



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN

IAA reference: IAA21/09805

Date and time of decision: 1 October 2021 16:09:00

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] August 2013 and lodged an application for a Safe Haven Enterprise visa (SHEV) (XE-790) on 15 May 2017. On 28 August 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 material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 21 July 2021 the IAA received emails from the applicant's representative, with a covering letter, submissions and further information attached.
4. The submissions, together with the covering letter, disagree with findings made by the delegate, respond to those findings, and provide further information. To the extent the submissions refer to information, including country information, that was before the delegate, refer to case law, and contain legal and other argument, I consider this does not constitute new information.
5. The further information consists of a statutory declaration by the applicant dated 22 September 2021. The statutory declaration consists of a mix of information that was before the delegate, the applicant's disagreement and responses to some of the delegate's findings, a new claim in relation threats made by his brother [Mr A] in Pakistan, and in relation to his mental health. The new claim in relation to threats from [Mr A] and his current state of mental health was not before the delegate and is new information (2021 statutory declaration new information).
6. The 2021 statutory declaration new information concerns events that post-date the delegate's decision. The 2021 statutory declaration new information is, on its face, credible personal information in the s.473DD sense. The new information about the death threats from [Mr A] and his current mental health impacts on the assessment of his risk profile if returned to Pakistan and therefore may have affected consideration of his claims. I am satisfied that s.473DD(b) is met and that there are exceptional circumstances to justify considering the new information in his 2021 statutory declaration.
7. In the submissions it was stated that if the IAA has concerns with respect to the applicant's credibility, including his new claim, the applicant should be afforded an interview. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. The IAA is required, subject to Part 7AA, 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. The applicant provided a statutory declaration with his SHEV application, he was interviewed by the delegate with his representative present, he provided detailed submissions and supporting documents to the delegate following the SHEV interview, and he provided submissions and further information to the IAA. I am satisfied he has had a meaningful opportunity to present his case. I have decided not to exercise my discretion to interview the applicant.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
- If forced to return to Pakistan, he fears he would be killed in an explosion or targeted killings.
 - He would be killed by the extremist groups who operate throughout Pakistan. These groups are ruthless and continue to subject his religious community to serious harm. He would face serious harm because of his Shia Muslim faith. The extremists believe that Shias are infidels. He can be easily recognised as a Shia Muslim given his name, accent, area of origin and religious practices.
 - He would be at risk of harm as he originates from [Town 1], Kurram District, and is a member of the Bangash Tribe. The extremists target Shia Muslims from the Kurram District for ongoing harm as they believe his community has worked against them and prevented their access to Afghanistan.
 - The extremists continue to subject individuals who do not adhere to their regime and beliefs to significant harm. Given his race, religion, tribal affiliation, and area of origin, if he was forced to return to Pakistan, he would be considered an enemy of the Taliban and be vulnerable to such harm.
 - He fears harm if returned to Pakistan due to his Pashtun race, Muslim Shia faith, his membership of a particular social group namely as a Bangash Shia from the Kurram District and also due to his imputed political which emanates from his race, religion, tribal affiliation and area of origin and roles of he and his family in the family members.
 - He also fears harm from his brother [Mr A], who was recently notified by an unknown person that the applicant was spending his time drinking alcohol rather than working to support his family. [Mr A] is very religious and deems the applicant to have become Westernised and an infidel. [Mr A] has threatened to kill the applicant.

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 [Village 1], a village in Kurram Agency (now District), Pakistan, in [year] and lived there until he left Pakistan in 2013. He married in 2009 and he and his wife have two sons, born in [year] and [year] respectively. His father is deceased. His wife, sons, mother and two brothers live in [Village 1]. He is in regular contact with his family in Pakistan. He attended school from [year] to [year], completing Year [number]. He worked in Pakistan as [various occupations]. In Australia he worked for a [Occupation 1] firm but due to his mental health he started working for a [Occupation 2] company but there has been limited work during the pandemic. He speaks, reads, and writes Pashto and Urdu, and he speaks English. He is of Pashtun ethnicity, belongs to the Bangash tribe, and is a Shia Muslim.

Problems in Pakistan

11. In summary, the applicant claims that prior to his departure from Pakistan, he lived in constant fear that he would be killed due to his race, religion, tribal affiliation, and area of origin. As a result, he felt he had no option except to flee, knowing that if he remained, he would be subjected to serious harm.
12. He says that from 2007 onwards, violence became very prevalent throughout the Kurram District. The extremist groups wanted to increase their influence there to ensure they were strategically well positioned to gain access to Afghanistan. The Shia Muslim community opposed the extremists and as a result, the extremists subjected their community to ongoing attacks and violence. Due to the violence, many Shia places of worship, marketplaces, shops, and homes were destroyed. Further, their infrastructure was regularly targeted by the extremists. This made it very difficult for him and his family to obtain basic supplies and services.
13. He states the extremists also subject members of his community to targeted killings, acid attacks, grenade attacks and bombings. They would also fire at their villages from the mountain tops. Many members of his village were killed by the extremists, often their bodies were dumped and had to be retrieved. As a result, he lived in constant fear that he would be harmed. He was not able to move around freely.
14. The applicant claims that while in Pakistan, he worked as a [Occupation 3]. He worked in [Town 1]. Attacks would regularly occur on the roads therefore he had to ensure he travelled with other people and took precautions to avoid harm. Many attacks also occurred at the marketplace near his business. This made him very scared; often, he was too scared to go outside due to the commonness of attacks. If he required supplies for his business, he had to travel to Peshawar. After the commencement of the conflict, the road between Peshawar and Parachinar was regularly closed. Once it re-opened, regular attacks occurred against members of the Shia community. He was too scared to travel to Peshawar. Given it was difficult to obtain supplies, it was very hard for him to carry on his business.
15. The applicant said at his SHEV interview that he had always wanted to come to Australia and as things got worse in Pakistan, he heard about someone bringing people to Australia, so he decided to join them. He was in more danger in Pakistan than his family because he was well known in the area, and had to travel the roads, because of his business.
16. He says his family have also suffered greatly due to the conflict. His wife and children continue to be forced to remain inside the home. It is too dangerous for them to go out. They only leave the house if it is very necessary. His family have told him that many attacks have occurred at times recent to his SHEV application (May 2017) and that they continued to live in constant fear of harm. At the time of the SHEV interview (July 2021) he said his two sons were going to school in Parachinar city and he worried that something might happen to them.
17. The applicant confirmed at the SHEV interview that he is Shia. He said he did not strictly practice his religion. In Pakistan he only prayed sometimes, and he did not pray at mosque or fast. In Australia he didn't go to mosque and sometimes went to religious days depending on his work.
18. The applicant claims that about two weeks before his 2021 statutory declaration was prepared (September 2021) his wife told him that she and their sons were forced to leave the

family home where they had been living with his brother [Mr A] and his mother. His wife and sons had to move in with her brother's [family]. She told him [Mr A] was upset because he had heard from someone in Australia that the applicant was not working and was spending his time drinking alcohol. He doesn't know who told this to his brother, but believes it is someone from his village who lives in Australia. Since his brother was told he was drinking, [Mr A] believes the applicant spends his money on alcohol rather than sending it to his family. This is untrue. The applicant stopped work in June 2021 because of his poor mental health and this is the reason he has been unable to send money to his family in Pakistan. His wife and mother have warned him that [Mr A] is very angry with him and wants to kill him. [Mr A] is very religious and believes the applicant is an infidel because he drinks alcohol. His wife and mother have advised him not to return to Pakistan because [Mr A] and his religious friends will kill him.

19. The applicant was generally consistent with his protection claims prior to leaving Pakistan and his background details in his SHEV application and at the SHEV interview. His claims about the dangers he and his family faced living in the [Town 1] area from sectarian violence, including the danger on the roads, 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 who lived in [Village 1] throughout his life in Pakistan; that he is a Shia; that the security situation deteriorated in Parachinar from 2007 and Shias were targeted and killed by the Taliban and other anti-Shia groups; that people from his village have been killed; that there were restrictions on his and his family's movements; and that he ran a business in [Town 1] and had difficulties with supplies as they had to come from Peshawar.
20. I do not consider his evidence about his brother [Mr A], including [Mr A]'s threats to kill him to be convincing. I do not consider it credible that, coincidentally after the delegate refused to grant him a protection visa, some unknown person happened to tell his brother [Mr A] in Pakistan that the applicant was not working because he was drinking; that [Mr A] happened to accept that information without making any contact with the applicant about it; that [Mr A] happened to be a very religious person; and [Mr A] therefore happened to make death threats against the applicant. I do not consider it credible that, even if it were true that he was told the applicant was drinking, [Mr A] would readily believe such a claim when the applicant's medical history (discussed below) indicates he has never had alcohol and is a non-drinker. I also do not consider it credible that, if it were true that his family was made to move out and death threats made, he was not aware of the exact date in the last two weeks or so before his statutory declaration that these very significant events occurred. At the SHEV interview the applicant said his wife and sons were no longer living with his brother [Mr A], as [Mr A] and his mother had recently moved to a separate house. Instead, his wife and sons were in their own house, with his other brother, who had since returned from [another country], living in the same house, but separately, as they had built a wall through the house. I do not consider it credible that his family would have moved back in with [Mr A] and the applicant's mother in the two months between the SHEV interview and his statutory declaration to the IAA. At the SHEV interview, the applicant claimed that he sent money to support his family, because previously his brother had supported them but then he stopped and his sons had told him that it was because he was meant to have taken them to join him in Australia. Again, I do not consider it credible that [Mr A] would decide to stop supporting the applicant's family in Pakistan without discussing the issue with him or that the applicant would have to be informed of the reason by his young sons. I am not satisfied on the credible evidence before me that [Mr A] has stopped supporting the applicant's family in Pakistan; that an unknown person told [Mr A] that the applicant was not working and supporting his family because he was drinking; that his family were forced to leave their home or have

moved elsewhere; and that [Mr A] is a very religious person, considers the applicant to be an infidel and has made death threats.

21. As discussed above, I accept that from 2007 the security situation deteriorated in Parachinar, with Shias being targeted and killed by the Taliban and other anti-Shia groups. However, although the applicant knows people in the village who have been killed, he was well known in the area from his business, and he and his family were aware of and afraid because of the various security incidents and attacks that have occurred, the applicant's evidence does not suggest that either he or his immediate family have ever been directly attacked or harmed by the Taliban or other anti-Shia groups. 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 since, he and his family were and are of any direct adverse interest to Taliban, other anti-Shia groups or anyone else in Pakistan.
22. At the SHEV interview in on 5 July 2021 he said he had stopped working for [Occupation 1] firm because he was mentally weakened and had started work as a [Occupation 2] but there was only limited work due to the pandemic. In his 2021 statutory declaration the applicant stated he stopped working in June 2021 due to his poor mental health. In post-SHEV interview submissions, it was stated that the applicant suffers with significant mental health issues which have made it difficult for him to work on an ongoing basis in Australia; his health issues would also impede his ability to relocate; and he provided supporting medical documents. A medical history report, as at 15 July 2021, from his GP, Dr [B]. Referrals from Dr [B] to a psychologist and psychiatrist dated 7 August 2020 and 25 February 2021 respectively. A report from [Dr C], clinical psychologist, dated 29 December 2020. [Dr C]'s report states the results of testing and indicates that although the results are linked to depression and/or anxiety, the GP may also wish to consider whether major thought disturbance was the issue and whether anti-psychotics would be of benefit. Despite the psychiatrist referral (with another issued in 17 March 2021 per the medical history), the applicant has not yet been able to see a psychiatrist. The medical history and referral from Dr [B] indicate that the applicant has been prescribed [medication] for depression since July 2020. None of the medical material refers to the applicant being unfit for work. I give more weight to the medical documents than the applicant's evidence about his mental state and fitness for work. Based on the material before me, I am not satisfied that the applicant is unfit for work. However, I accept that the applicant has been diagnosed by his GP as suffering from depression and has been prescribed medication as a result and that he would benefit from further assessment from a psychiatrist. Because of his depression, I also accept that he may seek to access to further medical care and treatment, including medication, if returned to Pakistan.

Returning Asylum Seeker

23. The applicant claims, and I accept, that he left Pakistan in June 2013 to travel by plane, using his own passport, to fly to [Country 1]. He then travelled to [Country 2] and on to [Country 3]. He subsequently left [Country 3] 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 is due to expire in 2023.
24. The applicant was one of numerous asylum seekers whose personal information was published by the Department in early 2014 due to a data breach on its website. Some of his

personal details were published for a short period of time, but the information did not include his claims or that he had applied for a protection visa.¹

25. The applicant's wife, children, mother, and brothers continue to live in [Village 1] and there is a small amount of family farmland. As his immediate family are living there, and the applicant previously lived there throughout his life in Pakistan, I am satisfied that [Village 1] in the [Town 1] area is the area of Pakistan to which he will return. Although the applicant has sent money to his family in Pakistan, on my findings they have been supported by his brother in Pakistan since the applicant has been in Australia. The applicant has remained in contact with his family in Pakistan. As discussed above I am not satisfied that the applicant has been threatened by one of his brothers or that his wife and children recently had to move. Given those factors, I am satisfied that his family in [Village 1] 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.

Refugee assessment

26. 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

27. 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.
28. 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 District where [Town 1, with a Shia majority], 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.² The Bangash tribe are

¹ Protection visa decision record, 28 August 2021, page 10.

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

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.³ 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.⁴ 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.

29. 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.⁵ 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.⁶ 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.⁷
30. 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 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

³ Marian Abou Zahab, "It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402.

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

⁵ Marian Abou Zahab, "It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402.

⁶ Marian Abou Zahab, "It's Just A Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", 1 January 2013, CIS29402; and Middle East Institute, "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007", December 2014, CIS2F827D91993.

⁷ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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.⁸

31. 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 Centre for Research and Security Studies (CRSS) noted that in 2019 the former FATA areas had the lowest percentage of civilian casualties from terror attacks in the country and in Kurram there were only three people injured in such attacks. It also identified that in sectarian attacks, Shias suffered 28 dead and 57 injured during 2019, but the majority were Shia Hazaras (24 dead and all the injured), with none of the incidents in former FATA areas.⁹ 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.¹⁰ Other media articles detailing a blast at an imambargah blast that injured one person and an explosion at a market in Parachinar that injured 17, were also before the delegate.¹¹ These incidents in 2019 and 2020 are unfortunate, but they are not inconsistent with the overall reduction in large scale or frequent attacks in the Kurram District since 2017 or the ongoing improvement in the general security situation in the Parachinar area.
32. Consistent with DFAT's identification in its 2019 report of an increased trend of societal intolerance, there have been ongoing concerns about growing anti-Shia sentiment in Pakistan. Incidents include confrontations and arrests for blasphemy of Shias; attacks; the passing of the Protection of the Foundations of Islam Bill (Bill) by the Punjabi Assembly; and anti-Shia rallies.¹² However, that same material notes, relying on SATP, that the number of sectarian attacks by armed groups continues to decrease, corresponding with the overall decline in terrorist attacks. The anti-Shia incidents are predominantly against Shia Hazaras and none are identified as occurring in Parachinar, which is a Shia majority area. It appears the closest incidents have been three attacks in Peshawar in 2020, but they were against Ahmadis. The country information also notes that although the Bill was passed, the Governor of Punjab refused to sign it, noting concerns that it could be seen as anti-Shia; and that the authorities continue to provide enhanced security at various Shia places of worship throughout 2020, including for the Muharram processions.¹³

⁸ Ibid.

⁹ CRSS, "CRSS Annual Security Report 2019", 28 January 2020, 20200130161732.

¹⁰ Irfan U Din and Mansur Khan Mahsud, FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020", 7 January 2021, 20210113125205.

¹¹ "At least 1 injured in explosion at imambargah in Lower Kurram", Dawn (Pakistan), 5 May 2020, 20200506121914; and "At least 17 injured in IED blast in Parachinar's Turi Bazar", Javid Hussain, Dawn (Pakistan), 23 July 2020, 20200724103731

¹² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Pakistan: Religious Minorities", March 2021, 20210329144620; and United States Department of State (USDOS), "2020 Report on International Religious Freedom: Pakistan", 12 May 2021, 2021051309414.

¹³ USDOS, "2020 Report on International Religious Freedom: Pakistan", 12 May 2021, 2021051309414.

33. 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 specifically of 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.
34. As discussed above, I am satisfied that the applicant will be returning to [Village 1] in the Parachinar area of Kurram District. It is a Shia majority area and his wife, sons, mother, and brothers live in the village. The applicant raised concerns in his submissions in relation to the Taliban taking control in Afghanistan that he says will lead to increased security concerns in Kurram. The applicant has not claimed any specific incidents have occurred in the Parachinar area since the Taliban came to power in Afghanistan and at this stage and for the reasonably foreseeable future, I consider the argument about the possible impact of the recent changes in Afghanistan 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 [Town 1]. There are reports before me with detailed statistical analysis of incidents in Pakistan and in the Kurram District, and I am confident it gives a reliable picture of the trends of violence, despite the applicant's submission that many attacks are not reported. I accept that some incidents may go unreported or have been misclassified but I am not satisfied it would be to any significant extent. DFAT acknowledges there are restrictions on journalists accessing and obtaining information about the former FATA, and identifies the risk as that some incidents, mainly those involving low level officials will go unreported. Overall, I am satisfied the country information shows that in the eight or so years since he was last there, the security and sectarian situation in the Kurram District, and in the Parachinar area, including in relation to the use of the roads, has improved substantially. There is no suggestion in the country information that the security improvement in the Parachinar area is confined to the red zones around Parachinar itself. Other than a general fear of what might happen, the applicant has not otherwise claimed that his wife, sons, or other family in the Parachinar area suffered any specific adverse treatment or targeting from the Taliban, other militants or anyone else since he left Pakistan. Indeed, he said at the SHEV interview that his sons attend school in Parachinar city, and although that worries him, he did not suggest his sons have been involved in any incidents. I accept that although the security situation has substantially improved, there remains some level of risk of harm from general and sectarian violence in [Town 1]. However, having regard to the nature and frequency of militant and sectarian incidents in Kurram District, and the applicant and his family's circumstances, I am not satisfied that, overall, they rise to the level of a real chance.
35. Aside from safety issues arising from the general security concerns in the Parachinar area, 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 [Town 1], 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, he is a man in his early [age range] who, notwithstanding his recent depression, has otherwise shown himself to be generally resilient and resourceful by adapting to life in Australia while separated from his family. He is not uneducated. He speaks,

reads, and writes Urdu and Pashto, as well as speaking English. He has work and business experience in Pakistan, as well as work experience in Australia. Although he has depression, and is taking medication, on my findings he is not unfit for work. While the applicant re-establishes himself in [Town 1], 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 [Town 1], would threaten his capacity to subsist or otherwise amounts to harm to the applicant, now or in the reasonably foreseeable future.

36. Given his depression, I accept that the applicant may seek medical care and treatment if returned to Pakistan. As discussed above, the security situation has significantly improved, including on the road to Peshawar, and I am not satisfied that there is a real chance of harm to the applicant if he travels beyond [Town 1] to obtain some medical treatment. DFAT indicates basic health care in Pakistan is free, but limited capacity, lack of funding, corruption, slow economic growth, and overarching governance challenges combine to reduce quality and accessibility. Wealthier Pakistanis have access to better quality private health care. Rural areas have poorer access to health care services, compounded by a lack of infrastructure and transport facilities. Because of military operations in and around Parachinar, access to some services can also be restricted. DFAT does not suggest that the security restrictions in place around Parachinar are discriminatory in either design or practice, or that people in Pakistan face discrimination in obtaining medical services (with the possible exception of Ahmadis).¹⁴ The information available to me does not suggest that in the event he seeks medical care and treatment in Pakistan, the applicant would be denied such medical care and treatment as a result of any systematic and discriminatory conduct, including for any of the reasons in s.5J(1)(a) or otherwise.
37. I am not satisfied that there is a real chance of harm to the applicant, if returned to the [Town 1] area in the Kurram District, due to the general security and sectarian situation, or for any other reason, given his profile and background, including as a Pashtun Bangash Shia from Kurram District, now or in the reasonably foreseeable future.
38. 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

¹⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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.¹⁵

39. The applicant left Pakistan legally using his own passport which remains current until 2023. He has not claimed he is wanted for any criminal offences in Pakistan or that he has committed any crimes while in Australia. 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, if he is interviewed, he will be found to have departed Pakistan legally and that he is not wanted in relation to any criminal offences, and he will be released within a couple of hours. Personal details of the applicant were released in the 2014 data breach, but the Pakistani authorities would be aware of his personal details by his own documentation together with the circumstances of his return to Pakistan. I am not satisfied that the data breach would increase his profile or otherwise alter the treatment he would receive from the authorities at the airport. 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 [Town 1]. 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 that the applicant would suffer harm on that basis.
40. 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 or so years in Australia, now or in the reasonably foreseeable future.
41. 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

42. 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

43. 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.

¹⁵ Ibid.

Real risk of significant harm

44. 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.
45. 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.
46. Based on country information discussed above, I accept that the applicant may face some difficulties if he seeks medical care and treatment. However, I am satisfied based on the same country information that any difficulties the applicant may have in accessing such medical treatment and care does not amount to significant harm as it is due to a lack of capacity and resourcing, rather than an intentional infliction by the Pakistani government, or anyone else, to cause extreme humiliation or mental or physical pain or suffering, severe pain or suffering and it does not amount to torture or an arbitrary deprivation of life or the death penalty. I am not satisfied the applicant faces discriminatory treatment due to difficulties in accessing medical treatment and care that amount to significant harm as defined in ss.36(2A) and 5 of the Act.
47. I accept that if the applicant 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.
48. 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,¹⁶ 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

49. 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).

¹⁶ *MIAC v SZQRB* (2013) 210 FCR 505.

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.