



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08251

Date and time of decision: 1 June 2020 14:17:00
M Brereton, 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 from [Town 1] in the Kurram Agency, Pakistan. He departed Pakistan [in] May 2013 and arrived on Christmas Island [in] July 2013. On 20 March 2017, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 17 April 2020, a delegate of the Minister for Immigration (the delegate) refused to grant the SHEV.
2. The applicant claimed to fear harm from the Taliban and Sunnis because of: his religion and ethnicity; his family's origins and property in [Town 2]; and his perceived wealth and education, including from his time in Australia.
3. The delegate accepted the applicant's claims but having regard to recent country information was not satisfied that the applicant faced a real chance or real risk of relevant harm, now or in the reasonably foreseeable future.

Information before the IAA

4. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 14 May 2020, the applicant, through his migration agent, provided a submission and new information to the IAA. Parts of this submission refer to and make argument in respect of the delegate's decision and information that was before the delegate. I am satisfied that those parts of the submission are not new information.
6. The submission refers to and attaches new information, comprising two media reports of an attack against a Shi'a place of worship (*imambargah*) in Lower Kurram on 5 May 2020. These post-date the delegate's decision and I am satisfied that they could not have been provided to the Minister before the delegate made the decision. The applicant submits that this "information goes to the heart of the Applicant's claim that Shi'as continue to face a risk of harm from militants in Kurram District". The applicant also submits that the scarcity of reporting supports the submission that there is a widespread media blackout and increased violence towards journalists in Pakistan, noting that "[i]f an unidentified explosion at a place of worship which results in the death of a person receives minimal media attention, what can be expected of less high-profile attack on individuals in the community?"
7. The articles do not identify the perpetrators or reason for the attack, and the nature of the blast was "yet to be confirmed". The articles report that the blast occurred at 4am and injured one person, damaged the *imambargah* and that an investigation of the incident was underway. On the same day, a bomb disposal unit defused an IED in the Dabar area while earlier, in January, nine people had been injured in a hand grenade attack near a police check post in Peshawar. None of these events occurred in Upper Kurram and I do not accept that they support the applicant's submission as to any increase or potential increase in violence, or his risk of harm there. Further, I do not accept the submission that these articles report "minimal information" about the incident, or that this information demonstrates media limitation or repression.
8. The applicant was assisted by a migration lawyer at the interview, and the same lawyer assisted with post-interview submissions and the submission to the IAA. The applicant provided a comprehensive post-interview submission covering a range of issues, including his risk of harm

in Kurram and the effect of media repression. He also provided supporting country information to the delegate. I am satisfied that he has had ample opportunity to present claims and evidence and to put forward his case. The new information is general country information and not personal information in the relevant sense, and given that it refers to a single incident which was not in Upper Kurram, I consider that this information does not add to the information that is already before me and is of limited value. Having regard to all of these factors, I am not satisfied that there are exceptional circumstances to justify considering this information.

9. The applicant submits that the delegate failed to afford procedural fairness, by relying on the country information reports that were not put to him for comment and that as a consequence the delegate's decision is affected by jurisdictional error. The applicant also requests an interview in order to provide the IAA "with the required information and respond to the delegate's adverse findings in order for a fair and accurate decision to be made."
10. I am not reviewing the delegate's decision but am making a new decision on the merits. The applicant and his agent are aware of the country information reports that were before the delegate and have had the opportunity to make submissions in relation to these in the IAA submission. The fast track review process contemplates that in general the review will be undertaken without accepting or requesting new information, and without interviewing the referred applicant. Although there is discretion to interview an applicant, I am not persuaded that it is warranted in this case. I am satisfied that the applicant has had the opportunity to respond to the delegate's decision and to put forward any new information that he wished to. He has not indicated what "required information" or responses are not already provided or require further explanation, why the matters he wants to discuss could not have been provided in writing or how any such evidence and information, if new information, may satisfy s.473DD. I am satisfied that the applicant has had every opportunity to address the dispositive questions in this review and having regard to the information already before me, my observations above and the statutory scheme governing this review, I have decided not to invite or obtain further information or comment from the applicant, whether by interview or otherwise.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - He is a Shi'a and Pashtun member of [Tribe 1]. He was born and lived in [Town 1] but his parents were originally from [Town 2].
 - In 2009 he moved to Rawalpindi to continue his education. He spent most of the time confined to his accommodation, due to the poor security situation.
 - In 2010, his cousin was killed by the Taliban.
 - In 2011, some men stopped the applicant in Rawalpindi. They said they knew of his origins and invited him for drink but the applicant believed he would be abducted for ransom and fled. He hid at a friend's house for three nights and then returned to [Town 1] on an aircraft that his brother had chartered.
 - He could not go out in [Town 1] because he would be identified, targeted and killed by the Taliban or by Sunnis. He had not completed his education and could not get a job. It was like living in prison and everyday he heard of Shi'as being killed. Eventually he had to leave [Town 1].
 - If he returns he will be targeted and killed by the Taliban and Sunnis. He will be perceived as wealthy and targeted. His family is well known and he will be identified and targeted

because of this. The Pakistani authorities cannot protect him and he cannot relocate anywhere.

- His family in [Town 1] are asked by the local residents when they (the family) will return to [Town 2]. [Number] of his brothers have fled to [Country 1].

Refugee assessment

12. 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

13. 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.

14. The applicant has been consistent in his claims as to origin and identity. He has provided his original Pakistani passport and National Identity Card (NIC) with translations in support of these claims. During the interview with the delegate on 16 March 2020 (the interview), the applicant was assisted by a Pashto interpreter and was able to provide credible and detailed information in relation to his claimed home area. I accept the applicant’s claims in this regard and I find that he is a Shi’a and a Pashtun from [Town 1] in the Kurram Agency and that Pakistan is the receiving country for the purposes of this review.

15. I note that the country information submissions provided with the post-interview submission also referred to other documents, being a driver’s licence from [Country 1]; birth certificate (in English); a *nikah* (marriage certificate) and a Pakistani police clearance certificate. These documents are not in the review material nor are they referred to anywhere in the SHEV application or at the interview. The applicant has not claimed to be married or to have ever been to [Country 1]. I am satisfied that this is an error in the submission and that these documents were not presented by the applicant. I am satisfied that they are not relevant to the applicant.

16. The applicant's father has passed away since the applicant has been in Australia. His mother remains in the family home [Town 1] and he has [number] brothers who have gone to [Country 1]. The applicant remains in contact with his mother and said that he sends money to her when he is able. The applicant claims that his family originated from [Town 2] (Lower Kurram) where they owned property and businesses, and that they continue to own property there. They had to leave in 1987 due to continuing unrest between the Sunnis and the Shi'as and they settled in [Town 1]. He claims that although they still have property in [Town 2] they are not using it or receiving an income from it. The applicant himself has never lived in [Town 2]. He also claims to have a fiancé in [Town 1]. Having regard to all of these factors I find that he will return to [Town 1] should he return to Pakistan.
17. The applicant claims that he is a member of [Tribe 1] and submits that he should be assessed against the profile for the Bangash-Turi tribes. There is no information before me about [Tribe 1] but other information¹ does indicate that the Upper Kurram Agency (where [Town 1] is located) is the most populated part of the Agency and the most prominent tribes there are the Turi and Bangash. Although they are two different groups, the Turi and Bangash are generally referred to "together" and enjoy the same rights. I accept the applicant's submission and will consider him against the profiles for Turis and Bangash.
18. The applicant claims that his cousin was killed by the Taliban in 2010. He states that his cousin "had been using the tractor for his farming and he had been killed by people wearing black turbans who had covered their faces. These men had tried to shoot at him and the other three people on the tractor, and then had thrown a hand grenade at them. My cousin died on the spot, and only one person survived." The information in the review material supports that Kurram has been an unsettled area in the past and that there has been significant violence between (and within) tribal and ethnic groups, as well as by Islamic extremists. I accept that the applicant's cousin was killed in an attack. The applicant has not claimed that the attack targeted the cousin personally or that the applicant or his family have ever been subjected to threats, harassment or violence from this armed group, or for any reason arising from the death of the cousin. While I accept that this incident occurred, I am not satisfied that there was, or will be, any link with the applicant or his immediate family, or that the applicant faces a real chance of harm from any group or person arising from this incident.
19. In his SHEV application the applicant raised a claim in relation to an incident in Rawalpindi in 2012. He claims that this is the reason that he fled Pakistan. The applicant did not raise this claim during his entry interview on 1 August 2013 (the entry interview). At the SHEV interview the delegate asked why the applicant had not raised it and the applicant said that he had said he wanted to add further information but the interpreter had told him that there would be another interview. He then said that he approached the case officer and interpreter the next day and said he had information to add, but they said he was not well and that he should wait for the next interview. In the post-interview submission the applicant's agent submitted that:

... at the time of his entry interview, [he] was advised to not provide extensive detail and that he would be provided an opportunity to elaborate at a later stage. At the end of the interview, the Applicant attempted to discuss this incident and was told that the interview was over and that he would be given the opportunity to discuss it at a later stage. The Applicant has

¹ "Tribes of the Kurram", Khyber.org, 16 June 2010, 20190829121124; Pakistan Security Research Unit (PSRU), "Sectarian Violence in Pakistan's Kurram Agency", Brief Number 40, 22 September 2008; International Crisis Group, "Pakistan: Countering Militancy in FATA", Asia Report No 178, 21 October 2009; Mahsud, M.K., "The Battle for Pakistan: Militancy and Conflict in Kurram", Human Security Report Project website, April 2010; Jamestown Foundation, Terrorism Focus, "Shiite-Sunni Strife Paralyzes Life in Pakistan's Kurram Tribal Agency", Vol. V, Issue 17, 2018; "The battle for Kurram", The Friday Times, Vol. XXIV, No.3, 2 March 2012.

provided a detailed explanation in response to his concern at his [SHEV] interview and has previously addressed this issue in the statutory declaration attached to his application for a protection visa in 2017. We submit that the explanation provided by the Applicant is reasonable.

20. The delegate told the applicant that she had listened to the entry interview and I have also done so. The applicant has not identified any particular exchange in the entry interview that is said to be when he sought to raise the claim and was told to wait. When the case officer got to the relevant part of the entry interview, he said "give me a summary, focussing on the events that have happened recently that made you want to leave the country now." The applicant began giving a history of [Town 1] and the case officer said "not the whole history, just what has happened to you recently that made you leave." The applicant referred to a bomb blast in 2013 and the case officer said "that was after. What made you want to leave when you did?" The applicant said that there was Taliban everywhere and he could not go to work or study or leave the house. The case officer asked again "was there any specific event that caused you to leave or just the general security situation?" The applicant then referred to the death of his cousin. The case officer asked "any other reasons you decided to leave?" and the applicant said "just that". When asked if he had ever had any direct interaction with the Taliban the applicant said no. At the end of the entry interview the case officer asked if there was anything that the applicant had not been asked or that he wanted to say and the applicant gave a very short response that was translated as "no". There do not appear to be any further exchanges with the interpreter and the entry interview ceased.
21. I have been mindful of the context of the entry interview and *obiter dicta* about this in *MZZJO v MIBP* [2014] FCAFC 80 and *DWA17 v MIBP* [2019] FCAFC 160. In the present case, the entry interview was conducted about two weeks after the applicant's arrival on Christmas Island. Given he is claiming to fear harm from the Taliban I consider it is implausible that the applicant would not have raised an incident where he felt his life was directly threatened by that group, and which he claims is the reason he left Pakistan, when asked about his reason for leaving. It is also implausible that although he told the delegate that the men in Rawalpindi were Taliban, he did not refer to this when asked at the entry interview if he had ever had direct interaction with the Taliban. I do not consider it plausible that he would not have mentioned fearing a direct threat to his life by the Taliban, or suspected Taliban, that led to him abandoning his studies, returning to [Town 1] and then leaving Pakistan if this incident had occurred.
22. I have carefully considered all of the above circumstances and I do not accept that this claim is credible. In any event, even if I did accept it, for the reasons given below I consider that the claim is vague and does not indicate that the applicant faces a real chance of harm from these men, or arising from this incident, in [Town 1]. The applicant claims to have left [Town 1] in 2009 and gone to Rawalpindi to continue his studies. He enrolled in a course there but when not studying he spent most of his time confined to a house in that city because of the dangers he feared there. In 2012, he was shopping when he was stopped by a man who:

... stated that I was Pashtun. He stated that he knew my family was from [Town 2], and that we used to have businesses there. He said that he knew I was from [Town 1]. He had a short beard and he invited me to have some juice with him, and there were four people standing behind him and they all had long beards. I was very scared to accept because he clearly knew that I was Shi'a. I was very concerned about why this person seemed to know so much about me. I declined his invitation and started walking away. I stopped shopping and kept walking as quickly as I could. However, these five men kept following me. One of them was on the phone to someone. When I realized that they were going to keep following me, I stopped walking and started running through the back streets and caught a taxi.

23. The applicant claims that he took the taxi to a friend's house, where he stayed in hiding for three nights. He told his family what had happened and because the roads were not safe to travel (and with his brother's help) he was able to get a small charter aeroplane to return to [Town 1]. He remained in his home in [Town 1] because he was scared that he would be targeted, identified and killed by the Taliban and the Sunnis. He was unable to get a job and had not finished his education so he decided to leave Pakistan.
24. The men never identified themselves to the applicant and, his subjective belief that they were Taliban notwithstanding, he does not know who these men were or what their intentions were. His fear of harm from them was based on his perception of the situation rather than any stated threat or intention. Further, even if he was approached in Rawalpindi, he has not claimed that he or any member of his family has been approached or threatened in [Town 1]. I am not satisfied that this incident, if indeed it happened, adds to the applicant's risk profile in [Town 1].
25. The applicant claims that he continued to fear harm in [Town 1] and did not go out because of that fear. He described living in [Town 1] as like being in prison. He told the delegate that his mother [and specified siblings] remain in [Town 1] but he claims that [number] of his brothers had to go to [Country 1] because of their fears due to the situation in Pakistan. However, he has not claimed that they or his parents were caught up in any violence or have faced threats or harassment since he left Pakistan in 2012. He also submits that he fears persecution for reasons of ethnicity, religion, membership of a particular social group, and imputed political opinion, individually and cumulatively.
26. [Town 1] is [in Upper Kurram] within what was formerly the Federally Administered Tribal Areas (FATA), but is now part of Khyber Pakhtunkhwa (KP). Shi'as make up around 80% of Kurram's population. Kurram (which is located alongside Pakistan's north-western border with Afghanistan) has been the site of decades of sectarian tension between Sunnis and Shi'as and these tensions have periodically erupted into intense fighting. The arrival of the pro-Taliban Pakistani militias in 2007 triggered a particularly violent period, featuring significant fighting between Sunni and Shi'a militia groups.²
27. In 2014, the Pakistani security and military forces launched Operation Zarb-e-Azb, targeting terrorist groups including the Taliban across Pakistan. This was combined with a national action plan combining civil and military responses to counter-terrorism. Following on from the achievements of Operation Zarb-e-Azb, the Pakistani military commenced Operation Radd-ul-Fasaad in 2017, supporting local law enforcement agencies and focussing on border security. The Australian Department of Foreign Affairs and Trade (DFAT) notes that observers have credited these actions with a significant reduction in the number of violent and terrorism related attacks in Pakistan.³
28. During 2017, militants carried out mass casualty attacks in Parachinar including three bombings. On 21 January 2017, militants detonated a remote-controlled improvised explosive device (IED) in a marketplace in Parachinar; on 31 March 2017, a suicide bomber attacked an *imambargah* in Parachinar; and on 24 June 2017, two devices were detonated in a market in Parachinar. These attacks ostensibly targeted Turi Shi'as because of their religious affiliation, and killed more

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515; "Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Arif Rafiq, 1 December 2014, CIS2F827D91993.

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

than 120 people. DFAT assessed in 2017 that the risk to civilians from sectarian violence was higher in Kurram, and particularly Parachinar, than other parts of the FATA.⁴

29. The Pakistan Institute for Peace Studies (PIPS)⁵ reported that while KP faced the highest number of attacks in 2018 compared to the rest of Pakistan, there was only one terrorist attack in Kurram, which killed seven people. By contrast, North and South Waziristan reported 44 attacks, Peshawar 12 and Dera Ismail Khan 18.
30. The FATA Research Centre (FRC) reported that the security situation in the Khyber Pakhtunkhwa Tribal Districts, of which Kurram is one, considerably improved in 2019. In relation to Kurram the FRC reported that it remained largely peaceful during 2019 and referred to a remarkable decrease in violent incidents and resultant casualties, with only one terrorist incident in which two security force members were injured in an ambush by militants. However, it cautioned that Kurram remained vulnerable due to its geographic proximity to one of the more volatile provinces of Afghanistan, its history of sectarian conflict and its relative proximity to North Waziristan and parts of Khyber district where militants are still able to conduct terrorist activities. The FRC remarked that although terrorist incidents continued to occur in KP, the overall security situation in the area has remarkably improved during the past few years and that the threat of Taliban re-emergence there was “very meagre”. It said that apart from 2017, there had been a steady and downward trend observed in civilian casualties during the past six years (2013-2019) and attributed this to the military operations (referred to above in the DFAT reporting) that have significantly weakened the ability of terrorist to conduct high profile terrorist attacks. FRC cautioned that the threat of militants was still potent, although it noted that militants groups had altered tactics and switched from suicide attacks to IED attacks and targeted killings of law enforcement and security agency personnel, political representatives, tribal elders and members of anti-Taliban tribal militias.⁶
31. Reporting from the Pakistan Institute for Conflict and Security Studies (PICSS)⁷ examines the former FATA separately from the rest of KP province. The 2018 PICSS report noted that only three terrorist attacks in the Kurram Agency were identified in 2018: one attack against civilians that killed up to seven and injured one, and two attacks against security forces. The report opines that the Taliban and other Sunni militants have largely been cleared from the area. The 2019 report found that there was some improvement in the former FATA, and that terrorist fatalities in 2019 had fallen further from the 2018 levels (62 deaths in 2019 against 109 deaths in 2018). PICSS states that almost half of all fatalities in 2019 occurred in the one troubled district of North Waziristan
32. The applicant also fears harm as he will be considered to be a Turi/Bangash. He submits that this profile includes an imputed anti-Taliban opinion and pro-United States opinion that will lead to harm. The applicant submits that the IAA should have regard to the following assessments from the DFAT report:
 - 3.19: “Discrimination and violence towards Shi’a tribes, particularly Turis, remains significant In Kurram Agency due to state concerns regarding Iranian influence (see Shi'a) and greater presence of the Taliban and Al Qaeda.”

⁴ DFAT, “Pakistan Country Information Report 1 September 2017”, 1 September 2017, CISED50AD5515.

⁵ Pakistan Institute for Peace Studies (PIPS), “Pakistan Security Report 2018”, 6 January 2019, 20190121110758.

⁶ FATA Research Centre (FRC), “Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019”, 13 January 2020, 20200122123739.

⁷ Pakistan Institute for Conflict and Security Studies (PICSS), “2019 Annual Security Assessment Report”, 9 January 2020, 20200122140652; PICSS, “Pakistan’s Annual Security Assessment 2018”, 19 April 2019, 20190617153632.

- 3.26: “attacks and violence against Turis can and may still occur. As such, DFAT assesses Turis in Kurram Agency still face a moderate risk of sectarian violence from militant groups, because of their Shi’a faith.”
 - 3.23: “Relocation to Khyber Pakhtunkhwa is not viable, as Turis are discriminated against, face security threats, do not have adequate access to services, and would likely be forced to sell assets.”
 - 3.111: DFAT assesses that Shia in the former FATA face a low risk of sectarian violence within the context of a moderate level of militant and criminal violence across the region... DFAT assesses that the risk of sectarian violence for civilians in Kurram Agency, particularly in Parachinar, is higher than in other parts of the former FATA.”
33. It is also submitted that the other information before me should be accorded lesser weight than the DFAT report because the information referred to in those reports does not relate to Kurram specifically, unlike the relevant sections of the DFAT report. I note however that the other information I have considered relates to Kurram (or to KP more broadly), or is more recent than the DFAT reporting.
34. The applicant submits that based on the DFAT report, Turis such himself face a “moderate” risk of sectarian violence, and Turis have been targeted by extremist groups on account of their Shia faith. DFAT describes a moderate risk there being sufficient incidents to suggest a pattern of behaviour. DFAT has reported that there have been significant attacks on Turis in the past, but military and security operations, together with associated counter-terrorism activities, significantly decreased the number and severity of such attacks. In the first quarter of 2018, the Turi community reported two attacks, including one involving an IED that targeted women and children. This compares to community estimates that 200 Turis were killed and 1000 injured in 2017, although DFAT states that it is unable to verify these claims. DFAT also notes that Turis reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. This has restored confidence within the community for individuals (although not large groups) to travel on the Thall-Parachinar road, although only between dawn and dusk.
35. I also note [reporting] that the [Turi community] has [advised] that the military implements [red zones in the vicinity of Town 1]. Security forces have issued cards to access the red zones, which can be obtained by residents on presentation of identity documents. Since the implementation of these measures there have been no further attacks reported in [the vicinity of Town 1].
36. The applicant submits that “[i]t is clear that the Pakistani government wishes to represent to the international community that it is making improvements to control sectarian violence within its borders. This has resulted in a widespread media blackout and increased violence towards journalists. The DFAT report references this blackout, noting the authorities “discourage the publication of sensitive information, particularly in relation to national security issues.”” The applicant further submits that much of the DFAT reporting relies on media reporting the blackout means that the DFAT report should be given limited weight. He refers to his post-interview submission and urges the IAA to be guided by the reasoning in 1608734 (Refugee) [2019] AATA 2312. The applicant’s post-interview submission states that “[t]here has been no substantial changes to the situation since May 2019. There is no logical reason why a departmental officer should need to depart from this approach in analysing DFAT’s report.”
37. I am not bound by the decision of another decision-maker. In any event, that decision was made in May 2019 and there is more recent country information before me that is consistent with the DFAT analysis. The DFAT analysis draws on DFAT’s on-the-ground knowledge and discussions with various sources in Pakistan. It also takes into account of information from a wide range of

government and non-government sources, including but not limited to information produced by: PIPS, the South Asia Terrorism Portal, the United States' State Department and the United Nations Office of the High Commission for Human Rights. Further, the DFAT report was prepared for the specific purpose of protection status determination. I also note that I have not considered the DFAT report in isolation but have also had regard to the other reports cited above. I do not accept that the validity of the DFAT report is called into question by the media blackout and I do not accept the submission that I should give it limited weight for that reason.

38. The applicant's agent has referred to the "cyclical nature" of sectarian violence in [Town 1] and the former FATA more broadly. I acknowledge that although past events can be a guide to the future, they are not determinative of future trends or events. However, while the situation in Pakistan is fluid, the analyses I have cited above do not indicate that the government is drawing down or removing its security operations, nor do they assess that the more stable situation currently seen in the former FATA will deteriorate in the reasonably foreseeable future. I am not satisfied on the evidence before me that the high level of sectarian violence experienced in the former FATA in the past, including the first half of 2017, has continued. I am not satisfied that the level of such violence will increase in the reasonably foreseeable future. Having regard to all of these factors, and even if the applicant was readily identified or imputed as a Shi'a and a Turi and/or Bangash, and/or imputed with an adverse political opinion, I am not satisfied that there is more than a remote chance of the applicant being harmed for those reasons, or in sectarian or generalised violence targeting Shi'as, Turis and Bangash, including civilians, in [Town 1].
39. I have considered whether the applicant faces a real chance of harm as a Pashtun. According to DFAT, Pashtuns are the second largest ethnic group in Pakistan, are present in all levels of society and are said to be well represented in the security forces. DFAT has assessed that Pashtuns do not face a higher risk of violence than other groups, based on their ethnicity. DFAT reports that some members of the Pashtun community, particularly in Lahore, have claimed to have been harassed by police and security forces and to have had difficulty obtaining identification documents. Since the commencement of the most recent security operations in Pakistan, large numbers of Pashtuns have been arrested across the country on suspicion of terrorism activities—due largely to the fact that the Taliban's support base is primarily Pashtun. Hundreds of Pashtuns were also arrested in the lead-up to a proposed (later cancelled) large scale political protest in early November 2016. Members of the Pashtun community told DFAT that community leaders are typically able to secure the release of Pashtuns who have been arrested without firm evidence of wrongdoing.⁸
40. The more recent DFAT report⁹ states that some Pashtuns continue to report racial profiling and harassment by security officials in areas where Pashtuns are in a minority, such as the Punjab. DFAT assesses that Pashtuns in such areas face a medium risk of official discrimination but Pashtuns in Pashtun majority areas who are not Turis or linked to the Awami National Party (ANP), face a low risk of official discrimination. The applicant is not linked to the ANP, has not claimed that his area is a Pashtun minority area or that he has suffered any previous discrimination on the basis of his Pashtun ethnicity. The information above indicates that while Pashtuns may be profiled by the authorities on ethnic grounds, this is because of perceived support for the Taliban. DFAT does not indicate that Pashtun Turi or Bangash people face any additional adverse interest from the authorities because of their ethnicity. Having regard to the history of enmity between the Taliban and Pakistan's Shi'as, and the applicant's religion, origin

⁸ DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED850AD5515.

⁹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

and personal history, I am not satisfied that he faces a real chance of being profiled by the authorities, or being imputed with any adverse profile as a Pashtun or Pashtun Turi/Bangash.

41. In relation to general discrimination, the DFAT reports before me indicate that no laws or government policies discriminate against Shi'as on the basis of religion. Broadly speaking, there is also little community prejudice against Shi'as and societal discrimination is largely confined to local nepotism, favouritism or patronage. Shi'as are represented in the professional community and there is no credible evidence of systematic discrimination against Shi'as in gaining admission to the public or private employment sectors. The applicant has not claimed that he or his family has suffered any such discrimination in the past.
42. The DFAT reports do not indicate that Shi'as, Shi'a Pashtuns or Turis/Bangash in Kurram are denied, or are otherwise unable to obtain employment, access to medical or other services, or access to accommodation. In any event, I have found that he will return to Parachinar and the family home. He has not claimed to have suffered harm arising from nepotism, favouritism or patronage in his community in the past.
43. The applicant claims that he has been employed in Australia and that if he returns to [Town 1], he will be perceived as being wealthy. He will also be perceived as wealthy because his family owned businesses and still owns land and a market in [Town 2]. He has referred to people being kidnapped for ransom and killed because of such perceptions and fears that he will be targeted and harmed.
44. There is information in the review material which indicates that insurgent groups, including the Taliban, have kidnapped persons for ransom in the past.¹⁰ However, the Kidnap for Ransom Insight Report published in January 2019 indicates that while kidnap for ransom still occurs in Pakistan, most incidents are carried out by criminal elements and not insurgent groups.¹¹ I also note the DFAT assessment that there are moderate levels of criminal violence across the FATA, although the applicant has not claimed that he or his family has suffered any harm in the past arising from criminal violence or criminal activities.
45. The applicant also claims that the fact that he is educated will make him even more of a target than other Shi'as and Turi/Bangash. The applicant commenced, but did not finish, a [Diploma] in Rawalpindi and I accept that he may be seen as educated. If the claimed incident in Rawalpindi occurred I consider that this may have been in part related to the applicant's profile as a higher-education student there. However, there is no information before me that indicates any targeting of educated Shi'as or Turi/Bangash for that reason in [Town 1], or in Kurram more broadly, in recent times.
46. On the applicant's evidence his family in [Town 1] has not faced any ongoing threats, harassment or adverse interest from criminal groups or insurgents arising from their ownership of property in [Town 2], or the fact that [number] of the sons (including the applicant) are working abroad. Given this, as well as the decline in instances of sectarian kidnapping and kidnapping for ransom by the Taliban and militant groups in recent years, as outlined above, I do not accept that the applicant would be of any interest to the Taliban or Sunnis, including Sunnis from [Town 2], because of his family's property or former profile there, or from his own profile as someone who may be perceived as wealthy and/or educated. I am not satisfied that he faces any more than a

¹⁰ "Kidnapping for ransom Professionals, amateurs and con men", Herald (Pakistan), 10 May 2016, CX6A26A6E17102; Country of Origin Information Section (COIS), "Pakistan: PAK43433 – Medical Practitioners – Doctors – Karachi – Balochistan – Quetta – Peshawar – KPK – Punjab – Abduction/Kidnapping", 15 September 2014, CR0596BBF25.

¹¹ Constellis, "Kidnap for Ransom Insight Report - January 2019", 31 January 2019, 20190201085413.

remote chance of being targeted by criminal elements for these reasons. I am not satisfied that he faces a real chance of harm for any, or any combination, of these reasons, in [Town 1].

47. The applicant referred to people in [Town 1] telling his family to go back to [Town 2]. When the delegate asked about this the applicant explained that Shi'a groups in [Town 1] believe that [Town 2] Shi'as should reclaim their property. He said that some [Town 1] Shi'as tell his family they should go back and do that but no one has tried to force them to do so. He has not claimed that his family has been threatened or harmed for this reason. I am not satisfied that he faces a real chance of harm from Shi'as in [Town 1].
48. I accept that the applicant will need to travel by road to access [Town 1]. As noted above, the situation in [Kurram Agency] is significantly different to when the applicant departed in 2012. The road to Peshawar is considered much safer to travel, at least in daylight and the applicant told the delegate that his mother and fiancé travel to Peshawar when his mother requires medical attention. He has not claimed that they have experienced any harm or incidents while doing so. Although the information before me reports that roadside bomb incidents have occurred, including some recent attacks, as well as more random events such as landmines, I am not satisfied that the level and frequency of such incidents in recent years indicates that the applicant faces more than a remote chance of being harmed during the journey he will need to undertake to access [Town 1].
49. I accept that if the applicant returns to Pakistan he will be doing so as a returned asylum-seeker who has been in a Western country. The recent information before me, including the DFAT reports does not indicate that returned asylum-seekers or returnees from the West have been targeted or harmed in [Town 1] because of that profile. During the interview the applicant said that people may think he has talked about the country or the Taliban while he has been in Australia.
50. The applicant departed Pakistan on a lawfully issued passport. DFAT understands that 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 who have not committed any other crimes are typically released within a couple of hours. Those found to have contravened Pakistani immigration laws are typically arrested and detained. Those wanted for a crime in Pakistan or who have committed a serious offence while abroad may be arrested and held on remand, or be required to report regularly to police as a form of parole.
51. The applicant has not claimed to have committed any offences in Pakistan or since he left. As he departed on a valid passport, while I accept that he may be briefly detained and questioned, I am not satisfied that he will be subjected to any other interest. The information before me does not indicate that the authorities inflict any harm on persons with no other adverse profiles who are being questioned in this situation. The information before me does not indicate that the Pakistani authorities suspect returnees of having made comments about Pakistan or treat them differently or with suspicion for that reason. I consider that the applicant's fear of such harm is speculative. I am not satisfied that the applicant faces a real chance of harm from the Pakistani authorities as a returned asylum-seeker who has been in the West, even if he is briefly detained and questioned on his return.
52. DFAT reports that returnees are typically able to reintegrate into Pakistani society without repercussions stemming from their migration attempt, although those who took on debt tend to face a higher risk of financial hardship. Western influence is pervasive in many parts of Pakistan, particularly in large urban centres. Western films and music are widely available

(although in many cases subject to censorship), and western-branded retail chains operate throughout the country. Both Urdu and English are official languages, and English is taught in many schools and is widely spoken among Pakistan's elite. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return frequently to Pakistan to visit relatives. DFAT assesses that individuals in Pakistan are not subject to any 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. DFAT does not indicate that this risk is different in the former FATA than in other parts of Pakistan.

53. The applicant has not claimed to be in debt or to fear financial hardship because of his migration attempt. Further, any fear of harm as a returnee from the West assumes that he will be identified or imputed as having been in a western country. Although he claims that he is readily identifiable as a Shi'a, Bangash/Turi and Pashtun from [Town 1], he has not claimed or provided any evidence that he displays any characteristics, speech, appearance or anything else that would identify him as having been in the West. He has not claimed that he will need, want or intends to carry or display any documentation or other evidence that he has been in the West and I find that he will not do so. He has not claimed to have any need or intention to disclose, or interest in disclosing, this fact to other persons, and I find that he will not do so. I consider the chance that he will be identified as a returned asylum-seeker from the West and face harm for that reason is remote, and not a real chance. I am not satisfied that he faces a real chance of harm as a returned asylum-seeker, or a returned asylum-seeker from the West, now or in the reasonably foreseeable future, including for any imputed anti-Taliban comments while he has been in the West.
54. Having regard to all of the above and in particular the applicant's personal profile as a Shi'a, Pashtun and Turi/Bangash from [Town 1], and the information about the current situation in Pakistan and [Town 1], I am not satisfied that the applicant faces any more than a remote chance of being harmed for any reason, including from any real or imputed political opinion, in sectarian or generalised violence, criminal violence or suffering discrimination, should he return to Pakistan, including during any travel to, from or around [Town 1] that he may need to undertake. I am not satisfied that the applicant faces a real chance of any harm in Pakistan, now or in the reasonably foreseeable future, as a returned asylum-seeker who has been in the West, should he return to Pakistan. I am not satisfied that the applicant has a well-founded fear of persecution in Pakistan.

Refugee: conclusion

55. 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

56. 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

57. 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.

58. 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.

59. I have found above that the applicant does not face a real chance of harm for any reason or reasons should he return to [Town 1]. As "real chance" and "real risk" equate to the same threshold,¹² and for the same reasons as given above, I am not satisfied that the applicant faces a real risk of significant harm for any reason or reasons should he return to [Town 1].

Complementary protection: conclusion

60. 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.

¹² *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.