



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08196

Date and time of decision: 14 May 2020 16:15:00
J McLeod, 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 Shi'a, Turi Pashtun and Pakistani national from [Location 1] in the Parachinar area of Pakistan's Kurram district.
2. He arrived in Australia [in] June 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) on 21 November 2016. On 14 April 2020 a delegate of the Minister for Immigration refused the grant of visa, finding that the applicant would not face a real chance of persecution or real risk of significant harm in his area in Pakistan.

Information before the IAA

3. I have had regard to the material ('the review material') given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. I have obtained new information about an explosion at an Imambargah, a Shi'a place of worship in Shoorki, in the Lower Kurram tehsil of Kurram District on 5 May 2020.¹ This information was not available to the delegate when she made her decision. It is a recent development which is directly relevant to the applicant's claims to fear harm as a Shi'a from Kurram district. I am satisfied there are exceptional circumstances to justify considering this information.
5. On 6 May 2020 the IAA received a submission from the applicant. In part, the submission reiterates claims and information that were before the delegate regarding the strategic significance of his area and the history of the Taliban and other militants' presence and fighting there. I am satisfied that this information was either referred to by the applicant during the SHEV process or arose on the other material before the delegate. I do not consider these parts of the submission to be 'new information' for the purpose of s.473DC(1).
6. However the submission also refers to new information being four security incidents involving: Sunnis from Sadda recently blocking the road, burning Shi'a cars and torturing the drivers; a recent dispute between Sunni and Shi'a tribes over land in Balish Khel and Boshara; the capture of 30 terrorists who crossed security checkpoints and attempted to attack a school on 30 October 2019; and an explosion at a Shi'a mosque and Imambargah in the Shorko area on 6 May 2020. The applicant has neither identified the source of the information relating to these incidents, or provided copies or relevant extracts of relevant reports relating to such and according to the relevant Practice Direction issued under s.473FB this is not acceptable.² Nor has there been any engagement with either limb of s.473DD(b).
7. While the applicant had been advised of the relevant requirements in the IAA's letter (and associated attachments) of 17 April 2020, after receiving his submission of 6 May 2020, the IAA nevertheless wrote to the applicant on 8 May 2020 inviting him to provide this information by 12 May 2020. It also explained that as the information relating to the incidents appeared to be new information the IAA could only consider it in exceptional circumstances and that an explanation addressing the matters of s.473DD(b) should be provided. The applicant was advised that the IAA

1 Dawn (Pakistan), "At least 1 injured in explosion at Imambargah in Lower Kurram", 5 May 2020, 20200506121914; Peshawar Today, "Explosion at Imambargah injures one in Lower Kurram", 6 May 2020; Pakistan Observer, "One injured in Lower Kurram blast", 6 May 2020

2 Practice Direction for Applicants, Representatives and Authorised Recipients given by the Administrative Appeals Tribunal President under s.473FB of the Act, executed on 17 December 2018

may make a decision at any time after 12 May 2020 without taking further action to get the information. It is now 14 May 2020 and I am satisfied he has had an opportunity to provide the information. For these reasons I have decided not to accept this new information pursuant to ss.473DC(2) and 473FB(5) of the Act. Further, even if I were to accept it, noting it relates to what appears to be general country information and is either undated, refers to an incident in October 2019 several months before the decision, and an incident regarding which I have already obtained information on³, I am not satisfied the new information would meet the requirements of s.473DD(b) and (a).

Applicant's claims for protection

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

- He is a Pakistan citizen, Shi'a Muslim and ethnic Pashtun of the Turi tribe who was born and lived his whole life in [Location 1], in the Parachinar area of Pakistan's Kurram District⁴ in Khyber Pakhtunkhwa Province (KPP).
- He left Pakistan and fears returning there because the Taliban and other militants have been issuing threats and carrying out target killings and bomb blasts against Shi'a Turis. He couldn't work or go out with any hope of returning home. His cousin was killed in a blast in December 2012.
- He fears the Taliban or other militant groups such as Lashkar-e Jhangvi, the Haqqani Network and Sepah-e Sahaba will kidnap and/or kill him from the airport, his village or anywhere in Pakistan, due to his being a Shi'a Turi from Parachinar, and because he has been in Australia. The Taliban has issued a Fatwa obligating people to kill Shi'as from Parachinar.
- He also fears the Pakistani authorities and other villagers will target him for having lived in Australia, a non-Muslim country and will blame him for leaving to seek asylum.

Refugee assessment

9. 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

10. 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

³ I am satisfied the applicant's reference to an explosion in Shorki on 6 May 2020 is in fact the incident in Shoorki, in the Lower Kurram tehsil of Kurram District on 5 May 2020 discussed above.

⁴ 'Kurram District' was formerly known as 'Kurram Agency' and was one of the seven administrative tribal districts of the Federally Administered Tribal Area (FATA) before it was merged into the Khyber Pakhtunkhwa province (KPP) in May 2018.

- 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.

11. The applicant's SHEV interview, initially scheduled for 16 April 2019 was postponed after the applicant presented a medical certificate certifying he would be unfit to participate in an interview until sometime after 9 July 2019 for reasons of his worsening depression "*and possible PTSD*"⁵. He later participated in such interview, in the presence of his representative, on 3 March 2020. In this interview the delegate asked the applicant if he felt there was anything relating to his health which might affect the interview and he responded that in the past he suffered from mental disturbance and a stomach problem but he is okay now. He confirmed he was okay to proceed with the interview. Throughout the interview the applicant responded accordingly to the delegate's questioning. Then, after conferring with his representative during the 'natural justice break', the applicant presented a copy of his mental health treatment plan from his General Practitioner (GP) dated 1 March 2020 and a referral letter from this GP of the same date referring the applicant to a counsellor for treatment for his depression and anxiety, which the documentation indicates was first diagnosed in 2019. The documentation also lists the applicant's medical history and various medications for his mental health and other conditions. The applicant stated he had been in a bad situation in Pakistan, in an area which was unstable with fighting and he faced a lot of issues. He said he has been away from his parents for a long time and his mother is missing him.
12. As noted above, the delegate questioned the applicant about his mental state at the beginning of the SHEV interview and he confirmed he was okay at the time, and okay to participate in the interview. He was also accompanied by his legal representative who had prepared his written statement of claims and made an oral submission on his behalf before the interview's closing. I note no concerns were raised by the applicant or his representative about his ability to participate in the interview, or to engage with the process thereafter. Nor has any medical evidence been provided to suggest he was unable to participate in the SHEV process from mid July 2019 onwards. I am satisfied the applicant was able, with the assistance of his representative, to participate in the SHEV process and present his claims and evidence.
13. The applicant claims to be a Shi'a, Turi Pashtun who was born and lived his whole life in [Location 1], Parachinar in the Parachinar area in Pakistan, where his family still reside.
14. The information before me from sources including the Australian Department of Foreign Affairs and Trade (DFAT)⁶ indicates that around 40% of the approximately 500,000 people in Kurram District are Shi'a Muslims, and that the applicant's Upper Kurram tehsil is predominantly (80%) Shi'a and mostly Pashtuns from the exclusively Shi'a Turi tribe. As the applicant claims, the Turi are identifiable from their Pashto language, accents, tribal names and Kurram origins. Throughout the immigration process the applicant has given an adequately consistent, plausible and convincing narrative relevant to his identity, background and area and provided documentary

5 Post-Traumatic Stress Disorder

6 Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

evidence of such. He has utilised the services of Pashto interpreters and provided plausible explanations for the anomalies in departmental records of his name and date of birth. The record of financial transactions before me raises no concerns as to the applicant's claims regarding his family members and their localities. I accept the applicant's nationality, identity, ethno-religious profile and background is as claimed. I find that Pakistan is the applicant's receiving country for the purpose of this review. I am satisfied the applicant's family reside in [Location 1], Parachinar and that this is the place to which he would return.

15. Country information from a range of sources included in the review material⁷ supports the applicant's claims about there being longstanding sectarian conflict and a presence of extremist groups in the applicant's area. Kurram is strategically important as a thoroughfare to Afghanistan, the Taliban's access to which, Shi'a tribes of Upper Kurram have attempted to block. From 2007 until after the applicant's departure large scale violence was directed against Shi'as over their faith and resistance to the Taliban and other Sunni militants' presence and strategic intentions. There was a high incidence of active ground fighting and bombings, attacks on places of worship, targeted abductions and killings including beheadings, particularly of Turis and other Shi'as travelling on roads in the area, particularly the Tall-Parachinar road linking Parachinar to Peshawar.
16. Since his arrival in Australia the applicant has consistently spoken about his fear of being targeted for being Shi'a and about the death of his cousin in a bomb blast in 2012. In the SHEV interview he stated his cousin was killed in an explosion in a bazaar in Parachinar city. He also mentioned his father had been required to do some defence training and on occasion arm himself and defend a particular position in the village or nearby villages when the Taliban was trying to attack, most recently during fighting in 2009. The applicant spoke in a forthright manner about these things and I consider they are also plausible when considered with country information.
17. The applicant confirmed during the SHEV interview that he had never trained in weapons or engaged in any militant activities in Pakistan. There is nothing to indicate the applicant's father performed any specific role beyond performing these defensive duties, which I accept many Shi'a tribesmen would have done at the time, or that he was (and is currently) personally known to the Taliban or any other militias. Nor is there information to suggest the applicant's cousin was personally known to the Taliban or any militias or that he was specifically targeted in the explosion in the bazaar. And while I note his brother went to live in [Country 1] from around 2014 – 2016/17 due, according to the applicant, to the danger in Parachinar, nor does the evidence suggest his brother was being personally targeted. The applicant has not indicated that he or any member of his family have been personally known to, or had any recent interactions with the Taliban or any militias. On the evidence, I find that like other incidents of its kind around this time, the attacks the applicant's father was required to defend against, and the explosion which killed the applicant's cousin were sectarian in nature, targeting Shi'as in and around Parachinar at that time, and that the danger the applicant's brother sought to avoid by going to [Country 1], like the applicant in coming to Australia, arose from sectarian targeting and general insecurity. There is nothing to indicate that the applicant or any members of his family were ever sought by any militant groups because they were personally of interest to them, on their own profile, or for their connections to other family members. I am not satisfied the applicant was ever personally

7 Mariam Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan" in "The Dynamics of Sunni-Shi'a Relationships: Doctrine, transnationalism, intellectuals and the media", 2013, CIS29402; New America Foundation, "The Battle for Pakistan: Militancy and Conflict in Kurram", 1 April 2010, CIS18543; European Asylum Support Service (EASO), "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016; CIS38A80121710; EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 16 October 2018, CIS7B8394110560; EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 30 October 2019, 20191031160110.

threatened or targeted, or that he would be personally sought by or of any interest to, the Taliban or any other militant groups on his return.

18. Nevertheless, given these past incidents, and the volatility of the security situation in and around [Town 1] when the applicant left Pakistan, it is understandable that he fears returning. However the country information before me indicates that the security situation has markedly improved over the last several years and there is not a real chance of his being harmed now or in the reasonably foreseeable future.
19. Over the past five years the Pakistan government has implemented a range of counter-terrorism measures which are credited with changing the security situation for the better. In 2014 the government introduced a multifarious civil-military strategy targeting terrorist, separatist and criminal networks and enhancing border security. Military operations were carried out in the former FATA (now KPP) and other parts of Pakistan under Operation Zarb-e-Azb which targeted terrorist, separatist and criminal networks while government's 20-point National Action Plan (NAP) tackled administrative and development reform, establishing military courts to try suspected militants, reviving the option of capital punishment, targeting sources of finance for militant organisations, taking measures to restrict hate speech, and committing to policy reforms. These activities continued throughout 2015 and 2016, with Pakistani security forces particularly targeting a wide array of militant groups in the tribal areas. In 2017 Operation Raad-ul-Fasaad succeeded Operation Zarb-e-Azb and Operation Khyber-IV was also launched, targeting terrorist groups in the Rajgal Valley and Islamic State connections in Afghanistan. NAP-2 is currently being developed and there is no indication the government's efforts in counter-terrorism and security across Pakistan are likely to diminish in the foreseeable future.⁸
20. Sources including the Australian Department of Foreign Affairs and Trade (DFAT) and the Pak Institute for Peace Studies (PIPS), report that while certain challenges remain, the number of violent and terrorism related attacks have significantly declined and the security situation markedly improved since 2013, with the implementation of the government's measures.⁹ There have been few sectarian attacks in Kurram since 2014. The notable exceptions are some small scale incidents and a marketplace bombing in Parachinar which killed 26 and injured more than 70 in 2015 and a deadly spike in incidents in 2017. In the first half of 2017 there were four mass-casualty terrorist attacks on Shi'a Turis in Parachinar which killed more than 150 people and injured hundreds more. There was also a roadside bombing killing 14 Shi'as and census workers travelling in Kurram and a targeted shooting of a Kurram political administrator and his guard. Responsibility for the verified attacks was variously claimed by Sunni militant groups including Tehrik-e Taliban Pakistan (TTP), Lashkar Jhangvi (LeJ), Jamaat-ul-Ahrar, LeJ-Alami, Islamic State's local affiliates and others.¹⁰
21. DFAT's most recent report notes that KPP, including the former FATA, reported the highest number of terrorist attacks in Pakistan in 2018 and assesses that despite an overall reduction in levels of violence, sporadic large-scale terrorist attacks are likely to occur, against a background of ongoing smaller-scale attacks (albeit at a reduced tempo). DFAT also reports that the Taliban and Al-Qaeda have gained significant ground in the former FATA, killing many Shi'as, especially in

8 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

9 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; PIPS, "Pakistan Security Report 2019 - Foreword and Overview", 5 January 2020; 20200107154503

10 DFAT, "DFAT Country Information Report Pakistan", 1 September 2017, CISED50AD5515; Let's Build Pakistan, "Shia Genocide Database - A detailed account of Shia killings in Pakistan", 12 November 2018, CIS7B8394110090; Eurasia Review, "Pakistan: Sectarian Savagery – Analysis", 29 November 2018, CXBB8A1DA40015; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

Parachinar. DFAT notes that Shi'a tribes in the former FATA are among the most vulnerable groups in Pakistan and remarked on Turis' vulnerability due to their concentrating in identifiable groups. DFAT assesses that the risk of sectarian violence for civilians in the Kurram, particularly Parachinar, is higher than for civilians in other parts of the former FATA and that Turis in Kurram face a moderate risk of sectarian violence from militant groups, because of their Shi'a faith. It assesses that attacks and violence against Turis can, and may still occur.

22. However, DFAT's analysis of these issues is problematic. The reference to Shi'a killings is dated and while its glossary indicates that 'moderate risk' is intended to reflect DFAT's awareness of "sufficient incidents to suggest a pattern of behaviour"¹¹, it provides no clear examples of such incidents or how it reached its risk rating, nor its conclusions around the vulnerability of Shi'a Turis in Kurram. The reporting before me - including from DFAT, the European Asylum Support Service (EASO), the United Kingdom Home Office (UKHO), the FATA Research Centre (FRC), PIPS, Pakistan Institute for Conflict and Security Studies (PICSS), other sources the delegate consulted, reports provided by the applicant and obtained by myself - reflects that in the two and a half years since mid-2017, there have been no further sectarian attacks recorded in Parachinar and little evidence of such in broader Kurram district.
23. There have been drone strikes and clashes between militants and security forces but apart from a single explosion incident just recently at a Shi'a Imambargah in Shorko, Lower Kurram which involved one casualty,¹² the possible sectarian incidents (eg. a family killed when their vehicle hit a landmine in Upper Kurram and a Turi child fatality at a checkpoint crossing to North Waziristan) involved unclear circumstances and motivations and unknown perpetrators.¹³ A Wikipedia article submitted by the applicant at the SHEV interview also refers to a family killed in an explosion in Upper Kurram on 30 January 2018 however I am satisfied is the same incident mentioned by DFAT, PIPs and EASO¹⁴, and as with their reporting, the Wikipedia article also does not clarify the circumstances, motivations or perpetrators, nor the profile of the family involved. Another article he submitted from Dawn reports about a car explosion in December 2018 but this was in Sadda Lower Kurram and while the perpetrator, motivation and victim profile is unclear, I note it occurred just near the Frontier Corps base. The other country information the applicant submitted at the interview relates to attacks in other areas of Pakistan, or on Shi'a doctors, soldiers/security forces and other persons with additional profile factors the applicant does not share. Some also refers to incidents from several years ago. I note there was a large scale attack in neighbouring Orakzai District and some incidents elsewhere in 2018¹⁵ but information before me does not report a trend of systematic or large-scale actions targeting Shi'a's, Bangash or Turi Pashtuns, or other civilians in the Kurram District, and certainly not in the applicant's Upper Kurram tehsil.
24. Notably, DFAT¹⁶ itself assessed an improved security situation in Kurram, a significant decrease in the frequency and severity of attacks in 2018, and foreshadowed the improved situation to continue – which, judging from the information from other more reports before me, it did. Sources before me including from the FRC, PICSS and PIPs have recorded a notable trending decline of

11 DFAT's risk ratings do not correlate to a real chance or real risk of harm for the purposes of the Act.

12 Dawn (Pakistan), "At least 1 injured in explosion at Imambargah in Lower Kurram", 5 May 2020, 20200506121914; Peshawar Today, "Explosion at Imambargah injures one in Lower Kurram", 6 May 2020; Pakistan Observer, "One injured in Lower Kurram blast", 6 May 2020

13 PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; EASO, "Pakistan Security Situation", 30 October 2019, 20191031160110

14 PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; EASO, "Pakistan Security Situation", 30 October 2019, 20191031160110

15 'Pakistan: Sectarian Savagery – Analysis', Eurasia Review, 29 November 2018, CXBB8A1DA40015; 'Pakistan Security Report 2018', Pakistan Institute for Peace Studies, 6 January 2019, 20190121110758

16 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

violence targeting (Turi/Bangash) Shi'as in Kurram since 2017.¹⁷ There is little evidence of recent targeting in Kurram at all and no reliable evidence of recent targeting against Shi'as in Parachinar or in the Upper Kurram tehsil.

25. The applicant's submission to the IAA refers to the violence in Kurram being cyclical and warns that although there have been breaks in it from time to time, the fighting and violence has always resumed. He refers to the historical persecution of Shi'as in Kurram and warns that the conflict is never-ending and will resume again in the future. He emphasises the continued presence of militants in the area, the TTPs, Lashkar e Jhangvi and Jundullah's support for Islamic State (IS) and IS' other militant's strongholds being nearby in Afghanistan's Khost, Paktia and Nangahar provinces. As noted above, the applicant also raised claims about a Taliban Fatwa and provided news articles to the delegate demonstrating ongoing attacks against Shi'as in Pakistan although apart from those discussed above much of the allegations of ongoing targeting against Shi'a and Turi put forward by the applicant are supported by dated reporting and reference to dated incidents, incidents in other parts of Pakistan and the spike of incidents in 2017.
26. I do not downplay the history of insecurity in the applicants' immediate and wider area. I accept there is a continued anti-Shi'a extremist presence in the region, and that there have been recent incidents including the explosion just last week in other parts of Kurram (that being in Lower Kurram). However on the evidence, these types incidents have not been commonplace in the past couple of years and I am not persuaded they have been occurring at such a rate as to indicate the security improvements in Kurram and surrounds will be negated. The applicant's submissions and supporting evidence do not adequately account for the sustained civil-military counterterrorism efforts which have led to increased security and a sustained downward trend in violence in Kurram and the KPP and former FATA and across Pakistan and which, on the evidence before me, will continue into the foreseeable future. I note the applicant's fears about collusion by government forces but while I accept some such corrupt incidents occur, only scant references have been made to this in the country information before me and I am not persuaded these incidents have been occurring at such a rate in Upper Kurram or surrounds as to indicate a real chance of it resulting in harm to the applicant now or in the reasonably foreseeable future.
27. Overall, the information before me indicates the situation has settled down and the area is now secure. Credible sources considered by the delegate including DFAT, EASO and PIPS¹⁸ have continued to assess that the security situation in Kurram has been significantly improving since 2014, with the Pakistan government's response effectively weakening the operational capacity of militant groups in the region. These sources report reduced terrorist activities and anti-Shi'a sectarian violence across the former FATA over the past five years.
28. Significantly, there have been no further sectarian attacks recorded in Parachinar in the two and half years since mid-2017 as the Pakistani government has been taking active steps to provide immediate protection to Shi'a and other civilians in Kurram, and continuing with its implementation of longer term counter-terrorism measures. Recent military operations to erect fencing (40% of which had been reportedly completed in Kurram by February 2018) and other border control measures aimed at tightening the permeability of the Afghan-Pakistan border

17FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2018", 15 January 2019, 20190117094912; FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", 13 January 2020, 20200122123739; PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; PICSS, "'2019 Annual Security Assessment Report'", 9 January 2020, 20200122140652

18 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 30 October 2019, 20191031160110; PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", 13 January 2020, 20200122123739

have, according to DFAT, made minorities feel more protected with local observers, including officials, in KPP reporting *“a trend of increased security, a reduction in reported killings and reduced fear within the community in 2018.”* DFAT also reports restored confidence in the Turi community for individuals to travel on the formerly highly insecure Tall-Parachinar road (albeit only in daylight hours) and in fact the evidence before me does not indicate any recent attacks on Shi’a Turis travellers. Additional security has also been provided for Shi’a Ashura processions and the military also continues to control a 20-30 square kilometre ‘red zone’ area for Parachinar, with a second smaller red zone therein, restricting access to protect places such as markets and schools.¹⁹

29. Given the security measures which have been put in place across Pakistan, in Kurram and within Parachinar, that there has been a sustained decline in sectarian attacks overall and taking into account the absence of attacks carried out in the Parachinar area in more than two and a half years, even if the applicant participates in Shi’a community events upon return, I consider there is only a remote possibility (and not a real chance) the applicant would be harmed by the Taliban or other militias, or other members of the community or authorities. I am not satisfied the applicant would be unable to openly practise his Shi’a faith, or that the government protection would be withheld or ineffectual.
30. I note DFAT has mentioned that the security situation in Parachinar and Kurram has restricted freedom of movement and limited the community’s access to essential services and trade opportunities, but it also notes the Pakistan Constitution guarantees the right to freedom of movement in Pakistan, that internal migration is widespread and common and that Turis are now using the Thall-Parachinar road with restored confidence.²⁰ The applicant has not suggested his family members have been recently targeted and the credible reporting before me also does not support that there have been any recent attacks in or around Parachinar, or in Upper Kurram targeting persons of the applicant’s profile. I note too that the applicant has provided evidence of his identity, nationality and domicile and confirmed he is in possession of his passport and National Identity Card (NIC). There is nothing to suggest the applicant could not obtain the relevant documentation/access pass to allow him to move in and out of the red zone surrounding Parachinar.
31. I do not accept the applicant faces a real chance of being harmed by the Taliban or other militant or extremist groups or anyone, either in a targeted attack on Shi’as/Turis/Pashtuns, nor as a bystander in any other security incidents. Given the demographic make-up of the applicant’s area, I am also not satisfied the applicant would face discrimination for these reasons.
32. During the SHEV interview the applicant indicated he also feared returning to Pakistan due to his residence in Australia. He referred to the Taliban’s presence in Pakistan and said the authorities will not allow him to leave the airport as they will question him and blame him regarding his reasons for travelling abroad. He also said other villages will blame him for going to Australia, a non-Muslim country.
33. I accept that the applicant may be returned to Pakistan involuntarily, or on a temporary travel document, which DFAT suggests will attract attention and questioning on arrival from Pakistan authorities who will attempt to ascertain whether he left legally, and to investigate if he is wanted for crimes in Pakistan, or committed any offences while abroad.²¹ There is nothing in the information before me which suggests the applicant departed illegally, or in any manner otherwise than lawfully on his genuine passport and there is nothing to suggest he committed an

19 DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

20 DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

21 DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

immigration offence under Pakistan law. Nor has the applicant claimed, or the evidence given any indication, that he has committed any criminal offences in Pakistan or abroad. The evidence also does not suggest the applicant has engaged in any protests or public criticism against the Pakistani government while abroad. Nor does country information suggest that persons in the applicant's position are imputed with an anti-government opinion. It does not indicate he would be treated with suspicion or harmed by the authorities due to his Shi'a faith, ethno-tribal profile, and/or origins in Parachinar/Kurram, or the circumstances of his return after making a failed asylum claim overseas in Australia. I am not satisfied the authorities will take an adverse interest in the applicant. DFAT suggests that in such cases returnees are typically released within a couple of hours. Neither DFAT, nor the other sources before me suggest that returnees suffer any mistreatment during this process. The information does not suggest that the applicant, as a failed asylum seeker who spent several years in the west and/or Shi'a Turi Pashtun from [Location 1] in the Parachinar area of Kurram district would be detained or would otherwise be treated differentially. I am not satisfied that he would be, or that – even taking into account the applicant's mental and other health conditions - the questioning or couple of hours he might spend in this returnee questioning/processing before being released amounts to serious harm.

34. DFAT has reported that western influence in many parts of Pakistan was pervasive, with western films and music widely available (though subject to censorship) and western-branded retailers operating throughout the country. English is an official language (alongside Urdu), is taught in many schools and widely spoken among Pakistan's elite. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assesses that individuals in Pakistan are not subject to additional risk of discrimination or violence on the basis of having spent time in western countries or because of perceived western associations (such as clothing), despite a generally increasing conservatism and religiosity across the country. DFAT²² assesses that returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt and that returnees to Pakistan 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.²³
35. The information before me does not support that persons returning from the west are targeted and harmed. Neither the information from DFAT, EASO, the FRC, PIPs, UKHO, PICSS or any other sources before me suggest returnees (including Turi Shi'a Pashtun failed asylum seekers/returnees from Australia/the west and returnees and failed asylum seekers more generally) are targeted in Pakistan by extremist groups, nor by government officials or members of the community. Taking all of this information into account I am not satisfied that the applicant faces a real chance of harm from anyone on account of being a failed asylum seeker or returnee from the west, even when taken with his ethno/tribal-religious profile and origins in Parachinar or Kurram.
36. Reporting from PIPs and other sources indicates there have been few security incidents of any kind in Kurram in recent years. There was a recent incident at a Shi'a Imambargah in Shorko (Lower Kurram) near the Afghan border, some recent drone strikes targeting militants and clashes between militants and security forces along the Afghan border and some incidents in other parts of Kurram and former FATA. But the evidence indicates that there has been a significant improvement in security in the area, and that violent incidents are not occurring with any frequency or severity or with a rate of civilian involvement so as to indicate a real chance of harm of this nature to the applicant in the foreseeable future. Nor does it indicate a real chance of harm arising from criminality. Given these factors and the significant improvement in security in the

22 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

23 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

applicant's area and more generally in security across Pakistan including on previously highly insecure roads in the northwest region, I consider the chance that the applicant would be harmed in or in reaching Kurram district and Upper Kurram tehsil, Parachinar and [Location 1] or in the course of travelling to other places in the region, is remote and therefore not real.

37. The applicant's representative referred to the applicant living through traumatic experiences between 2007 and 2009 when the applicant was very young which has led to his mental ill health. He raised concerns that this, along with the applicant's employment experience being limited to low-skilled jobs and manual labour, would affect his ability to subsist, and prevent him from obtaining 'better work'.
38. I accept the applicant suffers from anxiety and depression and has been prescribed medication for this and referred for counselling. There is no clear diagnosis of PTSD (nor other medical evidence of the applicant's anxiety and depression being caused by trauma experienced in Pakistan) before me, nor any other medical opinions or evidence to substantiate that the cause of the applicant's anxiety and depression (which was only diagnosed in 2019) arose from trauma the applicant experienced in 2007 – 2009, nor otherwise as a child. Nevertheless, it is not implausible that the applicant has been adversely affected by events which occurred in his area while he was growing up. However in any event, the applicant confirmed in the SHEV interview that he has been working full-time in Australia in [Industry 1] for the past two years, obtained a [specified] licence sometime in 2019 and has been attending English classes at TAFE three nights per week. There is no evidence to suggest that his mental health (nor the other medical conditions listed in the documents before me regarding which the applicant has raised no claims or concerns) has impaired his ability to work and study and reside in the community, or that it has required anything other than low-level medical intervention.
39. From the country information before me, I understand there are shortcomings in Pakistan's healthcare system. However, DFAT²⁴ advises that basic health care in Pakistan is free and neither DFAT nor any other sources before me suggest that assistance is not available or that the applicant will be denied care/treatment on the basis of any of his particular profile factors, or for any of the reasons specified in s.5J(1)(a) of the Act. While I note DFAT's comments about health services being variable across the country it is no longer the case that medical supplies and personnel travelling to Parachinar are affected by road blockades as they were in the past. I am not satisfied the applicant would be denied necessary treatment along religious/ethnic/tribal or other lines. I note too that the applicant is in touch with his family members and there is no credible evidence suggesting they will not support his seeking necessary healthcare. I consider it too speculative on the evidence before me to conclude that the applicant's mental health would worsen upon his return, or that he would not be able to obtain health care.
40. While I acknowledge that the applicant may face some challenges with access to and quality of services, I am not satisfied they would be the result of systematic and discriminatory conduct on the part of the government or any person or group. I am also not satisfied that the applicant will experience official or societal discrimination or any act/omission/treatment from the authorities that would amount to a denial of services. Country information does not support, and I do not accept, that the applicant would be targeted for violence or other harm on account of his mental or other health conditions. It does not support that his life or liberty will be threatened or that he will suffer significant physical harassment or ill-treatment, nor serious harm of any other kind arising from mental ill health or other health concerns.

24 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

41. As for the applicant's livelihood being affected, as noted above, the applicant has been living in the community, working full-time and studying through TAFE. He has not suggested his ability to work and study has been impaired, or given any information to support that his conditions are such that he would be unable to work – including in farming with his family as he did before, in manual labour and [Industry 1] or other jobs - upon return. I do not accept the representative's submissions about his mental health affecting his ability to obtain a 'better job' or that remaining in manual labour type employment would in fact amount to serious harm as defined in the Act (nor significant harm as defined in s.36(2A) or s.5(1) of the Act).
42. The applicant has not provided any evidence to support that he and his family members have been unable to earn an income from their farming in recent years, or that they would not have been able to survive without the supplementary contributions he has sent them from Australia. The applicant is not in the minority in his area and evidence before me also does not support that the applicant would be denied other types of employment or an opportunity to earn a livelihood on the basis of his ethno/tribal-religious profile or for any reason in Kurram district. For clarity, while I note the applicant claimed he could not previously work or go out in Pakistan for security reasons, for the reasons discussed above, I am not satisfied the security conditions now or in the reasonably foreseeable future are/will be such that the applicant will be unable to go out and also work.
43. I am not satisfied the applicant faces a real chance of persecution arising from his mental health or employment/financial arrangements.
44. I have considered the applicant's circumstances overall, but I am not satisfied the applicant will face a real chance of persecution for any one, or any combination of reasons given. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

45. 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

46. 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

47. 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.

48. 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.
49. The information before me indicates that while there are shortcomings in Pakistan's healthcare system, healthcare is available and I am not satisfied there is any reason he would have services denied or withheld, or that he would be otherwise targeted on account of his mental health or other health conditions. I am not satisfied there is a real risk the applicant would be subject to acts or omissions which would constitute significant harm as defined in the Act.
50. Even with his mental ill health and other conditions the applicant has been working full-time and studying in Australia. I am not satisfied he would not be able to work as a result of his mental or health or other health factors, or that there is in fact any reason he would be denied an opportunity to earn a livelihood in Pakistan. And as noted, I am not satisfied the security situation is such that it would prevent him from working. I am not satisfied there is a real risk of the applicant facing significant harm as defined from employment or subsistence related issues.
51. While the applicant may be questioned by authorities at the airport about the circumstances of his travel and return, I am not satisfied on the evidence that he would be mistreated or treated differentially for any reason and the information indicates he would be released within a matter of hours. I am not satisfied that these circumstances – even accounting for his mental and other health conditions - would amount to 'significant harm'. The routine questioning process does not include the arbitrary deprivation of life, the death penalty, or torture; nor am I satisfied he would be subject to cruel, inhuman or degrading treatment or punishment, as defined. I am not satisfied he faces a real risk of significant harm arising from the returnee processing.
52. I have otherwise found the applicant would not face a real chance of harm for any reason on return. For the same reasons, I am not satisfied he would face a real risk of harm, including significant harm – from anyone 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.

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.