



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08177

Date and time of decision: 12 May 2020 13:29:00
M Oakman, 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 Pakistani citizen. He arrived in Australia [in] March 2013 and lodged an application for a Safe Haven Enterprise visa (SHEV) (XE-790) on 9 May 2017. On 9 April 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 6 May 2020 the IAA received an email from the applicant, with a statement in response (statement) to the delegate's decision attached.
4. In his statement the applicant largely argues that the delegate has not considered many alternative information and news reports available on the genocide of Shias in Pakistan, has not considered the situation of the Shias in Pakistan, and has not done any justice to his case. To the extent that the statement takes issue with the delegate's findings, repeats evidence that was before the delegate, and contains argument, I do not consider this to constitute new information and I have had regard to it. In particular, I note that some of the incidents that he refers to in his statement, such as the missing Shias who are suspected of fighting in Syria for Iran backed groups, was referred to in the post-SHEV interview submissions that his legal representative provided to the delegate. The statement also refers to other reported incidents said to have recently occurred in Pakistan, that were not raised before the delegate and it is new information.
5. Contrary to the Practice Direction for Applicants, Representatives and Authorised Recipients (the practice direction) no copies, or extracts of the relevant part, of those new reported incidents were provided. The applicant provided the actual source of only one of the new reported incidents. That article is discussed further below. Those other new reported incidents appear to relate mainly to incidents in Quetta and/or involving Hazaras. As the applicant is not Hazara and, as discussed below, I am satisfied the applicant will be returning to the Parachinar area of the Kurram Agency, the relevance of those articles is not apparent. Where he has indicated a date for those new reported incidents, it appears to pre-date the delegate's decision. Given the doubtful relevance of the new reported incidents, the dates of the new reported incidents where indicated, the applicant's failure to state any sources for those new reported incidents, and that a range of other country information about conditions in Pakistan was before the delegate, I have decided under s.473FB(5) of the Act not to accept those new reported incidents.
6. In his statement the applicant also refers to a report about an incident in May 2020 in Lower Kurram. Unlike the other new reported incidents mentioned in his statement, the applicant provided the source as a link to an article in the Dawn, and I was able to identify and locate the specific article.¹ Given the applicant identified the source of the article, the article post-dates the delegate's decision and refers to incidents within the Kurram Agency, I have decided to exercise my discretion to obtain the Dawn news report and I am satisfied that there are exceptional circumstances to justify considering that new information.

¹ "At least 1 injured in explosion at imambargah in lower Kurram", Dawn, 5 May 2020, <https://www.dawn.com/news/1554708/at-least-1-injured-in-explosion-at-imambargah-in-lower-kurram>.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:

- If he were to return to Pakistan he fears he would be harmed by the Taliban or other Sunni militant groups. He fears he would be kidnapped and tortured and killed;
- One of his fears is that he would be identified by those militants who have connections with his father's business partner, "V", who he fears may have his identity documents. He believes V may wish to harm him because V supports and is connected to Sunni militant groups and has an ongoing disagreement with the applicant's family relating to the [business];
- He fears he would be targeted as a member of the Turi tribe because there is a perception that Turis have been oppressing Sunnis in the Kurram Agency;
- He fears he would be targeted because of his brother's work in opposing the Taliban;
- He fears he would be targeted because of his work to help the Shia community to build some roads through Lower Kurram;
- He fears he would be targeted for his work in helping his uncles in their medical dispensaries, and he was well known for doing that work, including helping with vaccinations. He fears that his work as a vaccinator could also place him at risk because amongst religious extremists there is a view that vaccination programs are set up by the CIA and Israel for their own interests, and that they are haram or against Islam. He also volunteered at [a] Blood bank; and
- His future risk in Pakistan (as set out in the executive summary to his post-SHEV interview submissions) includes the actual or imputed profile of Pashtun Shia Turi-Bangash from Parachinar. Pashtun Turi-Bangash Shias have historically been targeted for being: Shia religion; Turi ethnicity; active in armed opposition to Sunni extremist and militant groups; perceived as pro-US; and perceived as pro-Iran.

Factual findings

Receiving country

8. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Pakistan. I find that the applicant's receiving country is Pakistan. The applicant claims, and I accept, that he is a Pashtun Turi-Bangash and Shia Muslim.

Background

9. The applicant was born in [Village 1], a village near Parachinar, Upper Kurram, Pakistan, in [year] and lived there until he left Pakistan in 2013. His village is about [specified kms] from Parachinar city. He is unmarried and has no children. He is from a large family, with [number of siblings]. His parents and [siblings] live in [Village 1], and his other brother lives in Australia. He remains in contact with his family in Pakistan. He attended school from 1999 to 2011, completing [a specified year]. His employment in Pakistan is discussed below. He worked in Australia for about a year in [a workplace] until sometime in 2019. In his SHEV application he indicated he speaks Pashto and that he speaks, reads and writes Urdu.

Problems in Pakistan

10. In summary, as set out in his SHEV application, he was born in [Village 1], Upper Kurram, and grew up with parents and [siblings]. His family own land near the village and sell the crops that they grow in Parachinar. His family are all still living in the family home in the village. His maternal uncle, "S", and paternal uncle, "G", both work as medical practitioners. They both have medical dispensaries in the village which people come to when they cannot travel to the hospital in Parachinar. He gave an employment history of doing roadwork (2007); working in the [factory] [and] to transport the [product] to other parts of the Kurram Agency (2007 to 2013); working in G's medical dispensary (2006 to 2013); working in S's medical dispensary (2008 to 2013) and working on the family farm (September 2012 to March 2013).
11. His father owns [a] factory which is located in [Parachinar]. This business was shared with a Sunni from Mardan named V from 2006 to 2007 before the conflict started. They had met previously and became close and decided that they would make [a product] factory in Parachinar. V had contacts with mechanical engineers in other parts of Pakistan like Peshawar and Lahore and so would be able to arrange for people to come and maintain the [machines]. Due to these factors the business started off very successfully. V used to live in a room at the factory which had a kitchen and bathroom as his family were all in Mardan.
12. His father obtains the [materials] for the [product] from [Peshawar]. They used to distribute the [product throughout] Kurram Agency including as far as [Lower] Kurram Agency. There is another [factory] now but previously it was the only one. V from Mardan is still technically a partner but he has left Parachinar. It is very difficult to have him removed as a partner. In the past he was friends with the applicant's father and would travel to Mardan and Peshawar where his father would meet V's family. However, after the conflict started V's family became radicalized and supported the Sunni militants who were fighting the Shia tribes. The applicant used to work for the factory in the warmer seasons as it would be closed during the winter months. He helped his father with the business when needed.
13. A difficulty that the business faced was that when the machinery had operational issues there was not anyone in Parachinar who could help fix it, and an expert from Peshawar would have to come to fix it. Early on in the conflict V would organise people to come from Peshawar because his family were close by in Mardan. However, later on they could not trust V anymore.
14. His father and uncle wanted the applicant to work as a medical practitioner. They knew he would need to study a course in Peshawar to get qualified to do this. His father contacted V and asked if he could help the applicant enrol in a quality institution. At this time his father thought V could be trusted, even though this was a time when there were targeted killings of Shias in Peshawar. When the applicant moved to Peshawar he stayed in [a] Hotel. He was speaking to the manager of the hotel and told him that V was helping him, and that he was a Sunni from Mardan. The manager told him that if V or V's friends came to the [hotel] the manager himself should speak to them first. One day soon after this, friends of V came to the hotel, asked for the applicant and the manager spoke to them.
15. The manager told him that he should not go with those people because he sensed that they could not be trusted and he believed it was likely they were from a militant group like SSP. The applicant asked him why he thought this, and he said that he had spent a lot of time managing the hotel and the security and could tell who was a member of the Sunni militant groups. The manager also said that the car they were driving had stickers which showed they supported these groups. The manager said that it was also suspicious that V did not come to meet him himself. By that time V had all his documents including his Domicile Certificate, B Form, his

father's National ID Card and his school certificates because he had sent them to V before he came to Peshawar to enable V to submit the applicant's enrolment. He became very worried that V had all his documents which V could pass onto the militant groups and they could then easily identify him.

16. At this time a number of his brother's friends from Parachinar who were in Peshawar had been targeted by groups like the Taliban and Sipah Sahaba. His brother and his friends had been involved in working against the Taliban, and as a result the militants had targeted them in Peshawar. The applicant knew that V knew about his brother's activities because V said to his father that he had seen his brother in pictures showing he had been working against the Taliban, and V had been surprised because he thought their family were normal and did not do such things.
17. After the applicant spoke to his father about what had happened, his father called V and they had an argument, which resulted in the break down in their relationship, and V was not in touch with his father at all. The business papers are still under V's name as a partner but he has no actual involvement. His father told him that his life was more important than his education and he had to come back to [Village 1]. His father said that if things improved he could go back and complete the course. He was very fearful that his documents may have been passed around to the militant groups in Peshawar so he agreed that he needed to go back to his village. This was around late 2011 or early 2012.
18. While he was at school and especially after he finished [a specified year] he started working with his uncles at their medical dispensaries. His paternal uncle G was well known because he had worked for many years as a [vaccinator] in Lower Kurram [Agency]. He had worked for a government funded dispensary [and] had also opened his own private dispensary in [Village 1]. His other maternal uncle S was younger and had more recently opened a dispensary.
19. One activity he helped them with related to the [vaccinations]. These vaccination programs would be carried out at certain times every year. His uncles were given the responsibility from the [Hospital] to organize the vaccinations and train others to help with the process. There were lady health workers who were already trained but because they could not travel on their own the applicant would go with them. He had also trained with his uncle G and was experienced so he would go and assist. If the vaccination was for an infant the lady health worker would go inside. However often if it was being carried out in a village they would arrange for all the kids to meet in communal area such as at a small mosque. His responsibility was mainly to document who had been vaccinated, and how many kids had been done in each family. They had to cover all the villages in the area near [Village 1]. This included Sunni [villages]. These villages had the vaccination programs carried out but after the conflict started they did not go there because it was considered too dangerous. He had been with his uncle G before the conflict when he was still at school. When he came back to the village from Peshawar he helped his uncles for a lot of his time because many people needed medical treatment at this time due to the conflict and could not travel to the hospital in Parachinar and also because the hospital was very busy. He helped in lots of ways [details deleted]. He was well known as G's nephew from this work.
20. He was also a volunteer with [a] Blood Bank. Through his work with his uncles he knew which people were from different blood groups and would ask them to give blood if we needed their particular blood group, both for the blood bank and from the blood bank for the dispensary. He continued doing this work with his uncles until he left Pakistan. He wanted to get trained as a medical technician so that he could be properly qualified and work in this area like his uncles but because of the conflict this was not possible. It was decided he had to leave Pakistan. His father

made all the arrangements for him leaving Pakistan and coming to Australia. He sent the applicant's documents to the agent and when everything was ready he travelled to Peshawar.

21. Soon after the conflict started the applicant did some work to help the Shia community build roads through Lower Kurram. The reason why the community was building these roads was so that the Shia tribal militias could travel to defend against the Taliban encroaching on the Shia villages in Lower Kurram like Alizal. This was very important for strategic reasons. This was during winter and there was not much other work to be done so for extra pocket money the applicant helped with this work for around three weeks. On one particular day the Taliban left some letters with the contract workers on the road threatening to stop doing the work on the road. He did not see the letters but heard speculation about it. The contract manager said that because it was war it was no surprise that such letters had been sent, but decided that work should continue. A few days later he had taken the day off to take his mother to the hospital and on that same day the Taliban killed four workers on the road. He did not go back to work after this.
22. His brother had been involved in opposing the Taliban and their activities in the Kurram Agency. Before April 2007 the Taliban had been present in Parachinar in secret and only a few people in the community were openly opposing this. His brother and his friends from college were actively involved in this. They were doing what they could to motivate the rest of the community and informing them about the presence of the Taliban. His brother and friends would meet every day or two and pictures were taken of them. These pictures were sent around the community and it became known by the Taliban. Some of his brother's friends were then killed in Parachinar and Peshawar as revenge for working against the Taliban. This happened after the conflict started, when members of the Sunni community in Parachinar fled the city and passed on the photos of his brother and his friends in other parts of Khyber Paktunkhwa province. His brother was very fearful about the risk he could face in cities outside Kurram Agency because of this and so he left Pakistan and came to Australia by boat before the applicant. His brother was granted refugee status in Australia.
23. The delegate rejected some of the applicant's claims. I also have concerns about the credibility of the applicant. In particular, the applicant has not been consistent about his main reason(s) for leaving Pakistan to come to Australia. In his entry interview with the Department (May 2013), as indicated in the written record of that interview, he said he was [doing certain work], for a named company that he worked with for a week in February 2013. On a day that he was not at work because he was taking his mother to the hospital, the Taliban told them to stop the road work and four dead bodies was taken to the mosque, which he learnt from a call from his friend. Then a friend of his father's came and told his father that there was a letter with all the details in it including his son's name; his father said it was dangerous for the applicant and also for his brother so his family sent them to Australia. He said it happened two or three days before he left Pakistan. However, in his SHEV application he indicated in his employment history that he did the road work in 2007. Additionally, in the statement of claim provided with the SHEV application he mentioned the Taliban made threats and killed some people because of the road work, again on a day when he was absent because he was taking his mother to the hospital, but indicated it was at the start of the conflict in the area (making it around 2007); and appeared to suggest later in that statement (at paragraph 27) that he left Pakistan because he wanted to be properly qualified to work with his uncles but was unable to study to be a medical technician in Pakistan. At his SHEV interview he was asked the most significant reason for him to leave Pakistan, and he said he feared the Taliban because he did activities that they did not like, mentioning his family's [factory], his working with his uncles and a document. During the SHEV interview he did speak about the Taliban threats in relation to the road work he says he did, and confirmed that although he could not remember the exact year it was when the Taliban first came into the area which was just before the conflict started. Towards the end of the SHEV

interview the delegate raised with the applicant that he had said in his entry interview that the road work incidents with the Taliban occurred two or three days before he left Pakistan, which would have been in 2013; that was why his father decided to send him and his brother to Australia; but his brother had actually arrived in Australia in 2011. At the SHEV interview he said, that maybe it was a mistake as his brother came here when V called his father and said he had seen a photo of the brother acting against the Taliban and later his father sent him. In his post-SHEV interview submissions his response to that issue was his father told him to 'leave the country like his brother did'. Neither explanation sheds any light on why he suggested the road work incident was in 2013 in his entry interview and towards the end of the SHEV interview, but suggested it was in about 2007 in his SHEV application and earlier in his SHEV interview. The shifts in the applicant's evidence about what triggered his leaving Pakistan for Australia, including the 2007 and 2013 dates for the purported road work, reflect poorly on the applicant's overall credibility.

24. There are other issues with the applicant's evidence. The applicant claimed for the first time at the SHEV interview that his uncles received, and continue to receive, threats from the Taliban, and they were attacked with stones in one of the Sunni villages, because of their work including the vaccinations. I do not consider it credible that he failed to mention being attacked with stones or any threats when he provided a detailed account of his working for his uncles in his SHEV application statement of claim. When the delegate pointed this out to the applicant at the SHEV interview he said he didn't mention it because he put everything in short and was going to explain at the interview. The delegate suggested his statement was not short and he had only just added the threats. To which the applicant replied that he had mentioned other incidents like the family ones so he just kept it short. These responses were unconvincing. Additionally, I do not consider it credible that, if it was true that such threats were made, the Taliban have never attempted to harm the applicant's uncles who continue to operate their medical dispensaries, except by once throwing stones. It is also not credible that the applicant does not appear to have mentioned working for his uncles, or in any medical dispensary, in the work history shown in the written record of his entry interview.
25. There are also a number of discrepancies in his evidence between his SHEV application statement of claim and his SHEV interview in relation to the [hotel] incident and surrounding events. He said that when the men came for him in the hotel they spoke to the manager who came and saw him and warned him not to go with them (SHEV application) or that he actually spoke to the men before the manager came and took him aside and told him of his suspicions and warned him not to go with them (SHEV interview). He said the manager saw a sticker on the men's car showing they supported militant groups like the SSP (SHEV application) or that the applicant also saw the sticker on the car showing they supported the Taliban, but when asked what the sticker showed said it was too far away for him to see (SHEV interview). He said that his father spoke to V afterwards on the phone and this led to the breakdown of their relationship and they have not been in touch at all (SHEV application) or that his father spoke to V afterwards on the phone and accused him of trying to kidnap the applicant which V accepted (SHEV interview). He said that he was worried, because V had previously been sent his identity documents, that they would be passed around to militants in Peshawar (SHEV application) or that V attempted to kidnap him again, because V told his father that he had the applicant's documents and will give them to the Taliban and if we don't get him today we will get him later (SHEV interview). Taken together, these changes in his evidence and his failure to mention some of these claims in his SHEV application (V admitting to his father that he tried to kidnap the applicant and that V tried or threatened to kidnap him again), also reflect poorly on the credibility of his claims. Additionally, I do not consider it credible that the applicant would disclose his business with V to, or place such reliance on the concerns of, a person who apparently just happened to be the manager when he was staying at the hotel. Nor do I consider

it credible that, if his brother and his brother's friends were protesting and taking action against the Taliban from prior to April 2007, that the only time the applicant suggests some of his brother's friends were targeted and killed was, coincidentally, in Peshawar when the applicant was also there.

26. In assessing the applicant's evidence I have taken into account the difficulties often faced by applicants for protection, particularly those for whom some period has passed since they departed their country of origin, and that the applicant is suffering from anxiety and depression (discussed below). However, the issues identified above go beyond minor errors and discrepancies that could be attributed to factors such as misunderstandings in interpreted material, cultural communication issues, and recall problems and a lack of cohesive narration due to trauma, anxiety and depression, or the passage of time. Instead, those issues show significant and substantial credibility problems in the applicant's evidence. I do not consider the applicant to be either reliable or credible as a witness. I am satisfied he has exaggerated and fabricated parts of his evidence in order to boost his claim to protection.
27. I am not satisfied on the credible evidence before me that the applicant assisted his uncle(s) with vaccinations, or that he was stoned or threatened by the Taliban because of any help he was giving his uncle(s); that his uncles were threatened and continue to be threatened by the Taliban because of their medical dispensaries, including vaccination work; that some men tried to kidnap the applicant in a hotel in Peshawar in late 2011/early 2012; that V arranged or threatened to arrange the kidnapping of the applicant and V and his father had a falling out as a result; that V is a supporter of and connected to the Taliban; that friends of his brother were killed in Peshawar or that his brother came to Australia for the reasons claimed; and that the applicant worked on a road either in about 2007 or 2013 and was threatened by, or named in written threats from, the Taliban as a result. Given the issues identified with his evidence, and although I am mindful on the limitations with entry interviews, I prefer and accept the applicant's work history as shown in the written record of that interview over the work history set out in his SHEV application to the extent of any inconsistencies. I am prepared to accept, as they are part of the applicant's family, that he may on occasion have helped out his uncles in the medical dispensaries, but I am not satisfied that he was employed in such work, or assisted for any significant periods of time, as claimed in his SHEV application and at the SHEV interview. It follows from this finding that I also do not accept that the applicant intended to be trained as a medical technician, that he has lots of experience and expertise in that area or that he would look for work in that area if returned to Pakistan.
28. The applicant provided the Department with a report from a clinical psychologist dated 16 November 2019. The report states he was referred by his GP with a diagnosis of anxiety and depression and a request for psychological interventions to alleviate the applicant's symptoms. The writer's opinion, after several clinical consultations and several selected sub-tests, is that the applicant is in an entrenched state of depression and anxiety; he is a person who requires a simple and consistent path in life; there are no enduring psychological factors which would predict a negative outcome if he were provided with a stable and supported life opportunity; and a situation of uncertainty on the other hand would be significantly injurious from a clinical psychological perspective. Other than the mention of undertaking several clinical consultations, the report does not refer to the applicant receiving any medical or psychological treatment, including medication, at the time. Nor does the writer indicate what, if any, ongoing treatment may be required by the applicant. Based on that report, I accept that the applicant has symptoms of anxiety and depression and that he may seek to access some form of further treatment, if he is returned to Pakistan.

29. The applicant's parents, and [siblings], continue to live in [Village 1], a village in the Parachinar area. As his family are living there, and it is the area where the applicant previously lived throughout his life in Pakistan, I am satisfied that the Parachinar area of Pakistan is the area to which he will return. The applicant indicated that his family own farm land near their village and sell the crops they grow in Parachinar and that, although seasonal, his father still operates the [factory] in Parachinar. Given his family's situation in Pakistan, that he previously worked in the [business] and on the family land, and he was supported by his family at times when he lived in Pakistan, together with him having stayed in contact with his family in Pakistan while he has been in Australia, I am satisfied that his family will be able to provide the applicant with basic support, if needed, now and for the reasonably foreseeable future, if he returns to Pakistan.

Asylum Seeker

30. The applicant claims, and I accept, that he left Pakistan in March 2013 to travel by plane, using his own passport, via [two countries], to [Country 1]. He subsequently left [Country 1] to travel to Australia in a boat organised by smugglers. I find that, if he were to return to Pakistan, he may be identified as a returned asylum seeker. The applicant's passport was due to expire in 2017.

Refugee assessment

31. 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

32. 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.

33. Pashtuns traditionally live among their own tribes and sub-tribes in Khyber Pakhtunkhwa province and the former Federally Administered Tribal Areas (FATA), which includes Kurram Agency where Parachinar, a Shia majority city, is located. Pashtuns are identified by their use of the Pashto language and comprise an estimated 15.4 per cent of the population of Pakistan,

making them the second-largest ethnic group in the country². The Bangash tribe are Ghurgusht Pathans, descended from a legendary Pashtun ancestor. All the Bangash of Upper Kurram are Shia. The Bangash clans living in Lower Kurram and Kohat are all Sunnis, while other Bangash clans are Shia, Sunni or a mix of both³. Shias comprise around 40 per cent of the population of Kurram. Upper Kurram is estimated to be around 80 per cent Shia, while Central and Lower Kurram is majority Sunni. NICs do not display the holder's religion and although Pakistani passports do display the holder's religion they do not distinguish between Sunni and Shia Muslims. However, some Shias may be identifiable by common Shia names. Similarly, ethnic and tribal names can reveal a person's tribal or sectarian affiliation, as can their address if they are from a predominantly Shia area⁴.

34. Kurram Agency has a long history of sectarian and tribal tension and violence, to some extent stemming from competition between Shias and Sunnis over resources. The Turi-Bangash occupy the most fertile area of the district⁵. There was another outbreak of violence in Kurram in 2007. Between 2007 and 2011 Kurram was the scene of frequent violence, including a long running blockade by the Taliban of the main supply route to Parachinar – the Tall Road between Peshawar and Parachinar. Other sectarian attacks at that time included the use of hand grenades, rockets, mortars and bomb blasts. During this period at least 1,500 people were killed, and the violence in the area continued beyond 2011.⁶
35. Since 2014 however, the Pakistan armed forces have launched a number of major security operations, including Operation Zarb-e-Azb, Radd-ul-Fasaad, and the National Action Plan (NAP) which have had a notable impact on the security situation in the region. In 2018, the Government announced its second National Security Policy, and was reportedly preparing NAP2. These operations have disrupted the activities of militant groups, including the Taliban, and resulted in a significant decrease in the number and severity of attacks on Turis. Turis report significantly fewer road attacks in 2018. Militants have been forced into the mountains, which has restored confidence in the community for individuals (but not large groups) to use the Tall-Parachinar Road between dawn and dusk. There are also tighter Afghanistan-Pakistan border controls and the military has implemented a twenty to thirty 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. While these initiatives have improved the security situation in Kurram District they have also restricted freedom of movement and limited the community's access to services and trade opportunities. Other country reports also indicate a similar reduction over 2017 and 2018. For example, country information identifies eight attacks on Shias in 2018 in general, but only three terrorist attacks in the Kurram Agency in 2018, one attack against civilians, that killed up to seven and injured one, and two attacks against security forces.⁷ While noting the success of the counter-terrorism operations, the Department of Foreign Affairs and Trade (DFAT) says there appears to be an increase in societal intolerance and religious extremism. DFAT notes a trend of

² Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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

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

⁵ Marian Abou Zahab, "'It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402.

⁶ Marian Abou Zahab, "'It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402; and "Pakistan: Sectarian Savagery – Analysis", Eurasia Review, 29 November 2018, CXBB8A1DA40015.

⁷ Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2018", 6 January 2019, 20190121110758; "Pakistan: Sectarian Savagery – Analysis", Eurasia Review, 29 November 2018, CXBB8A1DA40015; "Six of a family martyred in Kurram roadside blast", The News International (Pakistan), 31 January 2018, CXBB8A1DA25475; "Shias killed in Pakistan since 2001 to 22 April 2018", South Asia Terrorism Portal, 17 June 2018, CIS7B839419943; and "Terror incidents continued to decline in 2018" Express Tribune (Pakistan), 1 January 2019, 20190121150833.

decreased reports of attacks against Turis during 2018, and expected it to continue to reduce for 2019, though noting that attacks against Turis can, and may, still occur. However, DFAT does not identify any large scale or frequent attacks in the Kurram Agency beyond 2017. Overall, DFAT assesses in its 2019 report that in the general security situation sporadic large-scale terrorist attacks are likely to continue to occur, against a background (at a reduced tempo) of ongoing small-scale attacks; and Turis in Kurram Agency still face a moderate risk of sectarian violence from militant groups because of their Shia faith.⁸ Since that assessment by DFAT, more recent country information notes the continuing reduction in security incidents in the Kurram Agency over 2019. For example, the European Asylum Support Office (EASO) notes there were no terrorist attacks counted in Kurram in the first six months of 2019 and noted there was a significant improvement in the security situation in Kurram during 2018, and the delegate did not identify any reports of Shias being targeted in Kurram in 2019.⁹

36. The applicant provided a number of letters of support and other country information in his post-SHEV interview submissions. The majority of that material is expressed in very general terms about ongoing problems in Parachinar or refers to incidents outside Kurram Agency. The Daily Jhang 22 October 2019 news report provided in those submissions indicates some Sunni militants were in the Parachinar area but, more significantly, they were detained and handed over to the authorities by local Shias. The Dawn 16 October 2019 report provided in those submissions refers to a double murder and protests in Kurram. However, the report does not suggest it involved Sunni militants, but rather that it appeared to be a localised reaction to the identification of two men accused of involvement kidnapping local girls and some subsequent unrest that was dealt with by the authorities. The Dawn article provided by the applicant to the IAA concerns a bomb going off in an imambargah in Shoorki in Lower Kurram, on 5 May 2020, which injured the caretaker. The source of the bomb is not identified. The article also refers to a grenade attack in January 2020 that injured nine at a police check post in Peshawar and the defusing of an IED in Dabar the Sunday before the imambargah bombing. These incidents are unfortunate, but they are not inconsistent with the overall reduction in large scale or frequent attacks in the Kurram Agency since 2017 or the ongoing improvement in the general security situation.
37. The applicant comes from the Parachinar area of Pakistan and I accept that area has a history of general and sectarian violence, including both before and after he left Pakistan. The applicant's profile, on my findings, is not one of any specific interest to, or that he was previously threatened by, the Taliban or other Sunni militant groups. The country information discussed above indicates that since 2014 the Pakistani Government has launched a number of military and civil measures aimed at improving security in Kurram Agency, pushing the Taliban and other Sunni extremists from the area, and promoting sectarian relations. I accept that these actions have introduced some restrictions on those living in Kurram Agency, including movement restrictions and limiting access to services and trade opportunities, although the applicant has not identified any adverse impacts on his immediate family from such restrictions since he left Pakistan.
38. As discussed above, I am satisfied that the applicant will be returning to the Parachinar area in the Kurram Agency. It is a Shia majority area and his parents and siblings live in that area, in the same family home. The applicant also raised concerns in the post-SHEV interview submissions that Turi-Bangash Shias in Parachinar are perceived as pro-US and pro-Iran, which significantly increases their profile with various militant groups, and that Shias have been kidnapped for suspected links to pro-Iranian forces in Syria. Even accepting that was the case, the pro-US, pro-

⁸ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁹ EASO, "Pakistan Security Situation", 30 October 2019, 20191031160110; and Protection visa decision record, 9 April 2020, page 12.

Iran perceptions would apply to all Turi-Bangash Shias in the area and not just the applicant and/or his family who do not otherwise appear to have any personal connection to the USA, Iran or Syria. The applicant's post-SHEV interview submissions also identified a range of global and internal factors that it was argued would impact on the risk of harm that the applicant faces as a Pashtun Turi-Bangash Shia. I consider the argument about the possible impact of such factors to be entirely speculative. Having considered the country information and the applicant's circumstances, I am not satisfied there is a real chance he will suffer any harm from the Taliban or other Sunni militants or anyone else now or in the reasonably foreseeable future if he were to return to Kurram Agency. I accept that some incidents may go unreported or have been misclassified. DFAT acknowledges there are restrictions on journalists accessing and obtaining information about the former FATA, but identifies a risk that some incidents, mainly those involving low level officials will go unreported.¹⁰ However, these limitations do not amount to a media blackout as suggested in the applicant's post-SHEV interview submissions. There are a number of reports before me with detailed statistical analysis of incidents in Pakistan and in the applicant's region, and I am confident it gives a reliable picture of the trends of violence. Overall, the clear weight of the country information shows that in the seven years since he was last there, the security and sectarian situation in the Kurram Agency, and in the Parachinar area, has improved substantially. The applicant has not otherwise claimed that his parents and brothers who live in his village have suffered any adverse treatment from the Taliban, other militants or anyone else, including while pursuing their Shia faith, since he left Pakistan and, on my findings, his uncles who live in the village and operate medical dispensaries there, have not been subject to threats by the Taliban. Having regard to the nature and frequency of militant and sectarian incidents in Kurram Agency, I am not satisfied that overall they rise to the level of a real chance.

39. He does not claim that his family in Pakistan has suffered any harassment, discrimination or other harm as Turi-Bangash Shias since he left Pakistan. The applicant may take some time to re-establish himself in Parachinar, and I accept this process will also be impacted by the restrictions in place because of the military operations and red zones around Parachinar. However, he is a relatively young man who has shown he is generally resilient and resourceful by adapting to life in Australia while separated from his family. He has completed [a specified year] at school. He speaks, reads and writes Urdu and speaks Pashto. He has employment experience, including on the family farm land and in the [business], in Pakistan as well as for a time in Australia. While the applicant re-establishes himself in Parachinar he will face an uncertain period of unemployment. However, as discussed above, I am satisfied that his family will be able to provide him with basic support if required. Given those factors, I am not satisfied that any period of unemployment he may experience while he re-establishes himself in the Parachinar area, would threaten his capacity to subsist or otherwise amounts to harm to the applicant.

40. I accept that the applicant may seek some further treatment for his depression and anxiety, if returned to Pakistan. DFAT indicates basic health care in Pakistan is free, but limited capacity, lack of funding, corruption, slow economic growth and overarching governance challenges combine to reduce quality and accessibility. Wealthier Pakistanis have access to better quality private health care. Rural areas have poorer access to health care services, compounded by a lack of infrastructure and transport facilities. Because of military operations in and around Parachinar, access to some services can also be restricted. DFAT does not suggest that the security restrictions in place around Parachinar are discriminatory in either design or practice, or that people in Pakistan face discrimination in obtaining medical services (with the exception of Ahmadis).¹¹ The information available to me does not suggest that if he seeks further

¹⁰ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹¹ Ibid.

treatment for his depression and anxiety, the applicant would be denied any medical care and treatment as a result of any systematic and discriminatory conduct, including for any of the reasons in s.5J(1)(a) or otherwise.

41. I am not satisfied that there is a real chance of harm to the applicant in Kurram due to the general security and sectarian situation, or for any other reason, as a Pashtun Turi-Bangash Shia from the Parachinar area now or in the foreseeable future.
42. Country information indicates Pakistani citizens require a valid passport to enter or exit Pakistan and that attempting to enter or depart Pakistan without valid documentation or on fraudulent documentation is a crime. However, country information also notes that in practice, returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are generally processed like any other citizen returning to Pakistan. The government issues 'genuine returnees' with temporary documents when they arrive. A genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered destination countries. Those who return involuntarily or who travel on emergency travel documents are likely to attract attention from the authorities upon arrival. The authorities will interview failed returnees and release them if their exit was deemed to be legal, but may detain those deemed to have departed illegally. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return, irrespective of whether they departed legally or not. People returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are usually released within a couple of hours. Returnees are typically able to reintegrate into Pakistani community without repercussions arising from their migration attempt and do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country.¹²
43. The applicant left Pakistan legally using his own passport. He has not claimed he is wanted for any criminal offences in Pakistan or that he has committed any crimes while in Australia. Based on the country information, I am satisfied that if applicant returns voluntarily, he will be allowed to enter the country without questioning. If he returns involuntarily, I am satisfied that he will be interviewed and will be found to have departed Pakistan legally and that he is not wanted in relation to any criminal offences, he will be released within a couple of hours. There is no suggestion by DFAT that returnees are subject to any mistreatment during any such questioning at the airport. As discussed above, country information indicates travel on the Tall Road is generally safe during daylight hours. Nor does country information suggest that roads to and from international airports are at any heightened risk. As such, I am not satisfied that there is more than a remote chance of the applicant suffering harm while travelling from an international airport in Pakistan to his home near Parachinar. The country information does not suggest returnees from the west, including those who have spent an extended period abroad in countries such as Australia, are targeted by the Taliban or other militants and, in any event, given the improved security situation in Kurram Agency I am not satisfied that there is a real chance of the applicant suffering harm on that basis.
44. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker from Australia, and for having spent seven years in Australia, now or in the reasonably foreseeable future.

¹² Ibid.

45. I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

46. 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

47. 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

48. 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.

49. 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.

50. Based on country information discussed above I accept that the applicant may face some difficulties if he seeks access to medical services in Pakistan. However, I am satisfied based on the same country information that any difficulties the applicant may have in accessing any medical treatment and care does not amount to significant harm as it is due to a lack of capacity and resourcing, and ongoing security operations, rather than an intentional infliction by the Pakistani government, or anyone else, to cause extreme humiliation or mental or physical pain or suffering, severe pain or suffering and it does not amount to torture or an arbitrary deprivation of life or the death penalty. I am not satisfied the applicant faces discriminatory treatment due to difficulties in accessing medical treatment and care that amount to significant harm as defined in ss.36(2A) and 5 of the Act.

51. I accept that if he is returned involuntarily to Pakistan he may be questioned for a few hours by authorities at the airport before being released. The country information from DFAT does not suggest that returnees are subject to any mistreatment during their questioning at the airport. Again, I am not satisfied that in this process there is an intention to cause pain and suffering that can be reasonably regarded as cruel or inhuman in nature, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life. I am not satisfied on the evidence that if he is returned to Pakistan, and he is questioned at the airport, the applicant would be at real risk of being subjected to significant harm.

52. I have found that the applicant does not otherwise face a real chance of harm in relation to his claims or profile. As 'real risk' and 'real chance' involve the application of the same standard,¹³ he also does not face a real risk of any harm in Pakistan. I am not satisfied that the applicant faces a real risk of significant harm in Pakistan.

Complementary protection: conclusion

53. 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.

¹³ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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