tutor classes in Pakistan. After he arrived in Australia, he completed a [certificate] in [subject] and worked as [an Occupation]. His evidence at the SHEV interview was that he has been working for a company that makes [products], and he works as [an Occupation] on some weekends. He could speak, read and write the Pashto, Urdu and the English languages. I am not satisfied that he would be unable to access employment upon return, or that there is a real chance he will suffer any harm in this regard.
26. According to country information,⁴ western influence is pervasive in many parts of Pakistan. Moreover, returnees who exited Pakistan on valid travel documents do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are typically processed like any other citizens returning to Pakistan. The government issues 'genuine returnees', that is, those who left Pakistan legally, with temporary documents when they arrive. People suspected of, or charged with, criminal offences in Pakistan are likely to face questioning on return. Involuntary returnees may be questioned by the authorities upon return to determine whether they left Pakistan illegally, are wanted for crimes in Pakistan or committed any offences while abroad. Citizens who departed Pakistan on valid travel document and have not committed any other crimes are 'typically released within a couple of hours'. There is no

⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

information to indicate that returnees face mistreatment during this process. Returnees are typically able to reintegrate into Pakistan community without repercussions stemming from the migration attempt. There is nothing to indicate that individuals would be subject to discrimination or violence as a result of them having spent time in western countries, or as a result of their attempt to migrate. The materials before me also do not support that returning asylum seekers from countries such as Australia who are Pashtun Turi Shia from Kurram are perceived as an infidel, pro-west or anti-extremists; or that they face a real chance of harm from anyone for these reasons, or for having absorbed the western culture, beliefs, mindset or attitudes.

27. The applicant departed Pakistan legally with his own passport via Lahore airport. He has not committed any criminal offence, and I am not satisfied that he will be perceived as such. This is supported by his Police Clearance Certificate issued by the Political Agent, Kurram Agency, certifying that he 'belongs to a respectable and reputable family', 'There is nothing politically or otherwise against him in this court', 'He has never been convicted in any criminal case in this court' and 'He bears a good moral character'. I am not satisfied on the evidence that the processing on arrival at the airport would give rise to a real chance of any harm to him. The evidence does not support that he would not be able to safely and legally access Parachinar, Upper Kurram upon return. I am not satisfied that he would be imputed as: being opposed to the extremist groups, an infidel, or a supporter of the west, for being a Pashtun Turi Shia returning failed asylum seeker who spent time abroad in the west; or otherwise harmed by anyone on these bases. Nor am I satisfied on the evidence that there is a real chance of him facing harm from the extremists, the authorities or anyone for having absorbed the western culture, beliefs, mindset or attitudes, or perceived as such.
28. I am not satisfied that there is a real chance of the applicant facing any harm for the reasons claimed now or in the reasonably foreseeable future if he returns to Pakistan.
29. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

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

Complementary protection assessment

31. 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

32. 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.

33. 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.

34. I have found above that the applicant does not face a real chance of harm for any reason now or in the reasonably foreseeable future. As the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons given above, I find that there is no real risk of the applicant suffering harm if he returns to Pakistan for the purposes of s.36(2)(aa).

Complementary protection: conclusion

35. 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.