



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA21/09941

Date and time of decision: 12 November 2021 10:52:00  
M Simmons, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Pashtun Shia, a Turi Tribesman, and a Pakistani national. On 13 December 2016 he lodged an application for a protection visa. A delegate of the Minister for Immigration refused to grant that visa on 17 September 2021.

### 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. The applicant's representative provided submissions to the IAA on 11 October 2021. Provided with the submissions was material described as news articles in relation to the current Taliban issue with US troops departing Afghanistan and how that impacts the applicant's local area of Parachinar and FATA. The representative states that these articles have been provided to give the IAA an understanding of the region's current and future volatile situation due to the strategic location of the applicant's hometown with the Afghanistan border. That material is:
  - A Gandara article dated 26 October 2020 about the Taliban reemerging Malakand District.
  - A Reuters article dated 1 September 2021 regarding concerns in Pakistan over the Taliban in Afghanistan.
  - A screenshot of a CNN webpage displaying a video of an interview with a Taliban leader dated 26 July 2021.
  - A Washington post opinion piece dated 28 July 2021 discussing 26 July 2021 CNN interview, and the Taliban in Afghanistan and Pakistan.
  - a document entitled: Shia Turi tribe persecution and updated security situation of Pakistan (the tribal District Kurram, Khyber Pakhtonkhwa province) 15 Sept 2021 to 09 Oct 2021.
4. The Gandara was provided to the delegate by the representative on 20 July 2021 in written submission following the interview. It is not new information and I have had regard to it.
5. The Reuters article predates the delegate's decision by several weeks. The applicant was assisted by the same representative during his interview with the delegate, and both were reminded of the need to provide all relevant information prior to the delegate's decision. Submissions with information on the situation in Pakistan and Afghanistan were made following the interview on 20, 26 and 28 July 2021. There is no suggestion as to why this could not have been provided prior to that decision, and I am not satisfied it could not have been. This article does not contain any information about an identifiable individual, and as such I do not accept it is personal information. I am also not satisfied that the information may have affected consideration of the applicant's claims. It does not provide any additional information beyond that which was before the delegate. The Taliban's emergence in Afghanistan was clearly established in the information before the delegate. For completeness, I am also not satisfied that they are exceptional circumstances justifying my consideration of this article. In addition to the above, I note it does not offer any insight into the applicant's area of Pakistan, nor does it materially contribute to the information that was already before the delegate regarding the Taliban's ascendance in Afghanistan. This matter was raised during the interview

with the delegate, in written submissions following that interview and are reflected in the delegate's decision. I have not had regard to this article.

6. The Washington Post article and screenshot of the CNN webpage relate to a 26 July 2021 interview on CNN with the head of the Pakistani Taliban where he indicated that the Taliban intends to seize territory along the Pakistan Afghanistan border. This is also mentioned in the submissions. The submissions state the delegate failed to consider recent crucial media reports regarding the Tehreek-e-Taliban Pakistan (TTP) interview with CNN as this interview had aired prior to the delegates decision. I note the applicant and his representative did not provide any information regarding the CNN interview to the delegate prior to his decision, despite having made written submissions on three occasions after the interview. No explanation has been provided as to why this information could not have been provided prior to the delegate's decision and I am not satisfied that it could not have. The Taliban spokesperson is identifiable, however I am not satisfied his comments may have affected consideration of the applicant's claims. The Taliban's desire to control land along the border is well known and is reflected in the information that was before the delegate. These recent comments give no indication of any plan or capability to carry out this longstanding threat. It does not materially add to the information already before me in the review material as such I am not satisfied it may have affected consideration of the applicant's claims. For completeness, I am also not satisfied that there are exceptional circumstances justifying consideration of this new information. It lacks material bearing on matters in issue in this review. Furthermore the applicant had ample opportunity to discuss this issue, which he raised at the interview and in written submission following it with assistance from his representative. I have not had regard to this information.
7. The document entitled "Shia Turi tribe persecution and updated security situation of Pakistan (the tribal District Kurram, Khyber Pakhtunkhwa province) 15 Sept 2021 to 09 Oct 2021" cites various media reports on events from all over Pakistan. I am satisfied that the media reports mentioned postdate the delegate's decision and therefore could not have been provided prior to it. Some of the reports mentioned name individuals such as political leaders, and as such could be considered to contain personal information. However noting none of the reports concern the applicant's area of Pakistan, nor his tribe, and only one concerns Shias but in the Punjab province being issued infringement notice by the local government. I am not satisfied that any of this new information may have affected consideration of the applicant's claims. There is nothing on the face of this document to suggest that any of the events mentioned have any material bearing on the applicant's claims. None of the events mentioned relate to either Parachinar or Kurram District more broadly. None of the events listed concern any members of the Turi tribe. Only one source mentions Shias, a report from Shiite News which only concerns the Punjab Province, and no Turi Shias. Despite the title of this document, the various sources mentioned do not reflect 'Shia Turi tribe persecution' nor do any relate to Kurram District. Considering the foregoing I am not satisfied that there are exceptional circumstances justifying my consideration of this document and I have not had regard to it.
8. To the extent the submissions restate the applicant's evidence, restate and respond to conclusions of the delegate or convey legal argument, they do not contain new information and I have considered them. The submissions do not identify what information contained within them is new information, nor do they provide an explanation of how any new information satisfies s.473DD, contrary to the requirements of the Practice Direction.
9. Sections of the submission are attributed to the 2019 DFAT report which was before the delegate and is not new information and has been considered. Otherwise, no other sources are provided for the statements about the security situation in Pakistan and Afghanistan. It appears a reasonable proportion of the IAA submission restates verbatim the applicant's

representative's written submissions to the delegate provided on 20 July 2021. This is not new information and I have had regard to it. Other parts appear to reproduce an extract from the Reuters article which I have dealt with above. There is mention of a 24 Sept 2021 comment by Prime Minister Imran Khan stating that Pakistan would work with the authorities in Afghanistan to halt the Tehreek-e-Taliban Pakistan (TTP). This would appear to postdate the delegate's decision and therefore on its face appears to be new information, though it is not identified as such. The source of this information was not provided nor was a copy of the original article or report. Neither its context nor reliability is apparent. Considering these matters, I have decided not to accept this information.

10. The remainder and majority of the submission comprises unsupported contentions and assertions in relation to the situation in Pakistan and Afghanistan for which no sources or copies of the original documents have been provided. This includes in relation to the ideology, structure and strategies of the Taliban, the US withdrawal from Afghanistan and the purported 'International Coalition in Afghanistan and Pakistan'. The applicant was provided with information about the requirements of the Practice Direction, and he has been assisted by a lawyer and I do not accept he would be unaware of the within the Practice Direction. The basis for these statements and their reliability cannot be determined. In these circumstances given the various instances of non-compliance with the Practice Direction I have decided not to accept it.

#### **Applicant's claims for protection**

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11. The applicant's claims can be summarised as follows:

- He is a Shia Muslim, a Pashtun and a Turi tribesmen. He was born in [a] village, Parachinar in Kurram District.
- From around 2007, the Sunni community and the Taliban targeted his religious community, subjecting many members of his community to serious harm and forcing them to change their religious practices to that of Sunni practices. Sunni extremists regularly bombed Shia marketplaces and places of worship. Shias were also kidnapped while travelling on the road.
- He was unable to live freely, fearing he would be killed each time he left his house. He restricted his movements and only left his house when it was necessary. He was also restricted in the work he could undertake. A lot of infrastructure in his area was destroyed, making it difficult for them to access basic services.
- Given the security situation and safety issues, he decided he could no longer live in constant fear. He also knew that he would be at risk if he moved to another part of Pakistan as the extremists harmed his community throughout Pakistan. He therefore decided to flee Pakistan.
- The risk from the Taliban has increased since the US left Afghanistan. The security situation has changed, and it is the same as it was seven to eight years ago. As his community is located on the border with Afghanistan, they will be the first to be targeted by the Taliban because they are against them.
- He fears the Taliban would harm him if they found out that he has come back from Australia. Everything about him has changed since coming to Australia including his thoughts, feelings, language, religion and identity. He believes the Taliban will consider him a *kafir* (infidel).

- If he returns to Pakistan, he fears he will be killed by the Taliban and associated extremist groups who operate throughout Pakistan. He also fears harm from Sunnis and the Pakistani government.
- He would be at risk of harm due to his Shia faith, Pashtun ethnicity and membership of the Turi tribe. The Taliban consider Shia Pashtuns as their enemies and they believe they hindered their ability to access Afghanistan. He is also easily identifiable as a Shia from Parachinar as his name, prayer rituals and his area of origin are recorded on his documents.
- He believes the Pakistani authorities are unable to protect him as they are corrupt and often assist the extremists. Instead, the authorities will discriminate and persecute him.
- He is unable to relocate as he has only ever resided in Parachinar and the rest of Pakistan is unfamiliar to him. He has no support network in another area of Pakistan.

## **Factual findings**

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### **Identity and background**

12. It is claimed the applicant is a national of Pakistan. He provided a copy of his Pakistani passport, national identity card and a domicile certificate. The applicant has provided consistent and plausible details regarding his family composition, religion, ethnicity, tribal affiliation and area of origin. He was asked various questions on the subject by the delegate, to which he gave unprompted and reasonably detailed answers which accorded with the details set out in his visa application. Details in his identity documents corroborate his claimed identity, nationality and origins from Kurram District. His passport records his place of birth as 'Kurram Agency, Pak' and his identity card gives his residential address as '[Village], Parachinar Post Office. Subdivision: Upper Kurram. District: Kurram Agency.
13. The applicant claims he is adherent to Shia Islam. He discussed his religious practice in Pakistan and Australia with the delegate and offered a reasonably detailed and plausible account of it. He described attending his local imambargah in his village and the main imambargah in Parachinar when he was in the city. While indicating his practice in Australia is not strong, he continues to visit the imambargah in Melbourne on special occasions, prays three times a day, and celebrates the main events on the Shia calendar.
14. I accept that the applicant is Pakistani citizen, a Pashtun, adherent to Shia Islam and a Turi tribesman who originates from Kurram District. He has consistently claimed, and I accept, that his family continue to reside in Parachinar. I find that he would very likely return to that location where he has substantial ongoing ties. Pakistan is the country of reference for the purpose of this assessment.

### **Violence in Kurram**

15. Shia tribes have a history of conflict with Sunni groups in Kurram District. Both Bangash and Turi tribes resisted the Sunni Taliban and as a result were the target of sectarian violence. Between 2007 and 2014, Shia tribes in Kurram District faced significant violence from Sunni groups who targeted them because of their faith.<sup>1</sup> The applicant's description of the recurrent

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<sup>1</sup> Marian Abou Zahab, "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan", Hurst &

violence in Kurram District prior to his departure generally accords with reports before me on the conflict in Kurram District. I accept that there was a high level of sectarian violence in Kurram District during this period as claimed.

### **Residence in Australia**

16. I accept that were the applicant to return to Pakistan, he would do so after residing in Australia for more than 8 years.

### **Refugee assessment**

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17. 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**

18. 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.
19. The security situation across Pakistan is complex and subject to considerable regional variation. Credible sources have reported on the Pakistani government’s tough stance and relative success in combatting terrorism activities across Pakistan in recent years. Since 2014 the Pakistani government has taken significant measures to address sectarian and other violence, including by operations targeting terrorist groups such as the Taliban in Khyber Pakhtunkhwa.<sup>2</sup> In January 2020 the Pakistan Institute for Peace Studies (PIPS) assessed that during 2019 Pakistan witnessed a further decline in the number of terrorist incidents (down 13 percent and resultant casualties (down 40 percent) compared to 2018 levels, which continued a downward trend since 2009.<sup>3</sup> Campaigns by security forces and counterterrorism police are attributed with bringing about this change, however PIPS cautions that those figures do not suggest the

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Company, 1 January 2013, CIS29402; Department of Foreign Affairs and Trade (DFAT), ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

<sup>2</sup> DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

<sup>3</sup> PIPS, ‘Pakistan Security Report 2018’, 6 January 2019, 20190121110758.

threat of terrorism has been completely eliminated.<sup>4</sup> DFAT 's most recent assessment, from 2019, is that the state of affairs is complex, volatile and affected by domestic politics, politically motivated violence, ethnic conflicts, sectarian violence, and international disputes.<sup>5</sup>

20. The applicant is of Pashtun ethnicity. DFAT confirms that Pashtuns are the dominant group in Khyber Pakhtunkhwa Province, and assesses that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination.<sup>6</sup> In February 2019 DFAT noted the improved security situation in Kurram District, which is part of Khyber Pakhtunkhwa Province and the area from where the applicant originates, led to a trend of decreased reports of attacks against Pashtun Turis in 2018. While this trend was considered likely to continue in 2019, attacks and violence against Turis may still occur and as such DFAT assessed at that time that Turis in still face a moderate risk of sectarian violence because of their Shia faith.<sup>7</sup>
21. Adherents to Shia Islam have faced threats from anti-Shia militant groups in some areas of Pakistan. Sectarian violence in Pakistan has historically targeted individuals, places of worship, shrines and religious schools, and Shia have traditionally represented a higher proportion of the casualties. During 2017, militants carried out mass casualty attacks in Parachinar, including three bombings in Shia areas. Sunni extremist groups claimed responsibility and said that they had deliberately targeted Shia.<sup>8</sup> In more recent times Shia casualties across Pakistan have remained low, with one (non-Hazara) Shia being killed in the fourth quarter of 2020 and none in the first quarter of 2021 across Pakistan due to sectarian related violence.<sup>9</sup>
22. I have accepted that the applicant will very likely return to Kurram District, where his family continue to reside. A significant number of Pashtun Shia live in Upper Kurram, with around 80% of the population being Shia.<sup>10</sup> Reports indicate there have been significant improvements in relation to the security situation in Kurram District in recent times. Following a spike in violence in Kurram during 2017, there was a significant decrease in such incidents in 2018, followed by a further decrease in 2019.<sup>11</sup> DFAT reported that in 2019 due to improved security Pashtun Shia individuals now feel safe to travel the Thall–Parachinar road during daylight.<sup>12</sup> The FATA Research Centre reported that in 2020, a slight increase in militancy related incidents was observed largely as a result of escalation in land disputes in the district. Compared to one terrorism incident in 2019, three such incidents were recorded in 2020.<sup>13</sup> Two of those incidents were in Upper Kurram; a blast from explosives hidden in garbage at Mazdoor Chowk in Parachinar injuring two people on 22 June 2020, and an explosion in Parachinar's Turi Bazaar injuring 17 people on 23 July 2020.<sup>14</sup> There was also a blast an Imambargah in Lower Kurram's Shoorki injuring one person on 5 May 2020.<sup>15</sup> In the first quarter of 2021, the Centre for Research and Security Studies (CRSS) recorded no Shia (excluding Hazara Shias) being killed or

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<sup>4</sup> PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

<sup>5</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>6</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>7</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>8</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>9</sup> Center for Research and Security Studies, 'Quarterly Security Report Q1 2021', 20210729101849.

<sup>10</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>11</sup> European Asylum Support Office (EASO), 'Pakistan Security Situation', 30 October 2019, 20191031160110; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>12</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>13</sup> Irfan U Din and Mansur Khan Mahsud, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', FATA Research Centre, 7 January 2021, 20210113125205.

<sup>14</sup> Dawn, 'At least 17 injured in IED blast in Parachinar's Turi Bazar', 23 July 2020, 20200724103731; Irfan U Din and Mansur Khan Mahsud, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', FATA Research Centre, 7 January 2021, 20210113125205.

<sup>15</sup> Dawn, 'At least 1 injured in explosion at imambargah in Lower Kurram', 5 May 2020, 20200506121914.

injured in sectarian violence, and one fatality from sectarian violence in Khyber Pakhtunkhwa Province without detailing the circumstances of that incident.<sup>16</sup> In the second quarter of 2021, CRSS did not record data for Khyber Pakhtunkhwa specifically or Shias (excluding Hazara Shias) in their breakdown of fatalities from sectarian violence by province and religion/sect, suggesting no deaths or injuries for that religion or province.<sup>17</sup>

23. The delegate pointed out the improved security situation in Kurram District in recent years during the interview with the applicant. Following that interview, with the help of his representative, the applicant provided written submissions and material regarding the situation in Kurram District. Those submission assert that “country information indicates that a number of large-scale extremist attacks have occurred during 2017 until 2021, including a number of targeted attacks which occurred against Shias in Parachinar, resulting in numerous deaths and injuries of civilians”. However, the only incidents mentioned in the submissions that support this contention are the large scale attacks in 2017 and the July 2020 bombing in the Bazaar, both mentioned above, as well as a January 2018 bombing in Kurram in which five civilians were killed, as reported by the International Crisis Group. A list of incidents from 2019 to 2021 in the submissions, attributed to DFAT’s Smartraveller page, does not refer to any attacks or other security incidents in Parachinar or Kurram District more broadly. Provided with the submission were various media and other reports on topics including voter reform, the Pashtun Tahafuz Movement, the cost of living in Islamabad and the rise of the Taliban in Afghanistan. Also provide was a translated Facebook post relating to a kidnapping in Islamabad. These articles do not address the security situation in Kurram District. An October 2020 article from the Guardian discussing an increase of sectarian violence against Pakistani Shias only concerned events in Punjab and Sindh Provinces, and does not comment on the situation in Kurram District or Khyber Pakhtunkhwa Province.
24. Also provided was a document entitled “Shia Turi tribe persecution and updated security situation of Pakistan (the tribal District Kurram, Khyber Pakhtunkhwa province)”. That documents contains sections discussing proposed blasphemy law reform, the claimed return to militancy in Pakistan, an increase in anti-Shia sentiments, the government’s lack of will to punish terrorists, the US withdrawal from Afghanistan, and Shia returnees from western countries to Pakistan. Despite the heading, most of the information in this document does not concern Kurram District, and much of it relates to events outside Khyber Pakhtunkhwa province. It does not mention are recent examples of attacks against Turis or any other Shias in Kurram District, beyond those I have set out above. The recent events in Kurram were:
- On 14 July 2021, two security personnel were killed during clashes with militants in Zewa area of Kurram District while trying to rescue five kidnapped workers of a cellular company.
  - On 28 May 2021, four children sustained injuries when a landmine exploded in Tundai village in Sherzai area in the central part of Kurram District
  - On 23 May 2021, Pajhwok news reported that that Russian media had claimed that the US and Pakistan were jointly constructing military bases in Kurram District.
  - On 23 May 2021, clashes between protesters and personnel of the law enforcement agencies left eight people wounded in Sadda town, Kurram District.
  - On 17 May 2021, the Nation newspaper reported the District Administration held a grand jirga at Balsh Fort to maintain peace, law and order situations in Kurram District.

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<sup>16</sup> Center for Research and Security Studies, Pakistan: Quarterly Security Report Q1 2021', 20210729101849.

<sup>17</sup> Center for Research and Security Studies, Pakistan: Quarterly Security Report Q2 2021',20210729095338.



- On 19 March 2021, unidentified robbers shot dead an employee of the Pakistan Telecommunications Corporation Limited (PTCL) on Tola Road in Upper area of Kurram tribal district.
25. I note that in submissions to the IAA it was argued that the delegate did not afford appropriate consideration to the information provided following the interview. I have had regard to that material. This information does not reflect recent targeting in Kurram of Turis or other Shias. I do not consider that it displaces the detailed reporting from various reputable sources set out above, that indicate in recent years the security situation in Kurram District has improved significantly, including for Pashtun Turis and other Shia.
  26. During the 2021 interview with the delegate, the applicant stated his father had been working in [Country 1] for many years but decided to return to Parachinar around three years prior. He also stated his brother was working in [Country 2] but decided to return to Parachinar. Reporting suggests around the same time, many people were returning to Kurram District after having previously fled due to insecurity. Ahlul Bayt News Agency reported in June 2018 that hundreds of displaced Shia and Sunni families returned to Parachinar and were reportedly welcomed back by “enthusiastic crowds”.<sup>18</sup> The applicant’s mother and other siblings have always remained in Parachinar. He did not suggest that any of his family members had been threatened or harmed since he left Pakistan in 2013. Considering that they belong to the same religious, ethnic and tribal groups as the applicant, that his father and brother elected to return to Parachinar from abroad in recent years is consistent with the sustained stability in the security situation in Kurram District .
  27. Much of the risk assessment regarding Shias tribes in Kurram from the material before me concerns the mass-casualty attacks in Parachinar in 2017. DFAT’s early 2019 assessment that Turis in Kurram District faced a moderate risk of sectarian violence from militant groups because of their Shia faith is now dated and is not borne out by the more recent detailed reporting on this area before me.<sup>19</sup> Reporting I have set out above does not demonstrate any increase in violence, or any ongoing or systematic attacks against Shias, Turis or Pashtuns in the Kurram District during 2018, 2019, 2020 or thus far during 2021, and the number and extent of violent incidents has remained low.<sup>20</sup> While the absence of recent attacks against Turis or other Shias and Pashtuns in Kurram does not preclude the possibility of future attacks, when I consider the frequency of such attacks over a number of years, and the improved security situation, I consider the chance that the applicant will be targeted because of his tribal, ethnic, or religious profile in the foreseeable future to be remote.
  28. Returning to Pakistan from a Western country is common, including those who have studied abroad and those with dual citizenship.<sup>21</sup> There is a large Pakistani diaspora in various nations. Over six million Pakistanis live outside Pakistan, with significant numbers in Saudi Arabia, the United Kingdom, the United Arab Emirates and the United States. DFAT assesses that returnees to Pakistan 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.<sup>22</sup> I note that

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<sup>18</sup> Ahlul Bayt News Agency, ‘Families of displaced Shia, Sunni Muslims begin to return to their homes in Parachinar of Pakistan’, 24 June 2018, CXBB8A1DA40019.

<sup>19</sup> DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

<sup>20</sup> Irfan U Din and Mansur Khan Mahsud, ‘Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020’, FATA Research Centre, 7 January 2021, 20210113125205; PIPS, ‘Pakistan Security Report 2018’, 6 January 2019, 20190121110758; DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 2019022009340.

<sup>21</sup> Country of Origin Information Services Section (COISS), ‘Pakistan: CI150313142225972 – Western Values – Returnees’, 23 March 2015, CRE6D907989.

<sup>22</sup> DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

both the applicant's father and brother have returned to Parachinar after working abroad for many years, and there is no suggestion their return created any problems for them. The material before me does not support a conclusion that Pakistanis of any religion, ethnicity or tribe who return from overseas are targeted for reasons of their residence abroad or because they unsuccessfully request asylum in another country.<sup>23</sup>

29. The applicant expressed general fears about the Taliban's expanding control in neighbouring Afghanistan leading to insecurity in Kurram District. I accept that historically Sunni groups such as the Taliban have exerted influence into and launched attacks on Kurram District from Afghanistan. Cross border tensions resulted in Pakistan building a fence on the Afghan border at Kurram District in recent years to prevent the movement of militants.<sup>24</sup> I note during the interview with the delegate the applicant stated that the Taliban had displayed their flag on the Afghan border. However, in submissions to the delegate after the interview it was asserted the Taliban were displaying their flag in neighbouring villages. The applicant offered no corroborative evidence in support of this assertion. The information before the delegate, including the reporting provided by the applicant, does not suggest that Taliban has recently infiltrated Kurram District from Afghanistan. The material before me does not support that recent developments in Afghanistan have spilled into Pakistan generally or Kurram District specifically, or that they necessarily will in the foreseeable future.<sup>25</sup> I do not accept that the Taliban have been displaying their flag in Kurram District. Given the Pakistan government's efforts to combat cross border threats, that the border is now much less permeable than in previous years, and that the situation in Afghanistan has only escalated very recently, I consider the potential for risk to this applicant in Kurram to arise out of Afghanistan in the foreseeable future to be speculative and remote
30. I am not satisfied that the applicant faces a real chance of any harm in the foreseeable future for any reason in Kurram District from any group, including the Taliban, other Sunni extremists or the Pakistani authorities. This includes for any reason related to his religion, tribe, ethnicity, the general security situation in Kurram District, due to the situation in Afghanistan, or because he would be returning from a period abroad. The applicant's fear of persecution is not well founded.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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32. 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.

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<sup>23</sup> DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

<sup>24</sup> ;EASO, 'Pakistan Security Situation', 30 October 2019, 20191031160110.

<sup>25</sup> The Washington Post, 'After jubilation, Pakistan faces dilemma as Taliban's takeover of Afghanistan inspires religious militants', 5 September 2021, 20210915112554.

### **Real risk of significant harm**

33. 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.

34. 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.

35. I have found above that the applicant does not face a real chance of harm in Kurram District in the foreseeable future. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.<sup>26</sup> As such, for the reasons outlined above, I am not satisfied the applicant faces a real risk of significant harm for any reason advanced or arising on the material before me.

### **Complementary protection: conclusion**

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

### **Decision**

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

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<sup>26</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

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

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

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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