



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA20/08544

Date and time of decision: 30 July 2020 14:14:00  
J Jennings, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be Shia, Turi Pashtun from a village in the Parachinar area, Kurram District, Pakistan. On 16 May 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. He claims that as a Turi Shia he fears harm in Pakistan from extremists and others.
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 30 June 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 material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 28 July 2020 the IAA received submissions on behalf of the applicant. These comprised a statement from the applicant and a statement from the [Migration Agent] who assisted the applicant complete the submissions on a non-ongoing basis. In part these statements address the delegate's decision and findings and state why the applicant disagrees with this and I have had regard to this.
5. The submission also included country information, being the 2019 Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Pakistan" and an article from Dawn dated 27 July 2020, and a medical report dated 22 July 2020, and a statement addressing new information. The Dawn article and medical report post-date the delegate's decision; the DFAT report was before the Minister.
6. In his statement the applicant expressed a wish to be able to explain in person to the reviewer what he has said in his statement and requests he be given an opportunity to do so before a decision is made on the review. I note the statement was prepared by telephone but beyond the request for an in person interview or hearing it is not apparent what information the applicant would provide at such an interview/hearing that could not be provided in writing. The applicant was represented throughout the protection visa application and interview process and his representative assisted the applicant to provide comprehensive post-interview submissions. I am satisfied the applicant has the opportunity to put forward his claims. The IAA is a limited form of review and does not generally conduct hearings. It does have the discretion to get new information from an applicant, including by way of interview. However I do not consider the circumstances warrant getting new information.
7. The new information also discusses the matter of getting new information in the context of addressing any new information. It is submitted in "the particular compelling circumstances of the review the Authority ought consider exercising its discretionary power under s 473DC(3) to invite the applicant to give oral evidence at an interview". These circumstances are stated to include but are not limited to where there is new information provided. The new information submission requests that in the event the IAA finds any particular material is new information which it is prevented from considering due to the operation of s.473DD that the applicant be given the opportunity to respond. It is advanced that whether the information will be considered potentially holds highly significant consequences for the applicant, given it is

evidence bearing on whether he faces a real chance or risk of suffering serious or significant harm and “particularly in view of the complex circumstances surrounding the various pieces of information”. I have considered this request, but I am not satisfied that the new information I have identified and discussed below is particularly complex, or that it “holds highly significant consequences” in the assessment of his protection claims below such that the circumstances warrant getting new information in this regard.

8. It is submitted in the new information statement “that information contained in the enclosed statement does not constitute ‘new information’, on the basis that the information concerns existing claims which were before the delegate when the primary decision was made. In the a statement, the applicant provides responses to the decision, reiterating his existing claims and in some aspects providing further clarification or details as to information that he has already provided to the delegate”. Similarly the statement from the assisting practitioner is stated to be a submission that “sets out why the decision of the Department was factually and legally incorrect and details those claims and other material facts overlooked by the delegate”. I have taken this submission into account and while some of the information in the applicant’s and the assisting practitioner’s statements reiterates claims already before the Minister, I find that a number of matters are new information.

#### *Health and COVID-19 pandemic*

9. The applicant acknowledges he did not advance information about his health to the Minister; this is new information as is the accompanying medical report. Similarly he did not advance any claims in regard to the COVID-19 pandemic.
10. The information as to the applicant’s mental health and his safety within the context of a pandemic is credible personal information and as the applicant links his condition to his fears of returning to Pakistan I am satisfied it may have affected the consideration of the applicant’s claims. As this information goes to the applicant’s mental health and general health I am satisfied that exceptional circumstances exist that justify the IAA considering this information.

#### *Violent clashes in Kurram June/July 2020*

11. The Dawn media report and the comments in the submissions relate to clashes in June/July 2020 and post-date the delegate’s decisions. Considering the nature of the information I am satisfied that there are exceptional circumstances that justify the IAA considering this information.

#### *Threats to father in 2016*

12. In his statement the applicant advised that around 2016 his father received another threat by telephone from the Taliban. The applicant stated his father only told him about this threat recently.
13. It is not apparent why the applicant’s father only told him of this threat recently and I am concerned at this claim noting that in his protection visa application he indicated he has regular contact with his family and speaks with his parents by telephone each week. However, accepting this on face value the applicant could not have provided this information to the Minister. Noting the direct relevance of the claimed threats to the applicant’s claims I am satisfied that there are exceptional circumstances to justify the IAA considering this information.

### *Attack in village 2020*

14. In his statement the applicant advised “only a few days ago a man from my village was shot dead at night and I fear this could happen to me. No one knows why this happened”. Accepting the premise that this incident occurred “a few days ago” and that this statement is dated 21 July 2020 I am willing to accept that this incident post-dates the delegate’s decision made three weeks earlier and on that basis could not have been provided to the Minister. But I have concerns as to the probative value of this information in supporting the applicant’s claims. Noting the comment “no one knows why this happened” it is not evident this was a sectarian matter as opposed to a criminal, domestic or other matter. No independent reporting of this incident has been provided or identified. Nor has the applicant indicated that has any links to, or shares any similar profile with this villager. I am not satisfied that the unverified killing, for an unknown reason, of a villager, with no apparent link to the applicant is of significant probative value in supporting the applicant’s claims and I am not satisfied exceptional circumstances exist that justify the IAA considering this information. Nor is it apparent or advanced that the applicant knows any further information regarding this matter such that seeking further information by way of an interview or otherwise would be of utility.

### **Applicant’s claims for protection**

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15. The applicant’s claims can be summarised as follows:
- The applicant is a Turi Shia Pashtun from a village in the Parachinar area, Kurram District, Pakistan.
  - The applicant received minimal education, attending school for around two years before leaving and commencing work on his father’s farming land.
  - The family was partially supported by remittances sent by an uncle working abroad.
  - From 2007 the Sunni extremists entered the area and began to incite hatred and violence against the Shias. Sectarian violence broke out and the applicant personally knew people killed in attacks. The roads were closed as it was not safe to travel due to attacks by extremists.
  - The applicant was involved in Shia religious events. He was involved in managing security for religious processions.
  - From [specified year] to [year] his father was elected as the president of the imambargah. In this role he spoke out against the Taliban and was vocal about Shia rights to practice their religion. The applicant supported his father in these activities. The applicant’s father received threats from extremists warning he and his father would be harmed if he did not stop criticising the Taliban. Around 2016 the applicant’s father received another threat by telephone from the Taliban. He was told to stop any activism or he would be harmed.
  - The applicant’s family have traditionally supported the National Assembly of Pakistan political party and the applicant was an active supporter for their candidate, [Candidate A], in 2011/2012. The applicant’s brother was injured in an attack at [Candidate A’s] campaign headquarters.
  - [Candidate A] was later killed and the applicant attended a protest about [Candidate A’s] killing.

- The applicant engaged in various activities because he liked to help people. As a result of these activities he is a bigger target. The applicant was scared for his safety and decided to leave Pakistan in 2013. Two of his brothers live abroad.
  - The applicant fears if he is returned to Pakistan he will be harmed as a Shia and because of his and his father's past activities.
  - He fears that on return the authorities will ask where he has been since he departed from Pakistan.
  - The authorities cannot protect him and his fear extends to all of Pakistan.
  - As result of his fears for his safety the applicant suffers from depression and has trouble sleeping. A medical report dated 22 July 2020 advised he is suffering from anxiety and depression for which he has been prescribed medication. The IAA submission contends the applicant's mental health issues would contribute to the difficulty of the applicant obtaining sufficient employment to support himself in Pakistan.
  - In June/July 2020 media reported a violent conflict in Kurram resulting in deaths and injuries. The applicant believes from Facebook reports that this was a fight between Shia and Sunni groups.
  - In post-interview submissions it is contended the applicant would be harmed for reason of his actual or imputed political profile of Pashtun Turi Shia and Shia Bangash. The submission puts forward the importance of considering the implications for Turis and Shia given their; perception as pro-United States; active armed conflict in Kurram Agency against the Haqqani network and Taliban; political opinion as anti-Taliban; perception as pro-Iran.
  - The applicant is concerned it is unsafe to return to Pakistan during the COVID-19 pandemic.
16. The applicant's details were inadvertently released in the February 2014 data breach.
17. The applicant provided a reference from his current employer dated 10 February 2020 attesting to his skills and work ethic.

### **Refugee assessment**

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18. 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**

19. 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.
20. The applicant has consistently claimed to be a Turi Shia Pashtun from a village in the Parachinar area, Kurram District, Pakistan. The applicant has provided documents in support of his claimed identity and residence. I accept the applicant's identity and nationality as stated and that Pakistan is the receiving country for the purpose of this review.
21. I accept the applicant has had limited education and is not literate. I accept he worked on his father's farming land from a young age and that the family was supported in part from remittances overseas.
22. I accept that from 2007 Sunni extremists entered the Kurram area and began to incite hatred and violence against the Shias. Country information confirms the Kurram District, formerly part of the Federally Administered Tribal Areas (FATA) and now part of Khyber Pakhtunkhwa, has been subject to sectarian dispute and conflict. The Kurram District comprises both Shias and Sunnis; Shias are the dominant sect in Upper Kurram where the applicant's village is sited. Shias/Turis have been opposed 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 conflict between the Turis and the various Sunni militant groups dates largely from 2007 when the Taliban, Al Qaeda, Islamic State and similar groups became prominent in the area. Shias in the area, particularly the Turi tribe, opposed the actions and influence of such groups and fiercely guarded their tribal lands resulting in significant outbreak of violence with Sunni tribes in April 2007. The violence escalated with the involvement of the Taliban which had established a stronghold in lower Kurram and stepped into the dispute to support the Sunnis.<sup>1</sup> In the context of this conflict I accept as plausible that the applicant personally knew people killed in attacks. I accept that the roads were closed due to the conflict and it was not safe for the applicant to travel, which affected the family's ability to transport goods to market.
23. The applicant has stated he is a practising Shia and I accept that he was involved in Shia religious events. I also accept as plausible that he assisted with security arrangements at such events, noting that at this time of sectarian conflict and limited government resources in the FATA security was largely managed by the communities in conjunction with militia groups operating at the time.<sup>2</sup>
24. It is claimed the applicant's father was elected as the president of the imambargah for two years from [year] and was a "high-profile prominent member of the Shia community". At the protection visa interview the delegate and the applicant's then representative discussed the possibility of obtaining evidence to support the applicant's claims as to his father's role and

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<sup>1</sup> Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; Pakistan – PAK39807 – Anjuman-e-Hussainia – Maliks – Political Agent – Targeted Harm – Tehrik-e-Taliban Pakistan, 11 January 2012, CRODEDD73544; Middle East Institute (United States), "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007", December 2014, CIS2F827D91993

<sup>2</sup> ibid

profile and in post-interview submissions photographs of the applicant's father "participating in his religious teaching" were provided.

25. Of the photographs provided photographs one and four would appear to have been taken at the same event involving a number of men sitting in an outside setting with some of them eating food and photograph two is of a group of men sitting on mats. I am not persuaded the photographs provided show the father engaged in the activities the post-interview submission contends lead to his high profile as a prominent member of the Shia community. While he is shown as part of a group in these photographs it is not apparent he is leading any discussion or teaching history of the Shia faith to the community within that group. The claimed fundraising is not apparent in these photographs nor is there any evidence of improvements to the quality of the religious building it is stated was the motivation for fundraising he was involved with. The photographs do not depict involvement in religious events or processions. Overall these photographs depict the applicant's father as part of a group of men, consistent with him being a village elder/leader. I accept that the group, including the applicant's father, may be linked to the imambargah. But I have some concerns as to the claim of the extent of his father's "high profile" as a "prominent" community leader. There is no indication the applicant's father was a scholar or educated such that he would be in a position to provide instruction in the "history of the Shia faith to the community"; and in this regard I consider it significant that the applicant is illiterate and that he and all but one of his brothers received only minimal formal education and his father was seemingly a simple farmer. It is stated the father was vocal about the Taliban and the need to restrict Taliban access to the area, but there is no indication he was a member of the important tribal Jirga system at any stage. I am also surprised that the applicant described only one his brothers being involved with assisting their father in his imambargah duties and the others as not being interested; it is claimed being president of the imambargah was a significant role and it is difficult to accept that the applicant's brothers were not more active in supporting their father in light of the claimed significance of the role.
26. Overall I have doubts as to the claim of the extent of the role and influence of the applicant's father in the Shia community, but I also take into account the possible difficulty in obtaining further documentary evidence of the claimed two year period as imambargah president and of the tribal nature of the community and community organisation and the possible informal election of office bearers in tribal society. I am willing to give the applicant the benefit of the doubt and accept his father was a member of the Shia community and villager elder/leader, that he was elected to the role of the imambargah president for two years in [year] and that he expressed anti-Taliban views. In the context that his father had an official role as imambargah president for two years it is also plausible he was threatened by the Taliban and I accept this claim. But it is important to note that the Shia community as a whole was largely opposed to the Taliban and the encroaching influence of the Taliban and the applicant's father would seem to be one of many Shias expressing such views.
27. Although I accept the claim as to the imambargah and village role of the applicant's father and past threats by the Taliban is difficult to accept the claim that around 2016 his father was threatened by the Taliban. This is [several] years after his tenure in the imambargah role and although the assisting practitioner's statement to the IAA contends he remains a high profile member of the community the indications are the applicant's father largely stays at home. In the protection visa interview the applicant described his father as no longer working because of his age and not having worked for some time; he further stated that his father was old and stayed in the house and did not travel on the roads outside the village. Furthermore, from the applicant's account his father did not inform him of this at the time. It is difficult to accept he did not do so, if true, noting that they talk regularly. There is no indication there was any reason

his father could not have informed him at the time or any reason to suggest a delay of four years in informing the applicant of the threat. I find it implausible that his father would have waited four years to inform the applicant of such a significant matter and I am concerned this damages the credibility of the claim.

28. Considering he completed his tenure in the imambargah role in [year] and has become increasingly restricted to the village and staying in the house I am not satisfied that in or around 2016 the applicant's father would have been of interest to the Taliban. I also do not accept that his father would not have informed the applicant of such threats at the time if true. The applicant has failed to satisfy me his father was threatened by the Taliban in or around 2016. I do not accept this claim.
29. I accept that the applicant assisted his father while he was in the imambargah role and in general provided support to the Shia community. However I am not satisfied that this role or his father's profile would make the applicant a target for harm from extremists as feared. I consider it significant that the applicant's remaining family members living in Pakistan, including his brother, and have not come to harm, and I have not accepted the claim his father was threatened in 2016.
30. I accept that the applicant and his family have traditionally supported the National Assembly of Pakistan. I accept that the applicant was involved as a supporter of National Assembly of Pakistan candidate in 2011/2012 and that [Candidate A] was killed and that he attended protests of the killing. Media reports confirm that [Candidate A] was shot and killed in [2013], which is largely consistent with the applicant's claim that he supported [Candidate A] during the period 2011/2012.<sup>3</sup> From the applicant's account he was one of one to two hundred supporters who attended political events and made up a crowd to display large numbers of supporters and to speak to members of the public and assisted with organisation such as setting up and security. There is no indication that he came to harm while carrying out this role or as a result of this activity and I am not satisfied he would be harmed for this reason, or should he continue to be similarly active should he return to Pakistan.
31. I have concern as to the claim the applicant's brother was injured in a bomb blast at the campaign headquarters of [Candidate A] at the time they were supporting his election campaign. Media reports confirm that prior to his killing in 2013 [Candidate A] [details deleted]. However these previous attempts each occurred in 2008, some three/four years earlier than when the applicant claimed he was supporting [Candidate A].<sup>4</sup> This casts significant doubt on his claim his brother was injured in the bomb attack on [Candidate A's] campaign headquarters and I have considered if this may be a simple mistake by the applicant as to the dates. But I am concerned that in his statement of claims he referred to [Candidate A] being killed in a shooting attack three months after the bomb attack in which he claims his brother was injured, whereas [Candidate A] was killed some four years after the bomb incident. That the applicant's account of the bomb incident which he claims resulted in injury to his brother is not consistent with independent information reporting the events is cause for concern and I am not satisfied that his claim is genuine. I do not accept this claim.
32. The post-interview submission contends the applicant has a number of unique risk factors that raise his profile and that "it is proven that the Taliban attacks are usually focused on more well-known members of the Shia community and this fact makes the Applicant a prime target for the militants". The experiences the applicant has recounted of threats to his father to

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<sup>3</sup> [Deleted.]

<sup>4</sup> [Deleted.]



discontinue speaking against the Taliban, and threats to the applicant and other family members if he did not cease his criticisms and the attacks on [Candidate A] occurred within the context of the sectarian violence in the Kurram District at the time. After his departure from Pakistan in 2013 a surge in terrorist attacks across the country occurred in 2014. As a result of the threat of rising Islamist militancy and ongoing violent attacks by militants the Pakistani government responded with counter-terrorism measures designed to disrupt the militants' activities and influence and in June 2014 the authorities launched Operation Zarb-e-Azb in parts of the FATA. This operation spread more widely into Khyber Pakhtunkhwa targeting terrorist, separatist and criminal groups. In December 2014 the attack on the Peshawar army school which resulted in the deaths of 140 children led to the establishment of a National Action Plan which combined civil and military efforts to target militant groups operating in the FATA. These operations are credited with achieving a significant reduction in violent and terrorism related attacks. Throughout 2015/2016 military operations continued and initially these counter-terrorism actions resulted in a significant reduction in the number of casualties from terrorist attacks.<sup>5</sup>

33. In response to this government action militant groups launched a number of major attacks in 2017. DFAT reported deaths from terrorist attacks in Kurram District as being "significantly increased" in 2017 and state it was aware of three attacks targeting Turis in Parachinar in that year. These are a bomb attack in a marketplace on 21 January 2017, a suicide bomb attack at an imambargah on 31 March 2017, and two devices detonated at a market on 24 June 2017. DFAT reports more than 120 people were killed in these three attacks.<sup>6</sup> 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. 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 DFAT reported that military operations have forced militants into the mountains. DFAT notes the comparison between Turi community estimates that in 2017 200 Turis were killed and 1000 injured whereas in 2018 the Turi community reported two attacks in early 2018 (which DFAT is unable to verify) and the community reported significantly fewer road attacks in 2018.<sup>7</sup>
34. However post-interview submissions contend that despite the government's counter terrorism measures there are several internal factors within Pakistan that point to ongoing sectarian violence in the reasonably foreseeable future and that the security situation remains fluid and further impacted by events in Afghanistan. In this regard the post-interview submission notes a suicide bomb attack on 18 February 2020, but I note this attack occurred in Quetta, not in Khyber Pakhtunkhwa, and the Al Jazeera report of the incident informs the explosion took place close to the event organised by Ahle Sunnat Wal Jammāt, a Sunni extremist group, indicating the target of the attack was Sunnis and not Shias.

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<sup>5</sup> DFAT, "Country Information Report – Pakistan", 20 February 2019, 2019022009340; Middle East Institute (United States), "Sunni Deobandi–Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007", December 2014, CIS2F827D91993

<sup>6</sup> DFAT, "Country Information Report – Pakistan", 20 February 2019, 2019022009340

<sup>7</sup> DFAT, "DFAT Country Information Report", 20 February 2019, 20190220093409; Fata Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; European Asylum Support Office (EASO), "Pakistan Security Situation", 30 October 2019, 20191031160110; Center for Research and Security Studies, "FATA Tribes: Finally out of Colonial Clutches? Past, Present and Future", 1 June 2018, CIS7B839418820; Express Tribune (Pakistan), "Sunni tribes start returning to Parachinar 11 years after displacement", 20 June 2018, CXBB8A1DA30592; Tribal News Network, "Six Shi' a families repatriated to Sadda after 37 years of displacement", 4 July 2018, CXBB8A1DA30721

35. The post-interview submission contends “it would be inconceivable to find that Parachinar/Kurram is a safe option for the applicant given the lengthy history of conflict and targeting of Shias in the region and the location of the region only kilometres away from the home of the Taliban” and that Shias have been in danger for “over 50 years”. Yet the applicant’s own account is that “from 2007 we started noticing a change in Kurram Agency” and in his statement of claims he went on to recount the entry of the Taliban to the area from 2007 as being a time when they could no longer take their produce to market due to attacks on the road and Taliban coercing people to follow the Sunni faith.
36. In regard to reporting from DFAT the submission comments that DFAT states violence towards Shias/Turis remains significant in Kurram due to state concerns regarding Iranian influence and submits the cumulative profile of Pashtun Shia Turis as pro-US, pro-Iran and anti-Taliban must be carefully considered.
37. The Country Information Annexure accompanying post-interview submissions cautions that the cyclical nature of violence in Pakistan must be taken into account and that the Pakistani Taliban has been able to regroup and regain its capacity to carry out major attacks both inside Khyber Pakhtunkhwa and in other parts of the country. The submission provides a detailed account of the activities of the major militant groups in Pakistan and details of their activities and expresses concerns as to the capacity and/or willingness of the Pakistani security agencies to provide effective protection. The submission also posits that there are numerous reports of the Pakistani government pressuring journalists not to report on militant attacks against religious minorities.
38. It is submitted that the applicant would be perceived as pro-US, pro-Iran, anti-Taliban and imputed as an opponent of the Pakistani government and in the Country Information Annexure submitted to the delegate it was stated that reports indicate that Turis have been increasingly viewed as being strongly supporting of the Iranian regime and working with the Iranian government in Pakistan and other sensitive contexts such as Syria, resulting in attention from Pakistani security services and further motivation for Sunni militants to target the community. The BBC article cited reports the questioning of a number of men, and the disappearance of some of those detained, suspected of links to a secretive militia in Syria, the Zainabiyoun Brigade, thought to be made up of around 1,000 Pakistani Shias fighting on behalf of the regime of President Bashar al-Assad.<sup>8</sup> However the indications are that those of interest and identified by intelligence agencies and those who have returned from Syria, particularly fighters, and pilgrims returning from the Iraq or other areas in the Middle East.<sup>9</sup>
39. Submissions from the applicant’s then representative also included an email dated 5 March 2020 comprising a range of letters and reports in support of claims and fears of ongoing militant activity in Pakistan. In general the letters recounted the history of sectarian violence and expressed concerns about the chance of ongoing attacks, make references to reference to Taliban and Daesh activity in the area, and in part proffer personal unsubstantiated opinions. In his letter a retired police officer comments that the government of Pakistan has done “nothing to protect Shias of Kurram from ... attacks” and “has not taken any significant measures to provide security” to Shias. Other letters refer to threats and targeting of Shia/Turis.

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<sup>8</sup> Submission, Country Information Annexure – Turi Shias in Pakistan; BBC NEWS, “The story of Pakistan's 'disappeared' Shias”, 31 May 2018

<sup>9</sup> Submission, Country Information Annexure – Turi Shias in Pakistan; BBC NEWS, “The story of Pakistan's 'disappeared' Shias”, 31 May 2018; The Diplomat, “US Pakistan Counter-terrorism needs a new focus”, April 2017; Deutsche Welle, “Shias in Pakistan’s Parachinar caught in the middle of proxy wars”, 26 June 2017

40. Where these letters do refer to more current incidents the information of the incidents is very basic and largely unsubstantiated. Comments about Islamic State/Daesh activity are assertions of threatening calls and fears of activity, but there is little in the way of detail outlining exactly how these groups, and/or the Taliban, are acting. The letter from the social activist and teacher refers to the difficulty and dangers living in the area and noted recent incidents. The social activist writes that a former brigadier has warned him not to leave Parachinar for the last two months due to threats of targeted killing by Islamic State yet, despite his letter putting forward information that it is too dangerous to travel outside the security zone in Parachinar, this activist visited Peshawar to meet with students after the death of a student and threats to other students. It is stated that the letter from Anjuman-e-Hussainia, dated 10 October 2019 is important because it demonstrates that the recent Muharram period was not without incident. In the letter there is a reference to one specific attack occurring in the “recent month of Muharram” involving three suicide bombers, one of who was caught alive without informing on the fate of the other two bombers and which therefore may indicate they escaped or that the other two bombers detonated, yet there was no report of any deaths, casualties or infrastructure damage. The letter stated that the “government suppressed the issue”. The letter from Tahreek-E-Hussaini also referred to an incident during Muharram involving three suicide bombers, reporting one as being caught and the other two escaping. This would appear to be the same incident and the fact that two letters from different sources have reported the same incident goes some way to authenticating this incident. But given that one bomber was caught and that none of the three potential suicide bombers appear to have detonated and there was no report of any injuries or property damage these reports point to the effective operation of the security apparatus. The letter from Tahreek-E-Hussaini also refers to a number of incidents from the “near past”, but as no dates are given for these incidents it is not clear when these occurred.
41. The media articles submitted report more recent incidents but these do not point to any harm to Shias as a result of these incidents. The media article from the Daily Jhang newspaper outlines the presence and apprehension of militants near a college in the Kurram District, and it is submitted their presence there is an ongoing risk. The second article from the Dawn reports a murder in Kurram and noted that while it initiated from a personal dispute it triggered protests of a sectarian nature. That the militants identified were apprehended and that the protest ended without violence indicates that the authorities acted in both cases to quell any potential uprising and ensure security. Similarly the transcript of the speech from the Secretary of the Anjuman-e-Hussainia comments that he has informed the army about the activities of people who concern him and although at one point he stated he does not know if the army followed them or not he also stated that four people of concern were arrested and he spoke to government officials of his concerns.
42. The post-interview submission addresses the situation in Kurram District specifically and comments on the DFAT profile and assessments in regard to Shias, noting DFAT assesses; that Khyber Pakhtunkhwa has a... moderate level of militant and criminal violence across the province; Shia in the former FATA face a... moderate level of violence; the risk of sectarian violence for civilians in Kurram Agency is higher than in other parts of the former FATA and attacks and violence against Turis can, and may still occur; and Turis in Kurram Agency still face a moderate risk of sectarian violence.
43. The DFAT report details the significant number of attacks by militant groups throughout Pakistan in 2018 and noted the extent of attacks in Khyber Pakhtunkhwa but does not specify any particular incidents in the Kurram District since the first half of 2017 and the information before me does not indicate large-scale attacks or high levels of casualties since that period. DFAT reporting is that despite the reduction in terrorist attacks and the decline of effectiveness

of militant groups who have become restricted to the mountains the 2019 “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. 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. However DFAT also noted that counter-terrorism measures have significantly decreased the number and severity of attacks on Turis.

44. I have had regard to the country information cited in the post-interview submission and the caution that incidents of attack and violence are under-reported, particularly due to media self-censorship and that the Pakistani government may not reflect the actual situation and exaggerate the success of security operations. In this regard I have taken into account that reports from agencies such as the FATA Research Centre based their reporting on a range of sources including field researches working in the region and reliable secondary sources.<sup>10</sup> Similarly the European Asylum Support Office collects data from “a broad range of credible and reliable sources” through the Centre for Research and Security Studies, the Pakistan Institute for Conflict and Security Studies, the Pak Institute for Peace Studies and the South East Asia Terrorism Portal.<sup>11</sup> Such reporting is detailed and includes statistical reporting of events, identifying location and type of attack, numbers of casualties/injured and personal characteristics of victims (race/religion/political affiliation), and often identifies perpetrators and overall provides a broad picture of the security situation.
45. In an email dated 7 May 2020 the applicant’s then representative forwarded a media article reporting the bomb attack that month on an imambargah in Lower Kurram.<sup>12</sup> Notwithstanding that the applicant may find such an attack concerning I note that this occurred in Lower Kurram, whereas the applicant’s village is in the Upper Kurram area. I also note the country information accessed by the delegate on 30 June 2020 that reports no fatalities from incidents in Kurram District in 2020.<sup>13</sup>
46. The Dawn article reports violent clashes in late June/early July 2020 over three days resulting in deaths and injuries between two rival groups over ownership of land.<sup>14</sup> I note the applicant’s belief that based on Facebook posts, the fight was between Shia and Sunni groups and his concern that the main Parachinar road was closed cutting off Kurram from the rest of Pakistan which shows that the Pakistan authorities have little control and that violence remains prevalent. The article reports that a high level Jirga met and failed to negotiate a ceasefire and community leaders have called on the security authorities to intervene. It is reported a wing of the paramilitary force has been deployed to the area. I am not satisfied that the information before me supports a finding that this was a fight between Shia and Sunni groups of that the

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<sup>10</sup> FATA Research Centre, “FATA Annual Security Report 2017”, 17 January 2018, CIS7B8394188

<sup>11</sup> CIS7B8394188; European Asylum Support Office (EASO), “Pakistan Security Situation”, 30 October 2019, 20191031160110

<sup>12</sup> Post-interview submissions: Dawn, “At least 1 injured in explosion at imambargah in Lower Kurram”, 5 May 2020

<sup>13</sup> South Asia Terrorism Portal (SATP), “Supporting country information - ‘Datasheet - Kurram (KP) - Monthly Fatalities 2020’”, accessed 30 June 2020, CLD2020/24311481

<sup>14</sup> IAA submission: Dawn, “Five more killed as clashes in Kurram continue”, 1 July 2020

Pakistan authorities have little control and that violence remains prevalent. Furthermore this incident occurred in Lower Kurram, whereas the applicant is from Upper Kurram.

47. 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.<sup>15</sup> However, notwithstanding the recent incidents in Lower Kurram, 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 identifying 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.<sup>16</sup>
48. 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.<sup>17</sup>
49. 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.<sup>18</sup> I acknowledge the situation in Pakistan is fluid and the concerns as to external events, particularly in Afghanistan, Syria and the imputed pro-Iran/pro-US profiles. 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 Khyber Pakhtunkhwa 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. I accept that the applicant may be readily identified as a Shia and 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.<sup>19</sup> I note the recent closure of the Thall-Parachinar road as reported by Dawn following violent conflict in Kurram. However it is apparent this is in response to the fighting in that area and has been enacted by the security forces as part of their security operation dealing with this incident. There is no indication that this closure is more than a temporary precautionary measure.<sup>20</sup>

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<sup>15</sup> The News (Pakistan), "Six of a family martyred in Kurram roadside blast", 31 January 2018, CXBB8A1DA25475

<sup>16</sup> Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; FATA Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; South Asia Terrorism Portal (SATP), "Supporting country information - 'Datasheet - Kurram (KP) - Monthly Fatalities 2020", accessed 30 June 2020, CLD2020/24311481; European Asylum Support Office (EASO), "Pakistan Security Situation", 30 October 2019, 20191031160110

<sup>17</sup> Dawn (Pakistan), "Several areas of Parachinar declared 'red zone'", 11 April 2017, 20191022114538; Tribal News Network (Pakistan), "Cabinet approves Levies, Khasadar forces merger with KP Police", 17 September 2019, 20190918113200

<sup>18</sup> Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; FATA Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; South Asia Terrorism Portal (SATP), "Supporting country information - 'Datasheet - Kurram (KP) - Monthly Fatalities 2020", accessed 30 June 2020, CLD2020/24311481; European Asylum Support Office (EASO), "Pakistan Security Situation", 30 October 2019, 20191031160110; DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

<sup>19</sup> DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

<sup>20</sup> IAA submission: Dawn, "Five more killed as clashes in Kurram continue", 1 July 2020

50. The continued decline in attacks indicates the effectiveness of the government's counter-terrorism operations, which remain ongoing although the government has scaled these back, and point to a meaningful and sustained change in the Kurram District. I am satisfied that there are effective and durable security measures in place and I am not satisfied that there is a real chance the applicant would be harmed in the reasonably foreseeable future should he return to his home in the Kurram District, as Shia Turi Pashtun, or for reason of his father's profile and his support for his father's activities or the Shia people in general, or for his role supporting the National Assembly of Pakistan, or should he continue to be involved in similar activities now or in the foreseeable future should he return to Pakistan.
51. I note the applicant's details were released in the data breach but I do not accept or this reason and 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.<sup>21</sup> As noted the influence of the Taliban and Sunni extremists has been significantly reduced by government counter-terrorism measures and I am not satisfied that there is a real chance the applicant would be harmed by such groups as a returnee from a western country, or otherwise.
52. I accept the applicant has been prescribed medication in Australia for anxiety and depression and I accept that he may continue to require medical attention in Pakistan. I also note his concerns as to the management of the COVID-19 pandemic in Pakistan.
53. 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.<sup>22</sup> I accept that there are limited medical resources outside the major population centres and I accept that resources for testing and treating COVID-19 may be limited but I am not satisfied that the applicant would be denied access to any medical care required for any s.5J reason.
54. The IAA submission contends the applicant's mental health condition may contribute to difficulty in obtaining sufficient employment to support himself in Pakistan. I note the applicant has been employed in Australia since 2017 and in his reference his employer speaks highly of the applicant's skills and application. The applicant was employed farming on the family land prior to leaving Pakistan and the indications are that the family retains this land. I note the report of the closure of the road as part of measures following the June/July 2020 incident but beyond this disruption, in response to a specific situation, the indications are the road is open to take produce to market. I note the difficult economic situation in Kurram but I am not satisfied the applicant would be denied employment or access to services or the capacity to subsist.
55. 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

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<sup>21</sup> DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

<sup>22</sup> *ibid*

real chance of harm should he return to Kurram District in Pakistan in the reasonably foreseeable future.

56. I have considered the applicant's circumstances as a whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Pakistan on any of the bases claimed.

### **Refugee: conclusion**

57. 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**

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58. 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**

59. 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.
60. 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.
61. I accept there may be difficulties for the applicant in accessing mental health services in Pakistan and that the standard of care and ability to manage the COVID-19 pandemic may not be as advanced as in Australia. But I am not satisfied that any difficulties the applicant may face in Pakistan for these reasons 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 intend to cause extreme humiliation.
62. I have otherwise found there is not a real chance that the applicant faces harm on any of the 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**

63. 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**

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



## Applicable law

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### ***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.