



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08340

Date and time of decision: 4 June 2020 17:11:00
J Jennings, 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 Shia, Pashtun from the Kurram District, Pakistan. On 21 March 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. He claims that he fears harm from the Taliban and Sunnis.
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 30 April 2020. The delegate was not satisfied that the applicant had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Pakistan.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 22 May 2020 the applicant sent two emails to the IAA which included hyperlinks to [Social media] material. The Practice Direction for Applicants, Representatives and Authorised Recipients issued 1 May 2020 sets out procedures to be followed when giving new information to the IAA. The Direction advises that hyperlinks to publicly available documents are not acceptable and advises that a copy of any document an applicant wishes to rely on should be provided to the IAA. The IAA contacted the applicant and, with the assistance of a Pashto interpreter, explained that hyperlinks are not an acceptable way to provide information to the IAA because they can change over time.
5. The applicant telephoned the IAA later the same day with a friend who had assisted him with the hyperlinks. The IAA repeated advice that it does not accept hyperlinks because they can change or be deleted over time and it is difficult to know what the applicant is trying to provide, whereas video files or PDF documents can be accessed at any time.
6. On 22 May 2020 the applicant sent a further email to the IAA which contained a number of photographs of building damage; no explanation was provided with the photographs but I take these to be the attack on the imambargah he referred to in the earlier telephone conversation.
7. The hyperlinks are not compliant with the Direction. Nevertheless, I note that the applicant is unrepresented in this review and I also take into account his limited level of education and his attempts to be compliant with the Direction following the telephone call from the IAA by then submitting new information in the form of photographs. The IAA is not required to accept any new information that fails to comply with the Direction however the provisions of s.473FB are discretionary. It is apparent from his telephone conversation with the IAA that the applicant wishes the IAA to consider this attack on the imambargah and in the circumstances I have decided to accept the hyperlinks.
8. One hyperlink links to [Social media] information reporting an explosion in May 2020.¹ It is apparent that the four photographs on this [Social media] are the same as those the applicant sent by email to the IAA. I also take into account that when discussing this information with the IAA by telephone he pointed to the significance of this information as evidence of the attack on the imambargah. On the basis that the explosion occurred in May 2020 the [Social media] information and photographs could not have been given to the Minister. The attack is

¹ [Social media link deleted]

on what is seemingly a Shia place of worship and considering the recency of the attack and the relevance to the applicant's claims to fear harm as a Shia I am satisfied that exceptional circumstances exist that justify the IAA considering this information.

9. I have obtained an article published in Dawn on 5 May 2020, "At least 1 injured in explosion at imambargah in Lower Kurram"² which reports on the imambargah bombing attack and provided further information as to the place, date and circumstances of the attack. This report provides further context to the attack to that provided in the [Social media] information and photographs provided by the applicant and I am satisfied that there are exceptional circumstances to justify considering this report.
10. The second [Social media] link is to information reporting on a bomb explosion in March 2017.³ That there were bomb explosions in the Kurram District in March 2017 is information already before me, including as part of information provided by the applicant's then representative, and is information considered by the delegate in his decision. Noting that the applicant was represented when he completed this protection application and that his representative provided a post-interview submission I am not satisfied that this information could not have been provided to the Minister. Nor am I satisfied that this is personal information. I am not satisfied that this information meets the requirements of s.473DD(b) or that exceptional circumstances exist that justify the IAA having regard to it.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - The applicant is Shia Muslim Pashtun from the Turi tribe. He was born and grew up in a village near the city of Parachinar in the Kurram District in Pakistan.
 - Shias in Pakistan are harmed by the Taliban and Sunni Muslims. He is identifiable as Shia and Turi by his appearance.
 - The applicant's movement in Pakistan was restricted because of the threat of the Taliban and Sunni Muslims. From 2007 the road to the large commercial centre where people went to obtain supplies and visit the hospital was dangerous and subject to attacks.⁴ The only way to travel was in convoy accompanied by armed government escorts.
 - [In] December 2007 his father was killed by the Taliban when delivering goods to an area near [Town 2], which is a Taliban area. His father was [shot] while in his vehicle. The applicant believes the attack was planned and that his father was targeted by the Taliban. The applicant has provided a copy of the death certificate for his father which records his death as due to fire arm injury.
 - As the oldest male in the family the applicant was expected to look after his mother and siblings and had to go outside to work although his mother warned him he if he went outside he would be killed.
 - Around 2007 the applicant heard a bomb explode within 200 metres of him while he was waiting at a taxi rank in Parachinar. He witnessed the carnage of burnt and mutilated bodies; he was shocked and frightened.

² Dawn, "At least 1 injured in explosion at imambargah in Lower Kurram", 5 May 2020

³ [Social media link deleted]

⁴ Stated as Pashawa in the application statement which I take to mean the commercial centre Peshawar

- Sometime around 2008/2009 the applicant was at marketplace in Parachinar and heard another explosion; he was told it was a suicide bomber.
 - These attacks targeted Shia Muslims.
 - In 2010 one of his cousins was killed while returning from a Shia pilgrimage. The applicant believes he was killed because he was a Shia.
 - The applicant has ongoing fears of harm in Pakistan and he fears that anything could happen to him.
 - The applicant fears that the authorities cannot protect him and his fear extends to all of Pakistan.
 - The applicant fears harm as a returning asylum seeker from Australia. He has been in Australia for a number of years now and has engaged in activities in Australia that he was not able to pursue in Pakistan, such as drinking alcohol, taking drugs, smoking and sexual relationships and he will be killed for this should he return to Pakistan. The applicant will not be able to engage in these activities in Pakistan.
 - At his protection visa interview the applicant referred to being mentally stressed. The post-interview submission advanced that there is a real concern that the applicant's mental health would not be appropriately managed if he were to return to Pakistan.
 - The applicant has provided a referral dated 16 October 2019 to a psychologist from a general practitioner in which the applicant is diagnosed as having depression and marijuana addiction and receiving prescription medicine. The report noted past history of marijuana addiction and depression from October 2018.
 - A report from the psychologist dated 26 October 2019 has been provided which states that the applicant has "reactive major depression with high anxiety" and acute stress and will be attending for therapy on a fortnightly basis focusing on teaching him more effective skills to manage his depression and alcohol and marijuana use. It is advanced that as a result of his mental health condition the applicant would face stigmatism and ridicule rendering it even more difficult for him to access services and that due to stigmatism faced by those with mental health conditions he will not be accepted in society reducing his access to employment and ability to subsist.
 - In post-interview submissions the applicant's representative advanced that the applicant fears harm or reason of his religion, being a Shia Muslim, and for his membership of the particular social group being a westernised individual who would be a failed asylum seeker.
 - The applicant has lived in Australia for a number of years and will be identified as having links to the western world, and perceived as having pro-western political opinions and may be imputed with a political opinion opposing the government.
12. The applicant has been convicted in Australia for the offence of driving under the influence of illicit drugs. He received a fine and licence suspension. The applicant has not advanced any claims to fear harm on the basis of this conviction and the delegate did not address the conviction in the decision, although it was discussed at the protection visa interview. In the light of country information discussed below that indicates returnees are questioned to ascertain if they have committed any offences while abroad I have addressed this matter.

Refugee assessment

13. 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

14. 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.
15. The applicant has consistently claimed to be a Shia Muslim Pashtun. The applicant has provided documents in support of his claimed identity and residence in the Kurram District (previously part of the Federally Administered Tribal Areas (FATA), which is now part of Khyber Pakhtunkhwa). I accept the applicant’s identity and nationality as stated and that Pakistan is the receiving country for the purpose of this review.
16. I accept the applicant is a member of the Turi tribe and grew up in a village near the city of Parachinar in the Kurram District in Pakistan. Shias are a minority group in Pakistan and make up 40 percent of the overall population of Kurram District as a whole, but in Upper Kurram they comprise 80 percent of the population and the major town of Parachinar in Upper Kurram is a Shia majority city.⁵ I accept that the applicant is recognisable as a Shia/Turi.
17. The country information before me reports sectarian dispute and conflict across Pakistan and in the Kurram District/FATA areas. The area comprises both Shias and Sunnis and the Shias/Turis have been opposed to the actions of the Taliban and Sunni militant groups who were seeking to use the area to gain entry to Afghanistan, which the area borders. The dispute has seen sectarian violence, including bomb attacks and travelers on the road have been

⁵ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Pakistan”, 20 February 2019, 20190220093409; CRSS Annual Security Report Special Edition 2013-2018,” Center for Research and Security Studies, March 2019”, 20190405163832; Pakistan Institute for Peace Studies, “Pakistan Security Report 2018, 6 January 2019, 20190121110758; Eurasia Review, “Pakistan: Sectarian Savagery – Analysis”, 29 November 2018, CXBB8A1DA40015

vulnerable to attack.⁶ From the applicant's account his father was killed in 2007 when he was travelling to an area close to [Town 2], which he described as a Taliban area and was described as a Sunni majority area in the post-interview submission. The death certificate supports the claimed death by gun shot and noting his father was a Shia travelling alone in a Sunni majority area I accept it is plausible that he was targeted by the Taliban/Sunnis as claimed by the applicant. I accept that as a result of the conflict and his father's death the applicant was concerned about his general safety, particularly working outside the family home and travelling.

18. I also accept as plausible that the applicant witnessed the carnage from a bomb explosion in 2007 and heard a further bomb attack in 2008/2009. I accept as plausible that a cousin was killed while returning from a Shia pilgrimage in 2010.
19. The Turi tribe opposed the actions of Sunni militant groups and from 2007 Turis were vulnerable to attack from extremists operating in the FATA. The violence escalated with the involvement of the Taliban. I accept that the applicant was concerned as to his safety in this environment and decided to leave Pakistan in 2013.
20. After the applicant's departure from Pakistan the threat of rising Islamist militancy, particularly Al Qaeda, and ongoing violent attacks by militants caused the Pakistani government to respond with counter-terrorism measures designed to disrupt the militants' activities and influence. In 2014 the authorities launched Zarb-e-Azb in parts of the FATA. This operation spread more widely into Khyber Pakhtunkhwa targeting terrorist, separatist and criminal groups. Operation Zarb-e-Azb and similar initiatives are credited with achieving a significant reduction in violent and terrorism related attacks. Throughout 2015/2016 military operations continued under a National Action Plan to target militant groups operating in the FATA. Initially these counter-terrorism actions resulted in a significant reduction in the number of casualties from terrorist attacks.⁷
21. However in response militant groups launched a number of major attacks in 2017. Militants carried out a number of attacks in Parachinar in Kurram District including three bombings, one of which killed 72 people in a market leading up to the Eid festival. Further reports are of roadside bomb attacks in which a number of Shias and government officials were killed in 2017 and early 2018 and a number of sectarian incidents and reports of attacks on Shias between March and April 2018 although these were shooting attacks and occurred outside the Kurram District.⁸ Deaths and casualties from these incidents were high and in response the Pakistani government ramped up its counter-terrorism efforts. In 2018 national security operations resulted in a significant reduction in terrorism related attacks and in 2019 the Department of Foreign Affairs and Trade (DFAT) reported that military operations have forced militants into the mountains.⁹
22. The post-interview submission contends that it is important to distinguish perceived security improvements in Pakistan from the question of whether there would be a real chance of

⁶ DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; Post-interview submission: DFAT, "DFAT Thematic Report – Shi'as in Pakistan", 14 April 2015; South Asian Terrorism Portal, "Shias killed in Pakistan since 2001", 22 April 2018

⁷ DFAT, "Country Information Report – Pakistan", 20 February 2019, 20190220093409; Post-interview submission: UK Home Office, "Pakistan: Fear of the Taliban and other militant groups", Country Information and Guidance, 8 May 2014

⁸ Eurasia Review, "Pakistan: Sectarian Savagery – Analysis", 29 November 2018, CXBB8A1DA40015; Fata Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

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

persecution of the applicant if he were returned to Pakistan and in this regard submits the ongoing persecution of Shia is well documented and Shias have continued to be victims of widespread and systemic violence in all of Pakistan's provinces. The submission cites from a range of sources reporting incidents of sectarian violence in Pakistan. However a number of these reports pre-date the National Action Plan which saw Pakistani authorities adopt counter-terrorism measures to suppress anti-Shia and other violence and the influence of extremist groups. More recent reports of attacks on Shias are cited however these largely report incidents outside the Kurram District as discussed below.

23. The post-interview submission comments that "a 2017 report states that, since 2002, over 2,679 Shia Muslims have been killed in Pakistan in targeted attacks by Sunni extremists.³⁰ Attacks against Shia Muslims continue to happen on a regular basis, 119 Shia Muslims have been killed since 2017". This report from the South Asian Terrorism Portal listed the 2017 attacks in Parachinar already noted above; other incidents listed as occurring in 2017 occurred in other areas of Pakistan and of the attacks listed as occurring in 2018 these were each in Baluchistan, with one in the Sindh.¹⁰ Similarly other reporting of "escalated violence and targeted attacks on Shia Muslims" occurred outside the Kurram District.¹¹ The post-interview submission refers to the emergence of ISIS in Pakistan since 2015 and cited incidents of ISIS attacks; however these occurred in the Sindh, Baluchistan and Karachi.¹²
24. The report from Minority Rights Group International is critical of the authorities' ability to respond to attacks and commented that "police have generally been unable to stop attacks when they occurred". The Minority Rights Group expressed particular concern for Hazaras in Quetta and Shia pilgrims travelling through Baluchistan.¹³ Similarly Al Jazeera reported attacks on Hazaras in Quetta.¹⁴
25. I note the reference in the post-interview submission to an attack "less than a month ago" where a number of vehicles belonging to Shias which were burned in a bazaar. The applicant was advised about this by his mother. No independent reporting has been cited to corroborate this incident however I note it is stated to have occurred in the [Town 2] area of Kurram, being the Sunni occupied area, and not in the Parachinar/Upper Kurram area. Similarly the bomb attack on an imambargah on 5 May 2020 occurred in Lower Kurram.¹⁵ I accept that the applicant may be concerned about such an attack and by photographs on [Social media] showing the damage but I am not satisfied that this attack points to a real chance of harm to the applicant in Upper Kurram.
26. Overall, since the counter-terrorism measures put in place from 2014 and enhanced in the 2018 National Action Plan update to disrupt the activities of extremist groups incidents of such attacks in Parachinar and Upper Kurram have significantly reduced.¹⁶

¹⁰ Post-interview submission: South Asian Terrorism Portal (SATP), "Shias Killed in Pakistan Since 2001", 22 April 2018

¹¹ Post-interview submission: AhlulBayt News Agency, "Pakistan: Takfiri terrorists shot Shiite religious scholar in Hangu/Photos", 15 May 2018; Shiite News (online), "Hazara shia muslim injured in terrorist attack in Quetta", 3 October 2018; Shiite News (online), "Shia Muslim of Parachinar martyred in Karachi terrorist attack", 4 October 2018; Shiite News (online), "Shia Youth Martyred in Terrorist Attack in Karachi", 23 March 2019

¹² Post-interview submission: The Guardian, "Pakistan Shia mosque bombing kills dozens", 31 January 2015; The Guardian, "Responsibility for Karachi bus attack that killed 43 passengers", 13 May 2015; The Diplomat, "An Alliance Between Islamic State and Lashkar-e-Jhangvi in Pakistan Was Inevitable", 15 November 2016

¹³ Post-interview submission: Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples - Pakistan: Shi'a and Hazaras", June 2018

¹⁴ Post-interview submission: Al Jazeera, "Hazara Shia Muslims attacked in Pakistan's Quetta", 10 October 2017

¹⁵ IAA submission: Photographs; [Social media link deleted]: Dawn, "At least 1 injured in explosion at imambargah in Lower Kurram", 5 May 2020

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

27. The post-interview submission noted that although DFAT assessed that Shias 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, such violence does still continue and the submission cited a suicide bombing targeting Shias at a market in November 2018; while this incident occurred in Khyber Pakhtunkhwa it was in Lower Orakzai Agency/District, not Kurram.¹⁷
28. Despite the reduction in terrorist attacks and the decline of effectiveness of militant groups who have become restricted to the mountains the 2019 DFAT report commented that “the Taliban and Al Qaeda have gained significant ground in the former FATA, killing many Shi’a—especially in Parachinar, rendering Turis and other Shi’a tribes of the former FATA amongst the most vulnerable across Pakistan”. However the same paragraph goes on to refer to “significant violence” between 2008 and 2014 indicating the references to Shia deaths relates to that period. This report details the significant number of attacks by militant groups throughout Pakistan in 2018 and noted that in 2018 Khyber Pakhtunkhwa reported the highest number of terrorist attacks in Pakistan but does not specify any particular incidents in the Kurram District since the first half of 2017, being the incidents noted above, and the information before me does not indicate large-scale attacks or high levels of casualties since that period.
29. DFAT noted an overall reduction in the level of violence but assessed that sporadic large-scale terrorist attacks may still occur against a background of ongoing small-scale attacks (albeit at a reduced rate) and the risk of sectarian violence for civilians in the Kurram District remains higher than for civilians in other parts of the FATA. Despite the reduction in terrorist attacks and the effectiveness of militant groups, DFAT reported that Shia tribes in the former FATA are among the most vulnerable groups in Pakistan. DFAT noted the Turi community reported two attacks in early 2018 (which DFAT is unable to verify), in comparison to estimates from the community that in the previous year 200 Turis were killed and 1000 injured. However DFAT also noted that counter-terrorism measures have significantly decreased the number and severity of attacks on Turis and the community reported significantly fewer road attacks in 2018, restoring some confidence within the community travelling on the road.¹⁸
30. I have considered the country information before me reporting history of attacks in Pakistan, and in the Kurram District specifically and I note the report of the family who died in the roadside blast in Upper Kurram 2018.¹⁹ However, the detailed and statistical reporting from agencies identifying location and type of attack, numbers of casualties/injured and personal characteristics of victims (race/religion/political affiliation), and often identifies perpetrators, provides a broad picture of the security situation and overall the indications are of a downward trend in such attacks as a result of increased security measures taken by the authorities.²⁰ I place significant weight on reporting from the FATA Research Centre, whose objective in their security report is to outline and categorise all forms of violent extremism and the role of terrorist groups in the scale of terrorist activities by employing primary and secondary resources, collecting data from field researchers and consulting reliable secondary sources to ensure the quality and veracity of its research. While cautioning that Kurram is vulnerable to attack due to its proximity to volatile areas in Afghanistan the FATA Research Centre report

¹⁷ DFAT, “DFAT Country Information Report – Pakistan”, 20 February 2019, 20190220093409

¹⁸ *ibid*

¹⁹ The News (Pakistan), “Six of a family martyred in Kurram roadside blast”, 31 January 2018, CXBB8A1DA25475

²⁰ Center for Research and Security Studies, “First quarter of 2019 witnesses overall 12% increase in violence related fatalities, as compared to year 2018, reports CRSS in its Quarterly Security Report”, 16 April 2019, 20190717112226; Center for Research and Security Studies, “Quarterly Security Report 2019”, 17 July 2019, 20190904144910; Center for Research and Security Studies, “Quarterly Security Report: 3rd Quarter, 2019”, 11 October 2019, 20191015091425; Pakistan Institute for Peace Studies, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758; Eurasia Review, “Pakistan: Sectarian Savagery – Analysis”, 29 November 2018, CXBB8A1DA40015

published in January 2020, commenting on the 2019 year, reported no civilian casualties in the Kurram District. The report noted that the district remained largely peaceful with only incident reported being an ambush attack by militants on two security forces.²¹

31. I note the post-interview submission comments and concerns as to the deficiencies in the police and security forces which limit the authorities' response to terror and militant activities and I have had regard to reporting by DFAT as to the limited police resources.²² However the government continues to maintain its security program and counter-terrorism activities to repress the influence of Sunni militant groups. Indicative of this are the continuing security arrangements put in place to secure large Shia events such as Ashura.²³
32. I have considered the country information before me reporting history of attacks in Pakistan, and in the Kurram District specifically and I note the indications of a downward trend in such attacks as a result of increased security measures taken by the authorities. I acknowledge cautions as to vulnerability of the Kurram District but the indications are that the Pakistani authorities have no plans to discontinue the security operations and counter-terrorism measures that have been successful in achieving a decline in militant attacks or that the greater stability now present in Kurram will diminish in the foreseeable future. I acknowledge the past history of sectarian attacks resulting in high levels of deaths and casualties in the FATA, and the upswing in attacks in early 2017, but considered overall I am not satisfied that the high level of violence has continued or may increase in the reasonably foreseeable future.
33. It is not apparent from the doctor's or psychologist's reports when the applicant's depression and stress became manifest. The psychologist report refers to the applicant's stress due to the then upcoming protection visa interview and absence from his family resulting in "pain beyond imagination, but also refers to stressors from his experiences in Pakistan including the death of his father and assuming responsibility for looking after his family at the age of [Age] years, witnessing "many" bomb attacks and "daily civil war", and his life and struggles which he described to the psychologist in a "very sad and pained way". I have accepted that the applicant's father was killed when he was a teenager, necessitating him working outside the home. I have also accepted the applicant witnessed or heard bomb attacks on the two occasions claimed and that his cousin was killed. I accept these would have been traumatic for the applicant, however to the extent that these stressful experiences may have been detrimental to his mental health while he was in Pakistan there is no indication that the applicant could not continue to work or earn a living while he was in Pakistan as a result.
34. I note the country information cited in the post-interview submission reporting low spending on mental health services in Pakistan, poor resourcing and the difficulties accessing services.²⁴ The country information before me reports that basic health care is available to all Pakistanis free, although there is limited capacity largely due to lack of funding and overarching economic and governance challenges. The country information reports some women in some circumstances and non-Muslim minority groups can experience difficulties in accessing health care but there is no indication that the applicant would experience such difficulties.²⁵ I accept

²¹ FATA Research Centre, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", 13 January 2020, 20200122123739

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

²³ Global Voices, "Muharram in Pakistan: Daring to observe Ashura", 14 September 2019, 20191022151801; Dawn (Pakistan), "Ashura observed across Pakistan amid tight security arrangements", 10 September 2019, 20191022152039; News International (Pakistan), "Muslims mark Ashura across Pakistan", 22 September 2018, CXBB8A1DA35779; Express Tribune (Pakistan), "Ashura processions culminate peacefully in different districts", 3 October 2017, CXC90406614861.

²⁴ Post-interview submission: World Health Organisation, Working Paper: "Spending targets for health: no magic number", 2016, United Kingdom: Home Office, "Country of Origin Information Report – Pakistan", 9 August 2013

²⁵ DFAT, "DFAT Country Information Report, 20 February 2019, 20190220093409

that there are limited medical resources outside the major population centres, particularly for mental health care, but I am not satisfied that the applicant would be denied access to any medical care required for any s.5J reason.

35. I also note the information reporting the need for awareness campaigns to enlighten Pakistan society on mental illness and mental health promotion to counter stereotyping of mental illness and negative associations of mentally ill people as “crazy”. Despite the implementation of a Mental Health Ordinance for Pakistan in 2001 to protect the rights of the mentally ill there remains ongoing criticism of slow progress, resulting in some stigma and some families hiding away mentally ill family members.²⁶ However, despite these concerns and a degree of stigma in Pakistan I am not satisfied that the information before me supports a finding that there is a real chance the applicant would not be able to gain employment or would be denied the right to subsist, or be outcast from society, nor does he indicate he would be rejected by his family.
36. I do not accept that as a failed asylum seeker who has resided in a western country that the applicant would be imputed with a political opinion of concern; there is no indication he has been involved in any political or anti-government activities, nor does the country information indicate that returnees are so imputed, even after a period of residence in a western country. Rather the country information indicates returnees are able to reintegrate into the community and DFAT assessment does not give rise to a finding that there is a real chance of harm or societal discrimination for having lived in a western country or being a returnee failed asylum seeker.²⁷
37. I am not satisfied that the country information before me supports a finding that the applicant would be harmed for activities he has undertaken in Australia, including taking alcohol, drugs, smoking and having sexual relationships outside marriage. At his protection visa interview the applicant indicated that he will not be able to engage in these activities in Pakistan, although he did not raise any protection claims on this basis. I acknowledge that the applicant has experienced more freedom in Australia to engage in such activities and his complaint that he may not be able to continue to do so in Pakistan, although I note he has sought and is receiving professional counselling to overcome his alcohol and drug use. The applicant has not claimed that he would continue to engage in such activities in Pakistan and I am not satisfied that any such limitations on his behaviour amount to serious harm.
38. The post-interview submission referred to a report citing difficulties for returnees to Afghanistan and submitted that militant groups in Pakistan operate in a similar way to their Afghan counterparts and that as Australia is viewed as an infidel country by the Taliban the applicant would be subject to harm. The submission also refers to case law and states “as noted in *AZABR v Minister for Immigration*²⁸ mere travel to Australia can expose a citizen of Pakistan and family members from the FATA region to threats of harm from the Taliban”. I have examined the judgment of the Federal Magistrates Court in this matter. While claims of threats were made by the applicant in the matter I do not consider that this supports a finding that this applicant would be harmed for reason of his travel to Australia. Furthermore the judgment itself does not purport to rule on that factual issue. I also consider it important to note this matter dates from 2011 and pre-dates the 2014 National Action Plan and the indications are

²⁶ Post-interview submission: Al Jazeera, “Pakistan’s mental health problem”, 7 October 2015; BBC (online), “Why Pakistan’s poor seek mental health cure at shrine”, 29 September 2016; Daily Times (Online), “The state of mental health legislation in Pakistan”, 1 September 2018; Journal of Pioneering Medical Sciences Blogs, Features, Global Health, Mental Health, Social Issues, Sara Saleem Damani, “Mental Illness in Pakistan: A subject of Stigma, Ridicule, and Cultural Insensitivity”, 28 January 2018

²⁷ DFAT, “DFAT Country Information Report – Pakistan”, 20 February 2019, 20190220093409

²⁸ Footnoted in the submission as [2011] FMCA 825, being the Federal Magistrates Court judgment

the Taliban and other Sunni extremists groups are no longer influential in Upper Kurram and I do not accept that there is a real chance the applicant would be harmed on this basis.

39. DFAT advises that returnees are questioned to ascertain if they are wanted for any criminal activity in Pakistan or have committed any offences while abroad. In this regard I have considered if the applicant may face any harm on the basis of the conviction in Australia for driving under the influence of illicit drugs should the applicant declare this conviction. DFAT advises that those who committed a serious offence abroad may be arrested and held on remand.²⁹ However the applicant's offending attracted only a fine and licence suspension and there is no indication that the applicant has been involved in any drug trafficking or other crime which is considered to be a serious crime in Pakistan.³⁰ I am not satisfied that the applicant's conviction or his personal drug use would result in him being arrested and held on remand or otherwise harmed.
40. I have accept that the applicant may be readily identified as a Shia, and/or as a Shia Turi from the Kurram District but I am not satisfied that the chance he would be harmed in the Kurram District as such is more than remote. Nor am I satisfied that the chance he may be harmed or killed as a bystander in an attack is more than remote. I accept that the applicant would need to travel within Pakistan to return to his home in the Kurram District but the country information before me indicates that the road to Parachinar is now open and Pakistanis are travelling on this road to safely access Parachinar and Upper Kurram.³¹
41. I have considered the country information before me and the applicant's claims and the general improvement in the security situation in Kurram District and the declining levels of militant attacks and sectarian violence and I am not satisfied that the applicant would face a real chance of harm should he return to Kurram District in Pakistan in the reasonably foreseeable future.
42. Considering the totality of the material before me I am not satisfied that there is a real chance that the applicant would experience persecution on return to Pakistan.

Refugee: conclusion

43. 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

44. 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

45. Under s.36(2A), a person will suffer 'significant harm' if:

²⁹ DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

³⁰ *ibid*

³¹ *ibid*

- 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.
46. 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.
47. I accept that the applicant has been diagnosed with reactive major depression with high anxiety and acute stress and that mental health is stigmatised in Pakistan. I accept that there may be difficulties for the applicant in accessing mental health services in Pakistan. But I am not satisfied that any difficulties the applicant may face in Pakistan because of his mental health would amount to the arbitrary deprivation of life or liberty, imposition of the death penalty, or torture (as defined). Nor is there any indication that the authorities or others, through any act or omission, intentionally inflict pain or suffering or severe pain or suffering, such as to meet the definition of cruel or inhuman treatment or punishment, nor that they intent to cause extreme humiliation.
48. Similarly I do not accept that any limitations in Pakistan on his behaviour or on the greater freedoms he has experienced in Australia would amount to significant harm.
49. I have otherwise found there is not a real chance that the applicant faces harm on any of the other bases claimed. Noting that the “real risk” test for complementary protection is the same standard as the “real chance” test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

Complementary protection: conclusion

50. 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.