



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09548

Date and time of decision: 19 August 2021 15:40:00
S McNeill, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Shia Muslim of [Tribe 1] from Parachinar, Pakistan. [In] May 2013 he arrived in Australia and on 14 March 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 20 July 2021 a delegate of the Minister for Immigration refused to grant the visa.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born in [Year] in [Parachinar] city, Kurram Agency, Khyber Pakhtunkhwa province, Pakistan.
 - He is [deleted] of [Tribe 1] and a Shia Muslim. There are about [number] [Tribe 1] families in Parachinar.
 - He completed his high school and then worked in his father's shop selling [products] at [a] market.
 - He married in 2001 and has [children].
 - Parachinar is situated in the neck of Pakistani territory that juts into Paktia Province of Afghanistan. The people are Pathans of various clans who are Shias by religion. Because of its proximity to Afghanistan, the region is known for sectarian clashes between the Taliban and Shiites since 2004 after the US led invasion of Afghanistan forced Taliban and Al Qaeda to flee across the border.
 - In 2007 fierce sectarian war broke out when the Sunni Taliban attempted to conquer Parachinar. More than 3000 have died and thousand were injured in the ensuing fighting. The road connecting Parachinar to the rest of Pakistan was blocked by Taliban fighters and people had to travel in convoys with the assistance of the military and police.
 - 'BK' was a Sunni who owned a shop next to their shop. He was one of the Sunni leaders. During the fight, his son was killed by the Shia and BK thought he had told the Shia leaders about his son.
 - After the fighting in 2007, BK moved out of Parachinar with the assistance of the Pakistan government. As the Sunni population was forced out of Parachinar, the Shia were trapped by the retreating Sunni who blocked the main road and set siege on the city.
 - He received a threat letter from BK through other Sunni drivers coming to Parachinar. BK threatened to kill him as he had informed on his son. He was advised not to get out of Parachinar. BK had become associated with the Taliban after leaving Parachinar.

- At the entrance of the [market] there was a suicide bomb attack in 2007/2008.
- In 2011 the road situation became better to travel out of Parachinar, and he went to Peshawar to get [products] for his shops. He travelled by bus and the journey takes about five hours.
- On the way the bus was attacked. There was a blast, many people were killed and some injured. He lost consciousness and was taken to [a] in Peshawar by security. After two days in hospital the military assisted his return to Parachinar.
- When he returned to Parachinar, he started receiving threats from BK, now an important Taliban leader, again. He knew it would soon be easier for the Taliban to enter Parachinar and kill someone. He decided to leave Pakistan. He could not go to another part of the country as the Sunni Taliban have a network everywhere.
- BK is still alive. He has been personally threatened by the Taliban who are targeting Shia Muslims.
- As a Shia Muslim he fears harm not only from the Taliban but also other sectarian groups including Lashkar-e-Islam and Lashgar-e-Jhangvi and ISIS.
- He also fears persecution as a returnee from Australia and he will be treated as an infidel, a person who spies for Westerners/Australians. He would be an easy target for the Taliban. The Pakistan Army commanders work in collusion with the Taliban. Most of the police are scared themselves and never take actions against them.

Refugee assessment

5. 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

6. 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.

7. The applicant has consistently claimed to be a national of Pakistan. He has provided a copies of his Pakistani passport bio-data page, driver licence and his national identity card. I am satisfied there is no issue as to the nationality of the applicant. I accept the applicant is a citizen of Pakistan and that Pakistan is the receiving country for the purpose of this review.
8. Based on the consistent documentary and oral evidence I accept the following in relation to the applicant: He was born in [Year] [in] Parachinar city, Kurram District, Khyber Pakhtunkhwa province, Pakistan. He is [deleted] and a Shia Muslim. His parents are deceased, and he has no siblings. His wife and [children] continue to reside in his own house in [Parachinar] assisted by his wife's brother. The applicant completed his education up until year [number] and then worked in his father's [shop] at the market. Recently the applicant has been working in Australia as [an Occupation].
9. The applicant claimed that he is of [Tribe 1] of which there are [number] families in Parachinar. In his SHEV application form his ethnicity was noted as Pashtun, this was also recorded in his statement of claims and that he feared harm on account of his Pashtun ethnicity. The applicant provided an amended statement of claims dated 21 May 2017 via email from his representative on the same date. The reference to his being of Pashtun ethnicity and his fear of harm on this basis had been removed.
10. Along with the amended statement of claims, the applicant provided a psychologist's reported dated 10 December 2019 confirming the applicant has attended 12 counselling and psychotherapy sessions. The report states the applicant has severe depression and anxiety and has been prescribe anti-depression medication. I note the report makes brief reference to constant flashbacks to traumatic events of the past (without identifying any), however, it also focuses on the applicant's ongoing seven-year separation from his family in Pakistan and his uncertain immigration status which is impacting him.
11. At his SHEV interview on 18 May 2021, the applicant stated [Tribe 1] is an area located in Logan, Afghanistan where the people speak Dari. His father was born there and migrated to Parachinar when he was young. [Tribe 1] people related to Afghanistan spoke Dari while Parachinar people are from Pakistan and speak Pashtun. He did not have Afghan citizenship and he did not know anyone in Afghanistan. Asked by the delegate if he could be recognised as someone whose parents migrated from Afghanistan and whether he could be distinguished, the applicant said he spoke Pashtu with a Dari accent and could be recognised as not from Parachinar.
12. Information in the review material indicates Logar province is in the eastern part of Afghanistan and borders Paktia province to the south. The population is approximately 330, 000 made up of Hazara, Tajik, Pahstun, Kuchi and other minority groups. Tajiks (the second largest ethnic group in Afghanistan after Pashtuns) make up 65 per cent, Pashtuns 34 per cent and Hazara, one per cent of the population. Tajiks primarily speak Dari whereas Pashtuns speak Pashtun. Ethnic Tajiks are located in Mohammad Agha, Baraki Barak, Charkh, Pol-e Alam and Khoshi districts. [Name] district is located in [part] of Logar province, [Number] km from Kabul. The majority of the residents in [the] district are Tajik, Dari speaking and of which [Number] per cent are Shia Muslims and the rest Sunni Muslims. It has [Number] villages and is divided into two parts, [Sub-district 1] and [Sub-district 2]. Tajiks are located in this main villages of [Sub-district 1] and the Pashtuns mainly in [Sub-district 2]. [Name District] people belong to nine tribes.¹

¹[Deleted].

13. While the applicant did not claim to be of Tajik ethnicity, I accept he identifies as a [Tribe 1] whose father originated from Logar province in Afghanistan. Dari is his first language, but he also speaks Pashtun. On the information before me, I find the applicant is not of Pashtun ethnicity and does not fear harm on this basis.
14. The applicant's provenance, Parachinar city, is the largest city in Kurram. Kurram is one of seven agencies (now districts) that make up the former Federally Administered Tribal Areas (FATA) but which since 2018 is now part of Khyber Pakhtunkhwa Province, one of Pakistan's four Provinces.² Parachinar is in Upper Kurram, one of the three administrative units of Kurram District. The other two are Lower Kurram and Central Kurram. Kurram District has a population of almost 620, 000.³
15. Pakistan has the world's sixth largest population, with over 200 million citizens. Muslims comprise of 96.28 per cent of the population, Sunnis the majority with 85 to 90 per cent and Shias between 10 to 15 per cent. Kurram District is the only district in the FATA with a significant Shia population. Shia are said to comprise around 40 per cent of the population of the Kurram District. Upper Kurram, from where the applicant originates, is estimated to be about 80 per cent Shia; Central and Lower Kurram have a higher percentage of Sunni residents.⁴ Most Shias in the Kurram District are from the Turi tribe, particularly in Parachinar (Kurram's largest city) and the Turi tribe is unique in that it is exclusively Shia Pashtun tribe of around 500, 000.⁵
16. I note the delegate had difficulty sourcing specific and tailored country information on the size of the Dari speaking [Tribe 1] in Parachinar and the targeting of that group. Further, he observed and relied on well documented and sourced country information pertaining to the targeting of Turi Shias. I have had regard to country information before me about the treatment and risk profile of the Turi Shias and other Shia groups of Upper Kurram. While the applicant is not of Pashtun ethnicity like the Turi, I am satisfied the [Tribe 1] Shia share a similar profile to that of the Turi Shia given they share a common religion and provenance.
17. The applicant essentially claimed that the Taliban have been targeting the Shia Muslims of Parachinar since 2007. BK a leader in the local Sunni community, whose shop was opposite his father's, blamed the applicant for his son being killed. The applicant received a threat letter from the other Sunni drivers coming to Parachinar. BK threatened to kill him for informing on his son to the Shia leaders. BK and the Sunni population were forced out of Parachinar. The road was blocked but after 2011 it became better. Traveling to Peshawar the applicant lost consciousness in an explosion and was hospitalised for two days. After this BK's threat letters continued.
18. Country information indicates tribal and sectarian violence in Kurram District (including Parachinar and surrounds) occurred in the 1980s, 1990s, early 2000s, and, on a large scale, from 2007-2011. The Taliban and Al Qaeda have gained significant ground in the former FATA killing many Shia especially in Parachinar, rending Turis and other Shia tribes of the former Fata amongst the most vulnerable across Pakistan.⁶ During the sectarian conflict of 2007 families from both sects, Shia and Sunni vacated their houses and relocated to safe parts of Kurram.

² Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

³ European Asylum Support Office (EASO), 'Pakistan Security Situation', 30 October 2019, 20191031160110.

⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁵ Ibid.

⁶ Ibid.

Sunni families of Parachinar fled to Lower and Central Kurram, and Shia families were displaced from Lower Kurram fled to Parachinar and Upper Kurram.⁷

19. Between 2008 and 2014, Turi and other Shia tribes faced significant sectarian violence. Groups such as the Tehreek-e-Taliban (TTP), the Pakistani Taliban, effectively an umbrella organisation for predominantly Pashtun Sunni militant groups, Lashkar-e-Jhangvi (LeJ) and Islamic State, 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 Agency and Peshawar.⁸
20. Country information above support the applicant's claims of sectarian violence, the Taliban attacking Shias and both sects being displaced including the Sunni families forced to flee Parachinar to Lower and Central Kurram. While I accept these events, I have concerns with the applicant's core claims, that he was threatened by BK over the death of his son and the applicant's travel to Peshawar in 2011 and being caught up in an explosion. I shall firstly consider the threats from BK.
21. As noted by the delegate in the applicant's SHEV interview, the applicant made no mention of threats from BK in his arrival interview, his first interview with the Department. After arriving in Australia at the end of May 2013, the applicant participated in his arrival interview in two parts, the first part took place on 7 June 2013 and part two on 4 July 2013. The interview was conducted using an interpreter in the Dari language. In Part 1 the applicant was asked why he left Pakistan. At the beginning of this interview, the interviewing officer told the applicant he was expected to give true and correct answers to the questions asked and that he should understand that if the information he gave at any future interview was different to what he said now, this could raise doubts about the reliability of what he had said. The arrival interview transcript has recorded 'yes' as the applicant's response to the questions of whether he understood what the interviewing officer had said and whether he understood the interpreter.
22. Asked why he left Pakistan, it is recorded the applicant said as a Shia in Parachinar they had been fighting the Taliban and other groups for five to six years; there were suicide bombings and they didn't let them go out of the town or city. Two times he escaped unhurt from suicide bombings, just outside the markets the bomb exploded. This happened five to six years earlier. Asked whether anything happened to him recently, the applicant said nothing particular happened to him. Recently they opened the way to Peshawar, and he could get out of Parachinar. He went to Peshawar and escaped. The Taliban and L-e-J attacked them. Once they were going to Peshawar and on the way, they were attacked, several people were killed. This happened two years prior. Asked whether he was injured, the applicant said 'no.' The applicant said he could not move to another area because he was Shia and they kill Shia in every city.
23. While I understand the arrival interview is an imperfect process and that it is not the opportunity for an applicant to present their claims in full or for these claims to be tested, I consider it not insignificant that at his first opportunity to speak to an Australian official, the country he had sought asylum from, he failed to raise the threats made by BK against him at the first possible opportunity.

⁷ 'Sunni tribes start returning to Parachinar 11 years after displacement', Express Tribune (Pakistan), 20 June 2018, CXBB8A1DA30592; 'As Fata merges with KP, Parachinar's Shias tell Sunnis it is time to come home', Muhammad Irfan, Samaa, 28 June 2018, 20190111113428;

⁸ Ibid; 'No losses in truck blast near check-post in Kurram Agency', International News, The, 11 February 2017, CXC9040664774;

24. The applicant's representative provided a post interview submission dated 1 June 2021 and in which she responded to the delegate's concerns regarding the applicant's failure to raise his claim of being threatened by BK, the Sunni shop owner, for the death of his son. The representative referred to the Protection Visa Processing Guidelines regarding 'Inconsistencies, contradictions or omissions' and further noted the applicant had been impacted psychologically by events that had happened in his home country, had been seeing a psychologist, was on medication, and had waited five years for his SHEV interview. She also referred to the UNHCR Handbook.
25. I accept the applicant has sought medical treatment in Australia and is suffering depression but this does not adequately explain why on his arrival he was able to provide a relatively detailed account of what led him to leave Pakistan including suicide bomb attacks and being targeted whilst travelling to Peshawar but not of specific threats made against him by BK.
26. It is not only the applicant's failure to mention BK's threats against him in his arrival interview, it is the applicant evidence at his SHEV interview that I found rather underwhelming. In his SHEV application, the applicant claimed after the fighting BK moved out of Parachinar with the assistance of the government. When this was put to the applicant at his SHEV interview a couple of times, the applicant seemed unfamiliar with this aspect of his claims. The applicant changed his narrative and said BK was walking with weapons, he could do whatever he wanted without the government stopping him; they assumed he worked for the government also and the government supported him and was not stopping him. The applicant was unable to directly respond to the delegate's question but instead sought to embellish BK's profile.
27. Asked by the delegate who killed BK's son, the applicant could only say he didn't know but there was fighting between the two parties in the city. Asked again if he knew the circumstances of his son's death, the applicant again stated there was fighting for a few days, so they didn't know what happened. Given the applicant claimed to be specifically threatened over an extended period of time by BK because of his son's death it is unusual that he would not have sought to gain more knowledge of the specific circumstance of his death given he was being blamed for it.
28. The delegate asked twice why BK particularly blamed him for his son's death and whether he was involved in his killing. The applicant initially stated BK sent him a threat message and he told him he would kill him because of his son's death. He then stated he knew his son and BK well. The applicant confirmed he was not involved in the conflict in any capacity such as a group or militia. BK 'thought maybe' he told other people in the area that BK and his son were Taliban. While I accept the applicant's shop may have been opposite that of BK's, there would have been many shopkeepers in the market including other Shias given Parachinar is a Shia majority area, who also knew BK and his son. The applicant did not provide persuasive or compelling reasons why he would be directly blamed for BK's death and he only stated BK thought maybe it was him.
29. The applicant's evidence regarding BK's connection to the Taliban presented as speculative; he could not state with any conviction which Taliban group BK belonged to and only said the Taliban were everywhere and maybe he was part of one of these groups. Asked how he knew BK was leading the Taliban, the applicant said before the fighting BK was going to the Taliban and then coming back to them, back and forward; they assumed he was leading the Taliban and they understood he was their leader. Asked where BK was now, the applicant said the Taliban were very strong in Pakistan, but he didn't know. Asked if he was still alive, the applicant only stated he thought BK was a full Talib. Asked why he thought BK was still alive

and active, the applicant said the [driver] (who had previously passed on BK's threats to him) asked about him (the applicant) currently.

30. Overall, I did not find the applicant's oral evidence regarding this claim convincing, it lacked substantive details and BK's actual connection to the Taliban and why the applicant would be blamed for his son's death seemed based on assumptions. The applicant was not involved in any fighting nor was he part of a militia group, his connection to BK's son death too remote. Given my concerns and the applicant's failure to put this claim forward in his arrival interview, I consider the applicant has manufactured this claim in order to strengthen his claims for protection. While I accept the applicant may have been in the vicinity of suicide bombers whilst working in the market in his father's [store] and that this impacted on him mentally, I do not accept that a Sunni shopkeeper named BK blamed the applicant for the death of his son and that BK subsequently threatened the applicant for a period of between five to six years from 2007 when his son was apparently killed, up until his departure from Pakistan in 2013. Given I have rejected his claim, I am not satisfied the applicant faces a real chance of any harm on his return to Pakistan now or in the reasonably foreseeable future on this basis.
31. The applicant claimed he did not leave Parachinar until 2011. After the road to Peshawar improved in 2011, he travelled by bus to Peshawar, a five-hour journey, to buy [products]. On the way, the bus was attacked. There was an explosion, many people were killed and some injured. He lost consciousness and was taken to [hospital] by security where he stayed two days before returning to Parachinar with the assistance of the military.
32. At his SHEV interview said he was going to Peshawar in 2011, there was an explosion. The delegate asked for further information about the attack on the convoy. The applicant again said he was on his way from Parachinar to Peshawar, suddenly there was that explosion and he was unconscious, woke up in the hospital, so many people were killed, and that thing happened. Asked how many vehicles approximately were in the convoy, the applicant said he didn't notice, he collapsed. Asked how big the convoy was, the applicant then said 10 to 12 cars. Asked where in the convoy was his vehicle, the applicant said he didn't remember it was a long time ago. The police were escorting the convoy, some people were killed and some injured.
33. Asked how many were killed in the attack, the applicant said he wasn't well at the time, so he didn't notice. Asked to describe the attack and how it happened, the applicant said he thought there was an explosion and then after that, day turned to night and he didn't know what happened. Asked was there anything else he wished to add, the applicant said there was an explosion, then he was unconscious and when he opened his eyes he was in hospital. He gave the name of the location where the convoy was attacked, he did not see the attackers.
34. As indicated in the country information above, there was a significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Tall-Parachinar road, which links Kurram Agency and Peshawar. I consider the applicant evidence again somewhat stilted and lacking in described detail. While I accept it is plausible the applicant knew little of the circumstances surrounding a sudden explosion, his evidence again lacked descriptive details. While he may not have been aware at the time how many people were injured or killed, or who was responsible for the attack, it is unclear why he would not make such inquiries after the event while in hospital or during his journey home while escorted by the military. I note also the discrepancy with his arrival interview where he stated he was not injured and there was not mention of him being in hospital. Despite these concerns, given he has consistently claimed to have been involved in an attack whilst traveling between Parachinar and Peshawar in 2011 and this is supported by country information, I accept the applicant was traveling in a

convoy which was impacted by an explosion and that they were targeted because they were Shia Muslims from Parachinar. I am not satisfied the applicant was individually targeted or was of any personal interest.

35. Information in the referred material indicates Pakistan's security situation, including in Kurram District from whence the applicant originates, has improved greatly since he departed Pakistan eight years ago. In 2014 the Pakistani military launched security operations to combat terrorism and sectarian violence. In June 2014 Operation *Zarb-e-Azb* targeted terrorist groups including the TTP and extended into the former FATA and Khyber Pakhtunkhwa. In December 2014, after the deadly attack on the Army school in Peshawar in which 132 children died, the Pakistani authorities introduced the National Action Plan (NAP). The combination of military operations and the NAP formed a civil-military effort to combat terrorism, separatist and criminal groups across Pakistan. The NAP ended Pakistan's unofficial moratorium on the death penalty, established military courts to try suspected militants, targeted sources of finance for militant organisations, took measures to restrict hate speech, and committed to policy reforms, particularly in the former FATA.⁹
36. Observers credit Operation *Zarb-e-Azb* and the NAP with a significant reduction in the number of violent and terrorism related attacks in Pakistan. Operation *Zarb-e-Azb* and associated antiterrorism activities led to a decrease in the number and severity of attacks on Turis in 2015 and 2016. The Pakistani military launched further military operations in 2017, Radd-ul-Fassad and Khyber IV. The military's focus was not only the Kurram District but other areas of the former FATA and other provinces including Punjab. Operation Khyber IV targeted various groups including ISIL connections across the border in Afghanistan's Nangarhar province.¹⁰
37. However, three large scale attacks carried out by militants occurred in the first six months of 2017 in Parachinar targeting Turis because of their Shia faith. These three bombings killed more than 120 people. On 21 January 2017, militants detonated a remote-controlled improvised explosive device in a marketplace in Parachinar. On 31 March 2017 a suicide bomber attacked an imambargah in Parachinar; and on 24 June 2017 two devices detonated in a market in Parachinar. DFAT assesses that these attacks targeted Turis because of their Shia affiliation.¹¹
38. A significant development occurred on 24 May 2018, when Pakistan's National Assembly passed the Federally Administered Tribal Areas (FATA) Reforms Bill, merging FATA with adjacent Khyber Pakhtunkhwa (KP) province. FATA reform was part of the National Action Plan (NAP), formulated after the December 2014 Peshawar Army Public School attack, an implicit recognition that FATA's tenuous governance had contributed in large part to the spread of militancy.¹²
39. Local observers, including officials, in Khyber Pakhtunkhwa reported a trend in increased security, a reduction in reputed killings and reduced fear within the community in 2018. The frequency of sectarian attacks has reduced annually since the launch of Operation *Zarb-e-Azb* and the NAP. DFAT reported in the first quarter of 2018, the Turi community reported two attacks, including one involving an IED that targeted women and children. This compares to community estimates that 200 Turis were killed in and 1000 injured in 2017.¹³

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

¹⁰ Ibid.

¹¹ Ibid.

¹² 'Shaping a New Peace in Pakistan's Tribal Areas', International Crisis Group (ICG), 20 August 2018, 20190605155256

¹³ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

40. Despite the spike in attacks in Kurram in 2017, DFAT notes the nine-year downward trend in terrorist attacks across Pakistan with a 16 per cent decline in 2017 followed by a 29 per cent decline in 2018.¹⁴
41. DFAT reports military operations have improved the confidence of Turis within the community for individuals (although not large groups) to travel on the Thall-Parachinar road, but only between dawn and dusk. By February 2018, the Turi community estimated 40 per cent of military fencing in Kurram was complete, decreasing border permeability. Continuing security measures and tighter Afghanistan-Pakistan border controls also restrict movement. The military has also implemented a 20 to 30 square kilometre area red zone in Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located. Security forces have issued cards to access the red zones, which can be obtained by residents on presentation of identity documents.¹⁵
42. The Pakistan army established Safe City in Parachinar city. The project includes the installation of closed-circuit television cameras throughout the city, which are linked to a command and control centre and which police officers monitor live.¹⁶ The Pakistani government encouraged IDPs within Kurram to return to their homes, some displaced for over a decade, and in June 2018 it was reported 'scores' of Sunni family had returned to Parachinar and been welcomed by Turi and Bangash elders.¹⁷
43. It was reported there were no militant attacks in Kurram in 2019. Militant attacks throughout Pakistan were said to have dropped to the lowest level in fifteen years. During 2019, the Pakistan Army remained busy fencing the border with Afghanistan and pushing back against militants along that border. The government had completed over 60 border posts and almost 130 kilometres of fencing along the border between Kurram and Afghanistan to restrict militant movements.¹⁸
44. Another Pakistan-based research group reported that the security situation in the area, as a whole, was said to have improved in 2019. Kurram remained largely peaceful, reporting only one incident, in which two security force members were injured in an ambush attack by militants, although it cautioned that Kurram remains 'highly vulnerable' due to its proximity to the Afghan border. The drop in reported incidents from 2018 marked a significant decrease of 67% in violent incidents, and a similar trend was observed in the casualty index.¹⁹ Other reporting also noted a downward trend in violence in Kurram District over 2019 observing only one violent incident.²⁰
45. In May 2020 a bomb blast occurred in an imambargah in lower Kurram, Shoorki area near the Afghan border. At least one person was injured.²¹ The first reported attacks in Parachinar city since 2017 occurred in June and July 2020. A blast at Mazdoor Chowk at Parachinar was

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ FATA Annual Security Report 2017', Fata Research Centre, 17 January 2018, CIS7B8394188.

¹⁷ 'Kurram IDPs set conditions for return', Dawn (Pakistan), 27 June 2018, CXBB8A1DA30284; 'Sunni tribes start returning to Parachinar 11 years after displacement', Express Tribune (Pakistan), 20 June 2018, CXBB8A1DA30592; 'Families of displaced Shia, Sunni Muslims begin return to their homes in Parachinar of Pakistan', Ahlul Bayt News Agency, 24 June 2018, CXBB8A1DA40019.

¹⁸ '2019 Annual Security Assessment Report', Pakistan Institute for Conflict and Security Studies, 09 January 2020, 20200122140652.

¹⁹ Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019', Irfan U Din and Mansur Khan Mahsud, Fata Research Centre (FRC), 13 January 2020, 20200122123739.

²⁰ Pakistan: Security situation', European Asylum Support Office (EASO), October 2020, 20201102100212.

²¹ Ibid; 'At least 1 injured in explosion at imambargah in Lower Kurram', Dawn (Pakistan), 05 May 2020, 20200506121914.

reported on 23 June 2020, explosives had been hidden in garbage and two people were injured including a cop. Soon after the blast, the security forces and policemen arrived at the spot and cordoned off the area for collecting pieces of evidence.²²

46. The second occurred on 23 July 2020 at Turi Bazaar when an improvised explosive device that had been fitted inside a [cart] exploded injuring 18 people. Police and security personnel cordoned off the area and a team from the Bomb Disposal Squad reached the scene to comb through the area and check for other IEDs. No one has claimed responsibility for this attack, although it was suspected by locals as a sectarian related attack. Hundreds of protesters rallied against government troops.²³ While other disputes relating to land and tribal disputes were reported in 2020,²⁴ no further militant or terrorism related incident has been reported in Parachinar and Kurram since July 2020, over a year ago.²⁵
47. According to a January 2021 media report, a spokesman for Pakistan's armed forces said more than 83 per cent of the fence along the 2,611 km border with Afghanistan, known as the Durand line, has been completed. Pakistan said the fence was to stop the movement of Pakistani Taliban, remnants of Al-Qaeda, and other foreign militants who prior to the fence's construction could easily launch cross border attacks on both sides. The fence had already played a key role in reducing militant attacks in Pakistan and it was expected to be finished by the middle of the year (2021).²⁶
48. Another report before the delegate indicates 16 labourers were "abducted by unknown terrorists" on June 26, 2021 while they were working at the site of a cell phone tower in Kurram. Ten of them were released the next day while the body of one of them was also found. Pakistani security forces launched intelligence-based operations to rescue the remaining five. While the exact location of the abduction is not identified, the article notes a security official dealing with the security situation in the area confirmed presence of militant groups including ISIS in the central part of Kurram.²⁷ I am not satisfied this incident occurred in Upper Kurram.
49. DFAT assesses Shias in Kurram still face a moderate risk of sectarian violence from militant groups because of their Shia faith. Moderate risk meaning DFAT is aware of sufficient incidents to suggest a pattern of behaviour.²⁸ The basis of this assessment is however not clear and is not reflected in the weight of the overall recent country information which points to a continuing downturn of violence against the Shia in the area. Taking into account the ongoing significant downward trend in violence and attacks by militant groups in general, that there has only been two incidents in Parachinar city since 2017, that the authorities take such incidents

²² 'Cop among two injured in Parachinar blast', News International -Pakistan, 23 June 2020, 20200812152337

²³ 'At least 17 injured in IED blast in Parachinar's Turi Bazar', Javid Hussain, Dawn (Pakistan), 23 July 2020, 20200724103731; 'Pakistan: Protests erupt over Parachinar bomb attack', Deutsche Welle, 24 July 2020, 20200812152550; 'Pakistan: Security situation', European Asylum Support Office (EASO), October 2020, 20201102100212.

²⁴ 5 injured in two firing incidents over land disputes', Tribal News Network (Pakistan), 19 April 2020, 20200420120040; 'Kurram elders fear violence over land disputes', Dawn (Pakistan), 27 May 2020, 20200727105053; 'Two brothers among three killed in Kurram', Dawn (Pakistan), 26 July 2020, 20200727182014; 'Kurram road blocked against lynching of man', Dawn (Pakistan), 27 July 2020, 20200727182220; Clashes between rival groups in Kurram over land dispute intensify', Tribal News Network (Pakistan), 30 June 2020, 20200702144928; 'Five more killed as clashes in Kurram continue', Dawn (Pakistan), 01 July 2020, 20200724133055; 'Death toll in rival tribes' clashes in Kurram reaches 14', Tribal News Network (Pakistan), 02 July 2020, 20200702124328

²⁵ CLD2021/20485428- Timeline (Terrorist Activities) July 2020- July 2021- SATP

²⁶ 'Pakistan military: Fence bordering Afghanistan nearly done', Munir Ahmed, Associated Press (AP), 12 January 2021, 20210113113203

²⁷ 'Security forces rescue 5 abducted labourers in operation in Kurram: ISPR', Naveed Siddiqui, Dawn (Pakistan), 15 July 2021, 20210716095300

²⁸ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

seriously, I am not satisfied DFAT's 'moderate risk of violence' accurately reflects the current or reasonably foreseeable situation in Kurram.

50. The applicant, in his amended statement of 17 May 2021, claims in recent times the persecution of Shia has increased both from extremists and their own government. Furthermore, in May 2018 an estimated 140 to 300 Shias had been forcibly disappeared. An October 2020 report indicates Shia casualties across Pakistan have remained low, with one Shia killed in the second quarter of 2020 and four in the third quarter due to sectarian related violence.²⁹ There are some reports of attacks against Shias during Ashura and Muharram,³⁰ but Ashura commemorations overall have witnessed few serious incidents in recent years since the Federal and Provincial government have undertaken extensive security planning and implemented a security presence to protect Shias during this period.³¹
51. DFAT notes reports by both militants and security forces carrying out extra-judicial killings and enforced disappearances are regular and common. The government's Commission of Inquiry on Enforced Disappearances reported that, at the end of 2015, it had received 1,390 cases of alleged disappearance, all of which remained outstanding. The commission claims it received 868 new disappearance cases in 2017 and disposed of 555. The number of new cases had increased from 649 in 2015 and 728 in 2016. DFAT understands the Commission has not initiated criminal proceedings against any perpetrators involved in enforced disappearances. In July 2018, the UN Working Group on Enforced or Involuntary Disappearances reported more than 700 pending cases from Pakistan, involving bloggers, journalists, students, peace activists and human rights defenders. Members of political parties, particularly Mutahidda Qaumi Movement (MQM) a Karachi based secular political party, are among the disappeared.³² The applicant does not fit any of these profiles.
52. Another report by the Austrian Accord of March 2021 provides more details. Citing a BBC News Report in May 2018 that 140 Shia Muslims disappeared in two years and their families believed they were detained by the intelligence services after returning from pilgrimage in the Middle East as they believed the men went to fight against IS and al-Qaeda. A handful had subsequently been let go. Referring to an article from the Diplomat of March 2020, it noted enforced disappearances had spread all over Pakistan and was not a new issue. Political activist, mainly from Baloch, Pashtun Sindhi and Muhajir ethnic groups have been victims of abduction. The report notes the US Department of State reported on the abduction and disappearance of two journalists from Karachi's Shia community.³³

²⁹ 'Quarterly Security Report Q3, July-Sept 2020', Center for Research and Security Studies, 08 October 2020, 20201012113549

³⁰ 'International Religious Freedom Report for 2019 - Pakistan', United States Department of State, 10 June 2020, p.13, 20200617121515; '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.

³¹ '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, 23 September 2018, CXBB8A1DA35781; 'Ashura being observed across Pakistan amid tight security', Dawn, 21 September 2018, CXBB8A1DA35775; 'Mobile services suspended in parts of Karachi ahead of Ashura', Dawn, 19 September 2018, CXBB8A1DA35716; 'Ashura processions culminate countrywide, majalis under way', Geo TV, 21 September 2018, CXBB8A1DA35780 'Ashura processions culminate peacefully in different districts', Express Tribune, 3 October 2017, CXC90406614861.

³² DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

³³ 'Pakistan: Religious Minorities', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), March 2021, 20210329144620.

53. The applicant has not claimed to know anyone personally to have disappeared or who he fears in this regard. On the information before me, I accept there are enforced disappearances including Shia Muslims in Pakistan; however, the numbers are relatively low, only 140 Shias, given Pakistan's population of 207.7 million.³⁴
54. In relation to general discrimination, DFAT reports societal discrimination in Pakistan tends to manifest in the form of positive discrimination in the form of nepotism or patronage in favour of one's own family, tribal or social group. Shias are represented in the professional community including medical and legal professions. DFAT has no evidence of systematic discrimination against Shia in gaining employment in the public service, police, military or the private sector. However, some Shias perceive discrimination against Shia gaining roles at higher levels of some organisations. Overall, DFAT assesses Shias do not generally face significant levels of discrimination when seeking employment based on their religious affiliation. Sunni and Shia attend the same public and private education institutions. Shias are well represented in parliament and regularly contest elections for mainstream political parties. DFAT assesses there are no barriers to preventing Shias from actively participating in democratic processes in Pakistan.³⁵
55. The applicant has only ever lived in Parachinar city in Upper Kurram where his wife and [children] continue to reside in their home assisted by his brother in law. I am satisfied the applicant would very likely return to his place of origin in Upper Kurram, if returned to Pakistan. I also find the applicant's reunion with his family will have a positive impact on his mental health. The applicant will be able to work in a [shop] as he has previously done. Alternatively, his work experience in Australia as [an Occupation] will enable him to find suitable employment. I am not satisfied the applicant will not be able to work, or that he will suffer significant economic hardship, or that he will be denied a livelihood or denied a livelihood or denied access to basic services such that will threaten his capacity to subsist.
56. Given security has been established in the applicant's home area and roads including the Thall-Parachinar road remain open, I am satisfied he will be able to return there and he will also be able to travel freely and without fear of harm to other parts of Khyber Pakhtunkhwa including through Sunni areas, and throughout Pakistan in general. I am also satisfied he will be able to worship freely and without fear at his local mosque and participate in Ashura, Muharram and other Shia religious festivals.
57. I take into consideration the active involvement of the Pakistani authorities, its various military operations over an extended period of time and its engagement in developing long term security in the former FATA, that there is no information before me to suggest this will not continue for the reasonably foreseeable future. I also consider there is a continued downward trend in violence and attacks by militant groups in general and that there has been very few attacks in Kurram for over three years, only two sectarian attacks in Parachinar city almost a year ago and the first since 2017, that the Taliban are no longer operating in upper Kurram, and the applicant's family remain in the area.
58. I am satisfied the risk to the applicant of suffering discrimination or any other harm including being killed by the Taliban or other Sunni militant or extremist groups, or more broadly general violence, because he is a [Tribe 1] Shia Muslim from Parachinar, Upper Kurram, Kurram District, is remote and does not amount to a real chance. I am not satisfied the applicant faces

³⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

³⁵ Ibid.

a real chance of any harm on these bases on his return to Pakistan now or in the reasonably foreseeable future.

59. The applicant claimed to fear persecution as a returnee from Australia and he will be treated as an infidel, a person who spies for Westerners/Australians. He would be an easy target for the Taliban. The Pakistan Army commanders work in collusion with the Taliban. At his SHEV interview the applicant said the Taliban kill many people from foreign countries, and if he returned, they would know he had spent time in a foreign country, and they would kill him. He stated that he will be identified by his accent, identity card and the existence of his family in business in Parachinar.
60. I accept the applicant has claimed asylum in Australia a western country where he has resided for eight years. I note the delegate was not able to locate any country information to suggest that returnees in Pakistan have been harmed, treated as an infidel or a spy for having lived in a western country or that asylum seekers returning to Pakistan are imputed with pro-Western views by either militant groups or the Pakistani authorities. The applicant will be returning to Parachinar a Shia majority area, the Thall-Parachinar highway is currently open, and he will not be required to travel through Taliban controlled areas or present his identity documents or speak to any Taliban or Sunni militant groups.
61. According to DFAT, returnees to Pakistan are typically able to integrate into Pakistani community without repercussions stemming from their migration attempt, although involuntary returnees who took on debt to fund their migration attempt tend to face higher risk of financial hardship or familial shame. Over six million Pakistanis live outside of Pakistan, with significant numbers living in the United States or United Kingdom. Wealthier Pakistani families commonly send their children abroad to study especially to the United States, United Kingdom, Australia and Sweden. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence discrimination as a result of their attempt to migrate or because of having lived in a western country.³⁶
62. DFAT does not indicate that this risk is different in the former FATA or other parts of Pakistan. A 2012 article before the delegate observed there were more than 400,000 FATA (former) residents (of a 5.5 million population) living and working in foreign countries, up from less than 100, 000 prior to 2005.³⁷
63. The applicant has not claimed to be in debt or to fear financial hardship because of his travel to Australia and he has been working in Australia. The Taliban are not presently active in Kurram District to where the applicant will return. There is no information before me to support a claim that the Taliban or other extremist groups target those returning from Western countries. Taking all this into consideration, I am not satisfied the applicant faces a real chance of any harm on account of his having lived in and claimed asylum in Australia a western country or as a returnee from the West, or returned (failed) asylum seeker from the West.
64. Having regard to all of the above, and in particular the applicant's personal profile, as a [Tribe 1] Shia Muslim from Upper Kurram, who has spent time in Australia and claimed asylum, and taking into account the country information about the current security situation in Pakistan specifically in the Upper Kurram where his wife and children continue to reside, I am not satisfied the applicant faces a real chance of any harm for the reasons claimed, now or in the reasonably foreseeable future, should he return to Pakistan.

³⁶ Ibid.

³⁷ 'Remittances soothe the scourge of militancy', Inter Press Service (IPS), 16 December 2012, CX301192

65. I am not satisfied the applicant has a well-founded fear of persecution in Pakistan.

Refugee: conclusion

66. 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

67. 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

68. 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.

69. 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.

70. Having considered the applicant's personal profile and country information before me, I have found that the applicant does not face a real chance of harm for any other reason in Pakistan. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test. Accordingly, for the same reasons I have concluded the applicant does not face a real chance of harm, I find that there is not a real risk of significant harm to him in the foreseeable future, were he to return to Pakistan.

Complementary protection: conclusion

71. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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