



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/08906

Date and time of decision: 30 March 2021 09:51:00
M Oakman, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Pakistani citizen. He arrived in Australia [in] March 2013 and lodged an application for a Safe Haven Enterprise visa (SHEV) (XE-790) on 10 July 2017. On 22 February 2021 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 17 and 18 March 2021 the IAA received emails from the applicant, with submissions and further information attached.
4. The submissions disagree with findings made by the delegate, respond to those findings, provide further information and address why there are exceptional circumstances to consider new information. To the extent the submissions refer to information that was before the delegate, and contain argument, I consider this does not constitute new information and I have had regard to it.
5. The further information is country information in the form of references and footnotes in the submissions, together with copies of the 14 footnoted media articles (15 were supplied but one is a duplicate) attached to the email of 18 March 2021. Some of that country information was before the delegate,¹ it is not new information, and I have had regard to it. The other country information² was not before the delegate and it is new information (new country information).
6. The new country information's 11 media articles all pre-date the delegate's decision. The applicant has not indicated in his submission why he was unable to provide these articles prior to the date of the delegate's decision. Although he was not represented at his SHEV interview [18 January 2021] or before the IAA, that is not an uncommon situation. Additionally, as the applicant submitted some media articles to the delegate at the SHEV interview, he was evidently aware that he could provide country information to the Department. The delegate also informed the applicant towards the end of the SHEV interview that any additional information received before a decision was made would be considered and provided the Department's email address. The Dawn article of 3 November 2019 does not contain personal information. The other ten articles refer to details and/or contain pictures of identified individual(s). However, the general subject matter of these articles were also reflected in the country information considered by the delegate in assessing the applicant's protection claims: including episodes of tribal and sectarian violence in Kurram District; sectarian violence faced by Turi and Bangash Shias; changes in the security and terrorism situation in recent years; the position for Shias in Pakistan in general; and

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; "Pakistani Shias live in terror as sectarian violence increases", The Guardian, 21 October 2020, [provided by applicant during his PV interview]; "The Changing Landscape of Anti-Shia Politics in Pakistan", The Diplomat, 28 September 2020, 20200929095157; and "Death toll in rival tribes' clashes in Kurram reaches 14", Tribal News Network (Pakistan), 2 July 2020, 20200702124328 (same as applicant's supplied MENAFN – Tribal News Network article).

² ABC News article dated 20 February 2020; Aljazeera.com article dated 20 March 2020; longwarjournal.com article dated 8 October 2020; shiiteneews.org article dated 13 June 2020; Daily Lead article dated 7 January 2021; News International article dated 27 July 2020; The Telegraph article dated 29 July 2020; Eurasian Review article dated 9 November 2020; Yahoo news article dated 12 September 2020; Dawn article dated 11 July 2020; and Dawn article dated 3 November 2019.

conditions in Pakistan overall. The new country information includes a report on a recent shooting in January 2021, covered by the Daily Lead article. This recent shooting incident was not considered by the delegate. However, the information in that article indicates the woman was killed in Hangu; it provides no motive for the shooting/killing, sectarian or otherwise; and although it reports the woman was headed for Parachinar, it is not apparent how anyone who saw her car on the Hangu Bypass, where she was shot, would be aware that the driver's ultimate destination was to be Parachinar. In short, the new country information does not materially add to the information considered by the delegate. In his submissions, the applicant said exceptional circumstances existed to justify his information being considered as it is directly relevant to assessing whether he satisfies the requirements of the visa and the fact that he would suffer severe detriment if the information was not properly considered in the decision making process. However, most, if not all, applicants who provide new information to the IAA would do so because they consider it directly relevant to assessing whether they meet the visa requirements and fear they would suffer severe detriment if the new information they provided was not considered. I am not satisfied that any of the new country information may have affected consideration of the applicant's claims. In relation to the new country information, the applicant has not satisfied me as to the matters in s.473DD(b)(i) or (ii). I am also not satisfied that there are exceptional circumstances to justify considering the new country information.

7. In the submissions the applicant requested that, in the event the IAA does not concur with his submission that he will continue to be persecuted if returned to Pakistan, he should be afforded the opportunity to comment on any information the IAA may rely upon. The legislative framework governing the IAA provides for a limited form of review. As a general rule, the IAA is required to review a matter without accepting or requesting new information and without interviewing the applicant (s.473DB). The IAA can obtain new information from an applicant, including at an interview, but can only consider that information in exceptional circumstances. Under s.473DE, the IAA is obliged in certain circumstances to give an applicant new information and invite comments on that new information. In this case the information I am considering was before the delegate; it is not new information and s.473DE does not apply. The applicant was interviewed by the delegate and provided submissions and further information to the IAA. I am satisfied he has had a reasonable opportunity to present his case. I have decided not to exercise my discretion to obtain further information from the applicant, including information by way of further comment on the information before me.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - There are many terrorist groups in Pakistan – Taliban, LeJ and ISIS; they all hate Shias and want to kill them.
 - There were bomb blasts in Parachinar while he lived there and there have been further bombings and incidents since he left, including a relative and a friend being killed. He is certain he would be killed if he returned to Parachinar. He would be killed in a bomb blast because he would have to leave the house to get his family food. It is very dangerous for his family to remain in Parachinar. It is like a prison for them, they almost never go outside. It is so dangerous for them there.
 - The government cannot protect Shias in Pakistan; they have no control over security in Parachinar.

- He fears harm if returned to Pakistan due to his ethnicity; religion; actual and imputed political opinion; and membership of a Particular Social Group, individually and cumulatively.

Factual findings

Receiving country

9. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Pakistan. I find that the applicant's receiving country is Pakistan.

Background

10. The applicant was born in S, a village near Parachinar, Upper Kurram, Pakistan, in [Year] and at a young age he and his family moved to Parachinar town where he lived until he left Pakistan in 2013. He is unmarried and has no children. His parents, two surviving brothers (one brother died in infancy) and a sister live in Parachinar. He remains in contact with his parents in Parachinar. He attended school from [year] to [year], completing high school and in 2009 and 2010 attended a [college] where he completed a [Qualification]. He did not work in Pakistan and was supported by his family. In Australia he has worked as [an Occupation 1] and an occasional [Occupation 2], since about 2018. In his SHEV application he indicated he speaks Pashto and that he speaks, reads and writes Urdu and English.

Problems in Pakistan

11. In summary, the applicant claims he is a practicing Shia Muslim. There are many terrorist groups in Pakistan - the Taliban, LeJ and ISIS. They all hate Shias and want to kill Shias.
12. Shia Muslims are very different from Sunni Muslims, including their belief in the 12 Imams. They also pray differently as Sunnis cross their arms over their body and pray five times a day; Shias put their arms by their side and only pray three times a day. Shia also go to different mosques to pray. The Taliban can recognise Shias because of their names, facial features and ID cards. Almost all Shia people have one of four customary names from the Imams of the Shias. Taliban have long hair and a long beard, but Shias do not have long beards or long hair. Their ID cards also identifies them because it shows their names and residential address. They also have a different accent, which is very recognisable.
13. The Taliban or other terrorist groups can also identify Shias by inspecting their body to see if they have been chaining. During the month of Muharram Shias beat themselves with chains for religious reasons. The applicant has done it two or three times in the past. Between 2007 and 2012, it was too dangerous to do chaining because you had to go to the Imambargah and he was too afraid to go outside. He cannot abandon his Shia religion, even if it is dangerous, he has to follow it. Even in Pakistan when it was extremely dangerous to practice as a Shia, he kept doing so because his religion is so important to him.
14. Pakistan is not a safe place to live. It was very difficult to live safely. He was unable to study or work because it was not safe.
15. In 2007, he remembers the Taliban started fighting and it lasted until 2012. They wanted to kill Shias. It was like being jail, during this time, living in Parachinar. He rarely left his house because he was afraid for his safety.

16. There have been lots of bombs in Parachinar. He can recall a number of bombings. On 4 August 2007, he was at school when there was a bombing at [a] market, about [Distance]kms away, and 11 people died. On 16 February 2008, during an election, he was at home, there was another bomb blast at the same market, about [Distance]kms away from his home. He heard the blast and about 89 people died. On 17 February 2012, while he was at his Imambargah, there was a bomb blast in [a] Bazar, about a [Number]-minute walk away. He heard the blast and lots of dead bodies were brought to the mosque. On 10 September 2012, when he was at home, he heard a loud noise and later found out there was a car bomb blast at [another] market.
17. During 2007- 2010, he studied first at [School] Parachinar and then at [College] Parachinar. He would walk to [College]; it was about [Distance]kms away and about [time] walk. He was always extremely afraid going to school and college, as he thought there could be a bomb blast or attack by the Taliban at any time, but it was a risk he had to take. Sometimes the college was closed because of the fighting. This happened every two or three months. In 2007, when he was at the [School], the college was closed for two or three months. During that time, they all stayed at home because it was too unsafe to go out; it was a really boring time because they could not go anywhere.
18. After he finished his [Qualification] in 2010, he wanted to continue his studies in [Subject] and do a Masters. There was no university in Parachinar, and it was too unsafe to travel to other cities like Peshawar as he heard of people being stopped by the Taliban. They would shoot all the people in the car because they were Shia Muslims; there are lots of these targeted killings. He just stayed at home and did housework and shopping for the family. He went to a bazaar that was a 10-15min walk from his house as it was his responsibility as the oldest boy to go to the bazaar. He went only once or twice a week to the market, early in the morning when it was not very busy, because bombs usually happen at the busiest times to kill the most people.
19. He has only been to Islamabad one time in 2011, to get a passport. He travelled by plane from Parachinar to Peshawar because the roads were closed by the Taliban. From Peshawar he went by bus to Islamabad. There is no plane travel anymore out of Parachinar. It was also very difficult to get a ticket, waiting for one or two months. He only stayed in Islamabad for two or three days. He stayed with his friend from Parachinar because he didn't want anyone to know that he was there. He didn't feel safe at any time in Islamabad. He was always afraid that he would be killed in a targeted killing or a bomb blast. He stayed inside other than when he went to the passport office. He has also visited Lahore once. He went there for two days before leaving for Australia and stayed inside because he was so afraid. He thinks he would be recognised and killed there as well because he is a Shia.
20. He felt like he was in a prison and trapped in Parachinar. He finally decided that he could not continue to live like that in Pakistan and thought he would die if he stayed.
21. There have been bombings, about five big blasts, in Parachinar since he left and up to 2017 (when he prepared his SHEV application). Luckily his family have always been at home when it happened. In May or June 2013, his uncle's son was killed when he stepped on an IED, which the Taliban often plant. The cousin was [age range], from S village about [Distance]kms from Parachinar. On 23 June 2017, there was an incident in Parachinar where 120 people were killed, including a very close friend of the applicant. The applicant learnt from social media and his family that that it involved two suicide bombers at Turi market, the bombs going off within 5mins of each other. The market was busy as it was around 4.30pm in the afternoon after Friday prayers. His family were home at the time and their house is about [Distance]kms from Turi market.

22. He is certain that he would be killed if he returns to Parachinar. He would be killed in a bomb blast because he would have to leave the house to get his family food. He fears harm, mostly from the Taliban but also other terrorist groups. None of the bombings had happened to him yet but if he had been at the locations where those bombings occurred it could have happened to him and he could also happen at any time. If returned to Pakistan he might be targeted in Parachinar or when going around, at any time.
23. His family lives in Parachinar, the family owns the house. His brothers don't do anything they are just at home as are his parents. His sister is married and lives with her husband. His father is retired, they live off his father's savings and have done so for approximately the last four years. It is very dangerous for his family to remain in Parachinar. It is like a prison for them. They almost never go outside. They have been lucky so far that no one in their family has been injured. The government cannot protect Shias in Pakistan. They have no control over security in Parachinar.
24. He would not be able to work in Pakistan. People do not like to hire Shia people in Pakistan because they are worried that someone will come and kill them or make problems. They do not want to get involved. He would also be very afraid that he would be caught up in a bombing if he was. He does not have any experience working in the past, having never had a job before and does not have any formal qualifications. Even if he wasn't a Shia, he thinks it would be very hard to get a job. He does not think he would be able to subsist in Pakistan. He would also have to provide for his family in Pakistan - his father is retired and as the eldest it is the applicant's responsibility to help them if he can.
25. The applicant has been generally consistent with his protection claims and background details since his entry interview with the Department (May 2013), in his SHEV application and at the SHEV interview. His claims about the dangers he and his family faced living in the Parachinar area from sectarian violence, including from the Taliban, are also generally consistent with the available country information. I accept the applicant's claims in general, except as discussed further below. In particular, I accept the applicant is a Pashtun Bangash born in S village but who lived from an early age in Parachinar town with his family and he is a practising Shia; that the security situation deteriorated in Parachinar in 2007 with fighting involving local Shias and the Taliban; and that he was aware of several nearby bombings while he was living in Parachinar and that there have been a number of bombing incidents since he left Pakistan. I also accept that he has lost a cousin and a very close friend in an IED incident in 2013 and suicide bombing incidents in a market in 2017, respectively.
26. However, his evidence that on occasions suggested he and his family stayed indoors from the start of the fighting in 2007 is somewhat unsatisfactory. In particular, his ability to attend and complete his studies at his local school and then college, together with his claims of his continuing to be a practising Shia, that there was a period in 2007 when they all had to stay home for 2-3 months, and his 2011 trip to Islamabad to obtain his passport, are largely incompatible with his claim to have stayed home (albeit he went twice a week to the market for the family's food) because of safety concerns. I am satisfied he has exaggerated this aspect of his claims. I am prepared to accept, given the country information and some of the specific limitations on his activities he identified in his evidence, that while he was living in Parachinar his life was impacted by the ongoing violence in the area and that there were times when, because of the security conditions, he could not go to school, the markets or his mosque and that there was a period of 2-3 months in 2007 when he and his family all had to stay home. I am not satisfied that he and his family have remained inside their home on an ongoing basis since 2007.

27. The applicant's parents and brothers continue to live in Parachinar town in a house owned by the family. As his parents and brothers are living there, and the applicant previously lived in Parachinar town throughout his life in Pakistan (except when he was an infant and lived in S village), I am satisfied that this is the area of Pakistan to which he will return. The applicant was previously supported by his family while he was living in Pakistan up until he left in 2013. At the SHEV interview he indicated his parents and brothers have lived off his father's saving for the last four or so years. The applicant has remained in contact with his parents in Pakistan throughout his time in Australia. Given that he was previously supported by his parents, his family own their house, his parents continue to support his adult brothers, and he has remained in contact with his parents while he has been in Australia, I am satisfied that his parents will be able to provide the applicant with continuing basic support, if needed, now or in the reasonably foreseeable future, if he returns to Pakistan.
28. As discussed above, I accept that from 2007 the security situation deteriorated in Parachinar, the applicant was aware of several bombings while he was living in Parachinar, and that there have been bombing incidents since he left Pakistan. Neither the applicant nor his immediate family have been at any of the locations when bombings or attacks took place, although on occasions he or his family were nearby to such locations while at home, school or mosque. The applicant and his immediate family have never been directly attacked or harmed by the Taliban or other anti-Shia groups. Although the applicant's cousin was killed by an IED in 2013, the applicant's evidence was that IEDs were often planted by the Taliban for people to step on. I am not satisfied that the applicant or his family have at any time been specifically targeted by the Taliban, other anti-Shia groups or anyone else. I am also not satisfied that, at the time the applicant left Pakistan or thereafter, he and his family were and are of any adverse interest to Taliban, other anti-Shia groups or anyone else in Pakistan.

Asylum Seeker

29. The applicant claims, and I accept, that he left Pakistan in February 2013 to travel by plane, using his own passport, via [Country 1] to [Country 2], and then by boat to Indonesia. He subsequently left Indonesia to travel to Australia in a boat organised by smugglers. I find that, if he were to return to Pakistan, he may be identified as a returned asylum seeker. The applicant's passport was due to expire in 2016.

Refugee assessment

30. 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

31. 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.
32. Pashtuns traditionally live among their own tribes and sub-tribes in Khyber Pakhtunkhwa province and the former Federally Administered Tribal Areas (FATA), which includes Kurram Agency (now District) where Parachinar, a Shia majority city, is located. Pashtuns are identified by their use of the Pashto language and comprise an estimated 15.4 per cent of the population of Pakistan, making them the second-largest ethnic group in the country.³ The Bangash tribe are Ghurgusht Pathans, descended from a legendary Pashtun ancestor. All the Bangash of Upper Kurram are Shia. The Bangash clans living in Lower Kurram and Kohat are all Sunnis, while other Bangash clans are Shia, Sunni or a mix of both.⁴ Shias comprise around 40 per cent of the population of Kurram. Upper Kurram is estimated to be around 80 per cent Shia, while Central and Lower Kurram is majority Sunni. NICs do not display the holder's religion and although Pakistani passports do display the holder's religion they do not distinguish between Sunni and Shia Muslims. However, some Shias may be identifiable by common Shia names. Similarly, ethnic and tribal names can reveal a person's tribal or sectarian affiliation, as can their address if they are from a predominantly Shia area.⁵ Like the delegate, I have also considered country information pertaining to Pashtun Turi Shias when assessing whether the applicant, a Pashtun Bangash Shia has a well-founded fear of persecution, if returned to Pakistan.
33. Kurram District has a lengthy history of sectarian and tribal tension and violence, to some extent stemming from competition between Shias and Sunnis over resources. The Turi-Bangash occupy the most fertile area of the district.⁶ There was another outbreak of violence in Kurram in 2007. Between 2007 and 2011 Kurram was the scene of frequent violence, including a long running blockade by the Taliban of the main supply route to Parachinar – the Tall Road between Peshawar and Parachinar. Other sectarian attacks at that time included the use of hand grenades, rockets, mortars and bomb blasts. During this period at least 1,500 people were killed and 5,000 injured.⁷ Between 2008 and 2014, Turis faced significant violence. Groups such as the Taliban targeted Turis for their Shia faith. Militants frequently stopped and killed Turis travelling on roads. A significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Tall-Parachinar road, which links Kurram District and Peshawar.⁸
34. The Department of Foreign Affairs and Trade (DFAT) states that the security situation in Pakistan is complex, volatile, and affected by domestic politics, politically motivated violence, ethnic conflicts, sectarian violence, and international disputes with India and Afghanistan. According to the South Asian Terrorism Portal (SATP), 3684 civilians have died in terrorism-related violence between 2014 and mid-January 2019. SATP bases its statistics from media reports, so this

³ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁴ Marian Abou Zahab, "'It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402.

⁵ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁶ Marian Abou Zahab, "'It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402.

⁷ Ibid.

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

number may understate the actual number of casualties. Since 2014 however, the Pakistan armed forces have launched several major security operations, including Operation Zarb-e-Azb, Radd-ul-Fasaad, and the National Action Plan (NAP) which have had a notable impact on the security situation in the region. In 2018, the Government announced its second National Security Policy, and was reportedly preparing NAP2. These operations have disrupted the activities of militant groups, including the Taliban, and resulted in a significant decrease in the number and severity of attacks on Turis. Turis report significantly fewer road attacks in 2018. Militants have been forced into the mountains, which has restored confidence in the community for individuals (but not large groups) to use the Tall-Parachinar Road between dawn and dusk. There are also tighter Afghanistan-Pakistan border controls and the military has implemented a twenty to thirty square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located. While these initiatives have improved the security situation in Kurram District they have also restricted freedom of movement and limited the community's access to services and trade opportunities. While noting the success of the counter-terrorism operations, DFAT says there appears to be an increase in societal intolerance and religious extremism. DFAT notes a trend of decreased reports of attacks against Turis during 2018, and expected it to continue to reduce for 2019, though noting that attacks against Turis can, and may, still occur. Overall, DFAT assesses in its 2019 report that in the general security situation sporadic large-scale terrorist attacks are likely to continue to occur, against a background (at a reduced tempo) of ongoing small-scale attacks; and Turis in Kurram District still face a moderate risk of sectarian violence from militant groups because of their Shia faith.⁹

35. Since that assessment by DFAT, more recent country information notes the continuing reduction in security incidents in the Kurram District for 2019 and 2020. The Pakistan Institute for Conflict and Security Studies (PICSS) indicated that no militant attacks were reported in Kurram in 2019.¹⁰ The FATA Research Centre (FRC) indicated there was one militant related incident in 2019 with two injured and there were three militant related attacks in Kurram in 2020, resulting in one dead and 18 injured; it identified the 1st and 4th quarters of 2020 as peaceful and identified the 2nd and 3rd quarters as tense; and described militancy related incidents as sporadic, although identifying ongoing land disputes as posing a future threat.¹¹ The European Asylum Support Office (EASO) indicated that in the Kurram District in 2019 the FRC reported one violent incident with two injured while the Pakistan Institute for Peace Studies (PIPS) recorded no terrorist attacks; and in 2020 (up to 31 July 2020) both the FRC and PIPS recorded three violent incidents/terrorist attacks with one dead and 18 injured; and refers to media reports of a May 2020 imambargah bomb blast, tribal clash at the end of June 2020 with a least five killed and 40 injured, and an explosion at a Parachinar market on 23 July 2020 that wounded 18 people and was followed by people protesting and blaming the security forces for the violence in the area.¹² Other media articles concerning the imambargah blast, the market explosion and the tribal land dispute clashes were also before the delegate.¹³ The tribal land clashes were not in Parachinar itself; the media reports suggests the land dispute has been ongoing for many years; and there is no further reports of it leading to violence post-July 2020. The land dispute clashes and the militant incidents are unfortunate, but they are not inconsistent with the overall reduction in

⁹ Ibid.

¹⁰ PICSS, "2019 Annual Security Assessment Report", 9 January 2020, 20200122140652

¹¹ Irfan U Din and Mansur Khan Mahsud, FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020", 7 January 2021, 20210113125205.

¹² European Asylum Support Office (EASO), "Pakistan: Security situation", October 2020, 20201102100212.

¹³ "At least 1 injured in explosion at imambargah in Lower Kurram", Dawn (Pakistan), 5 May 2020, 20200506121914; "Tribes land disputes claim 5 lives in Kurram", The Nation, 1 July 2020, 20210322144310; "Death toll in rival tribes' clashes in Kurram reaches 14", TNN, 2 July 2020, 20200702124328; "Protests erupt over Parachinar bomb attack", 24 July 2020, Deutsche Welt, 20200812152550; "At least 17 injured in IED blast in Parachinar's Turi Bazar", Dawn (Pakistan), 23 July 2020, 20200724103731; "17 injured in bomb blast at open-air market in northwest Pakistan", Hindustan Times, 23 July 2020, 20200724153817

large scale or frequent attacks in the Kurram District since 2017 or the ongoing improvement in the general security situation in Parachinar.

36. Consistent with DFAT's identification in its 2019 report of an increased trend of societal intolerance, there were a number of media reports and articles before the delegate concerning various anti-Shia incidents up to early 2021 including confrontations and arrests for blasphemy of Shias; attacks; the passing of the Tahaffuz-e-Bunyad-e-Islam legislation by the Punjabi Assembly; and anti-Shia rallies.¹⁴ However, none of the material appears to refer to any such incidents in the Kurram District or, in particular, to Upper Kurram and Parachinar which is a Shia majority area. Nor does there appear to have been any corresponding increase in violent incidents involving Shias in Kurram, which has remained low.¹⁵ Additionally, although there are reports of anti-Shia sentiment and clashes in 2019 and 2020 around Muharram,¹⁶ other country information indicates that Shias in Pakistan have been able recently to observe Muharram generally without incident, albeit amid government provided security.¹⁷
37. The applicant comes from the Parachinar area of Pakistan and I accept that area has a history of general and sectarian violence, including both before and after he left Pakistan. The applicant is not of any specific adverse interest to, nor was he previously targeted or threatened by, the Taliban, other anti-Shia militant groups, or anyone else. The country information indicates that since 2014 the Pakistani Government has launched military and civil measures aimed at improving security in Kurram District, pushing the Taliban and other extremists from the area or to its fringes, and promoting sectarian relations. I accept that these actions have introduced some restrictions on those living in Kurram District, including movement restrictions and limiting access to services and trade opportunities with the red zones in Parachinar.
38. As discussed above, I am satisfied that the applicant will be returning to Parachinar in the Kurram District. It is a Shia majority area and his parents and brothers live in Parachinar town in a home the family owns. The applicant also raised concerns in his submissions that Turi-Bangash Shias in Parachinar are perceived as pro-US, Pro-Iranian and anti-Taliban, which significantly increases his risk profile with various militant groups. Even accepting that was the case, the pro-US, pro-Iranian, anti-Taliban perceptions would apply to all Turi-Bangash Shias in the area and not just the applicant and/or his family who do not otherwise appear to have any personal connection to the USA or Iran, the fighting in Afghanistan or anti-Taliban activities. The applicant's submissions also identified changes in conditions in Afghanistan that he says will lead to increased security concerns in Kurram in the future. I consider the argument about the possible

¹⁴ "Pakistan: Hardline Sunni groups on collision course with Shiites", S. Khan, Deutsche Welle, 14 September 2020, 20200915102826; "The Changing Landscape of Anti-Shia Politics in Pakistan", The Diplomat, 28 September 2020, 20200929095157; "Why are anti-Shia sentiments on the rise in Pakistan?", Express Tribune, 14 September 2020, 20200915102018; "'Long Live Yazeed' Slogans Chanted At Extremists' Rally In Karachi", Naya Daur, 14 September 2020, 20200915111521; "Pakistani Shias live in terror as sectarian violence increases", The Guardian, 21 October 2020; and "Thousands mourn Hazara coal miners killed in Balochistan attack", AFP, 4 January 2021.

¹⁵ Center for Research and Security Studies, "Quarterly Security Report Q3, July-Sept 2020", 8 October 2020, 20201012113549.

¹⁶ US Commission on International Religious Freedom (USCIRF), 'USCIRF 2020 Annual Report', 28 April 2020, 20200429103634; "Why are anti-Shia sentiments on the rise in Pakistan?", Express Tribune, 14 September 2020, 20200915102018; and "'Long Live Yazeed' Slogans Chanted At Extremists' Rally In Karachi", Naya Daur, 14 September 2020, 20200915111521.

¹⁷ "Youm-i-Ashura observed nationwide amid tight security", Dawn (Pakistan), 31 August 2020, 20200917161348; "9th Muharram observed with solemn remembrance of Karbala", News International, 29 August 2020, 20200917153538; "Entry of 37 clerics in Rawalpindi banned", Dawn, 17 August 2020, 20200817115449; "Ashura observed peacefully amid tight security in KP", Dawn (Pakistan), 23 September 2018, CXBB8A1DA35781; "Ashura being observed across Pakistan amid tight security", Dawn (Pakistan), 21 September 2018, CXBB8A1DA35775; "Mobile services suspended in parts of Karachi ahead of Ashura", Dawn (Pakistan), 19 September 2018, CXBB8A1DA35716; and "Ashura processions culminate countrywide, majalis under way", Geo TV (Pakistan), 21 September 2018, CXBB8A1DA35780.

impact of such factors to be entirely speculative. Having considered the country information and the applicant's circumstances, I am not satisfied there is a real chance he will suffer any harm from the Taliban or other anti-Shia militants or anyone else now or in the reasonably foreseeable future if he were to return to Parachinar. There are a number of reports before me with detailed statistical analysis of incidents in Pakistan and in the applicant's region, and I am confident it gives a reliable picture of the trends of violence. The clear weight of the country information shows that in the eight years since he was last there, the security and sectarian situation in the Kurram District, and in Parachinar, has improved substantially. The applicant has not otherwise claimed that his parents and brothers who live in Parachinar town have suffered any specific adverse treatment or targeting from the Taliban, other militants or anyone else since he left Pakistan. I accept that although the security situation has substantially improved, there remains some level of risk of harm from general and sectarian violence in Parachinar. However, having regard to the nature and frequency of militant and sectarian incidents in Kurram District, I am not satisfied that, overall, they rise to the level of a real chance.

39. Aside from safety issues arising from the general security concerns in the Parachinar area and the death of his cousin in 2013, the applicant does not claim that his family in Pakistan has suffered any harassment, discrimination or other harm as Turi-Bangash Shias since he left Pakistan. The applicant may take some time to re-establish himself in Parachinar, and I accept this process will also be impacted by the restrictions in place because of the military operations and red zones around Parachinar. However, notwithstanding his comments in the submissions about having developed his psyche and behaviour in a liberal and secular environment, he is a young man who spent the first 20 years of his life in Parachinar in Pakistan under difficult conditions and then showed himself to be generally resilient and resourceful by adapting to life in Australia while separated from his family. He has completed a [Qualification] with his schooling. He speaks, reads and writes Urdu and English, and he speaks Pashto. He has some employment experience working as [an Occupation 1] and as [an Occupation 2] in Australia. While the applicant re-establishes himself in Parachinar, he will face an uncertain period of unemployment. However, as discussed above, I am satisfied that his family will be able to provide him with basic support if required. Given those factors, I am not satisfied that any period of unemployment or other issues he may experience while he re-establishes himself in Parachinar would threaten his capacity to subsist or otherwise amounts to harm to the applicant, now or in the reasonably foreseeable future.
40. I am not satisfied that there is a real chance of harm to the applicant, if returned to Parachinar in the Kurram District, due to the general security and sectarian situation, or for any other reason, as a Pashtun Turi-Bangash Shia from Parachinar now or in the reasonably foreseeable future.
41. Country information indicates citizens of Pakistan require a valid passport to enter or exit the country and that attempting to enter or depart Pakistan without valid documentation or on fraudulent documentation is a crime. However, country information also notes that in practice, returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are generally processed like any other citizen returning to Pakistan. The government issues 'genuine returnees' with temporary documents when they arrive. A genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered destination countries. Those who return involuntarily or who travel on emergency travel documents are likely to attract attention from the authorities upon arrival. The authorities will interview failed returnees and release them if their exit was deemed to be legal but may detain those deemed to have departed illegally. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return, irrespective of whether they departed legally

or not. People returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are usually released within a couple of hours. Returnees are typically able to reintegrate into Pakistani community without repercussions arising from their migration attempt and do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country.¹⁸

42. The applicant left Pakistan legally using his own passport. He has not claimed he is wanted for any criminal offences in Pakistan or that he has committed any crimes while in Australia. His supporting documentation includes an April 2013 police clearance certificate from Pakistan. Based on the country information, I am satisfied that if applicant returns voluntarily, he will be allowed to enter the country without questioning. If he returns involuntarily, I am satisfied that he will be interviewed and will be found to have departed Pakistan legally and that he is not wanted in relation to any criminal offences, he will be released within a couple of hours. There is no suggestion by DFAT that returnees are subject to any mistreatment during any such questioning at the airport. As discussed above, country information indicates travel on the Tall Road is generally safe during daylight hours. Nor does country information suggest that roads to and from international airports are at any heightened risk. As such, I am not satisfied that there is more than a remote chance of the applicant suffering harm while travelling from an international airport in Pakistan to his home in Parachinar. The country information does not suggest returnees from the west, including those who have spent an extended period abroad in countries such as Australia, are targeted by the Taliban or other militants and, in any event, given the improved security situation in Kurram District I am not satisfied that there is a real chance of the applicant suffering harm on that basis.
43. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker from Australia, and for having spent eight years in Australia, now or in the reasonably foreseeable future.
44. I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

45. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

46. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

¹⁸ Ibid.

Real risk of significant harm

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

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

48. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

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

50. I have found that the applicant does not otherwise face a real chance of harm in relation to his claims or profile. As 'real risk' and 'real chance' involve the application of the same standard,¹⁹ he also does not face a real risk of any harm in Pakistan. I am not satisfied that the applicant faces a real risk of significant harm in Pakistan.

Complementary protection: conclusion

51. 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.

¹⁹ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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