



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA23/10434

Date and time of decision: 31 March 2023 16:03:00
G Ma, 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 Pashtun Turi Shia from [Village 1], Parachinar, Upper Kurram, Pakistan. In February 2017 he lodged an application for a safe haven enterprise Visa (SHEV).
2. On 21 November 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa. On 14 January 2020, the IAA affirmed the delegate's decision. That decision was quashed, by consent, by the Federal Circuit and Family Court of Australia and remitted to the IAA for determination in accordance with the law on 24 January 2023. According to the orders, it was conceded that the IAA decision was affected by jurisdictional error in relation to the consideration of new information.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The review material includes some documents that the Department of Home Affairs (the Department) has identified as information not provided to the IAA with the original referral in 2019. One of which is a copy of the applicant's passport and ID card, which was information before the delegate, and not 'new information'. The other documents are of an administrative nature and, in my view, not relevant to the assessment of the applicant's protection claims. They are not 'new information' in the s.473DC(1) sense, and I have not considered them further.
5. I have obtained new country information¹ from the Department of Foreign Affairs and Trade (DFAT) published in 2022, the Pakistan Institute for Peace Studies (PIPS) published in 2023, 2022 and 2021, the Pakistan Institute for Conflict and Security Studies (PICSS) published in 2022, the European Asylum Support Office (EASO) published in 2021, Centre for Research and Security Studies (CRSS) published in 2022, US Department of State (USDOS) published in 2022, and an article from Dawn (Pakistan) published in January 2023. The applicant made claims about the general security situation in [Village 1] and Pakistan. The delegate relied on earlier versions of many of these reports in her decision which are now several years old. These contemporaneous, authoritative, and comprehensive reports, particularly the PIPS and PICSS reports, provides an in-depth statistical analysis on security incidents in recent years and gives an update regarding the situation in Kurram and across Pakistan. I am satisfied that there are exceptional circumstances to justify considering this new information.

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report January 2023", January 2023, 20230227094910; Pakistan Institute for Conflict and Security Studies (PICSS), "PICSS Annual Security Assessment Report 2022", 2022, 20230227094415; PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526; PIPS, "Pakistan Security Report 2019", 5 January 2020, 20200114102703; European Asylum Support Office (EASO), "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; Centre For Research and Security Studies (CRSS), "Uptick in violence Pakistan's Continuous Challenge Annual Security Report 2021", 18 May 2022, 20220629103851; US Department of State (USDOS), "2021 Report on International Religious Freedom: Pakistan", 2 June 2022, 20220603112306; Sirajuddin, Dawn (Pakistan), "Death toll from Peshawar mosque bombing rises to 101 as police say 'major arrests' made", 1 February 2023, 20230202103534; ABC News (Australia), "Blast at mosque in Pakistan's Peshawar targets police, at least 59 people killed", 31 January 2023, 20230131081555; and Ikram Junaidi, Dawn (Pakistan), "Security situation not as bad as before 2008, 2013 polls: report", 27 February 2023, 20230228115025.

6. On 10 January 2020, 14 January 2020 and 17 February 2023, the IAA received submissions with attachments from the representative (the IAA submissions). To the extent that the submissions explain and argue why the applicant disagrees with the delegate's decision, or refers to material that was before the delegate, these aspects are not new information, and I have considered them.
7. The 2023 IAA submissions excerpt paragraphs from, and attach a copy of, the following country information on which the applicant seeks to rely:
 - an article from Australian Institute of International Affairs published on 7 February 2023 regarding an attack at a mosque in Peshawar on 31 January 2023,
 - an article from the New York Times published on 4 March 2022 regarding an explosion at a Shia Mosque in Peshawar in March 2022,
 - International Crisis Group, "A new era of Sectarian Violence in Pakistan", Asia Report number 327, published on 5 September 2022, and
 - an article from The Print published on 12 March 2022, regarding the situation of Shias in Pakistan.
8. This new information is general country information, rather than personal information in the relevant sense, and does not fall within s.473DD(b)(ii). However, these articles/reports were all published after the delegate's decision, and I am satisfied that this information could not have been provided to the delegate before she made the decision and meets s.473DD(b)(i). The new information, which post-dates the delegate's decision by several years, is more recent than that considered by the delegate, and pertains to the applicant's claimed fear of harm as a Pashtun Turi Shia in Kurram and Pakistan. Having considered all relevant matters, I am satisfied that there are exceptional circumstances to justify considering it.
9. The submissions also extract paragraphs from the 2022 CRSS and USDOS reports and attach a copy of them. This information post-dates the delegate's decision, and I am satisfied that it meets s.473DD(b)(i). It is general country information, and not personal information in the relevant sense, and does not meet s.473DD(b)(ii). Although it meets s.473DD(b)(i), as noted above, I have obtained the whole publications which are now before me, and for this reason, this new information adds nothing further to the materials and I am not satisfied that there are exceptional circumstances to justify considering it.
10. The 2020 IAA submissions attached a document described as 'expert report' dated 9 January 2020 from [a named individual]. It is submitted that the author of this report is a lawyer, researcher, human rights advocate and case worker from the applicant's home area in Pakistan, and he was engaged by the applicant to provide this report. It is also submitted that the applicant was not able to engage the author to compile this report until after the delegate's decision, so it could not have been provided to the delegate. The applicant is seeking to adduce this report to provide commentary on country information and events in Pakistan to support his protection claims.
11. To the extent that the report refers to information that was before the delegate, such as the applicant being a Pashtun Turi Shia from Upper Kurram, Turis speak with a different accent, and country information that were before the delegate (for example, references to the 2019 DFAT report and an article from Dawn dated 16 October 2019), it is not new information.
12. Regarding the rest of the report, this information was not before the delegate, and it is new information. As the report post-dates the delegate's decision, I am satisfied that s.473DD(b)(i)

is met. The author's opinions pertain to the applicant's claimed fear of harm as a Pashtun Turi Shia from Kurram. His background and knowledge and his C.V., go to matters in relation to the reliability and credence of the author's opinions, which, in turn, is relevant to the weight to be given to his opinions and my assessment of the applicant's case. I am satisfied that on its face, the author's opinion, background, knowledge, and C.V., are credible personal information that may have affected the consideration of the applicant's claims had they been known. Section 473DD(b)(ii) is met. The general country information contained in this report is not personal information in the relevant sense and does not fall within s.473DD(b)(ii). Although much of the country information in the report pre-dates the delegate's decision and the applicant has not provided any explanation on why he was not able to engage the author to compile the report earlier, in this case, I am satisfied that the country information (both post-dating and pre-dating the delegate's decision) is used to support the author's opinions about the situation in Pakistan as at January 2020 that post-dates the delegate's decision. Such opinions pertain to the applicant's claimed risk of harm due to the situation in Pakistan. Considering all the relevant matters, I am satisfied that there are exceptional circumstances to justify considering the new information.

13. In the 2020 IAA submissions, the applicant's representative submits that the applicant should be found to be a credible witness, and if the IAA has any concerns with respect to his credibility, he should be afforded an interview to discuss these concerns. It is also submitted that if the IAA does not concur with the delegate's finding (of a real chance of harm upon return to Kurram due to the applicant's race and religion), they request that the applicant be afforded the opportunity to comment on any information the IAA may rely upon.
14. I have declined the request for an interview. Part 7AA of the Act compels the IAA to provide a "limited form of review". Generally, the IAA must conduct a review on the papers by considering the review material provided by the Secretary without accepting or requesting new information and without interviewing the applicant (sections 473BA, 473CB, 473DB). The IAA may exercise its discretion to invite a person to give new information at an interview pursuant to s.473DC(3). However, there is no obligation to do so. In this case, I do not consider that the circumstances warrant the exercise of that discretion. The applicant had the benefit of representation throughout the visa process. All the relevant issues were traversed at the SHEV interview, and his former representative also made oral submissions towards the end of the SHEV interview. Extensive post interview submissions and numerous supporting documents, of over 120 pages, covering a range of issues including risk of harm in Kurram Agency and on relocation, were provided to the delegate. The applicant has also taken up the opportunity to provide comprehensive submissions to the IAA in 2010 and 2023 that addresses the issues of risk of harm in both Kurram and throughout Pakistan, with country information and supporting documents, which was prepared with the assistance of his representative. I consider that the applicant has had a meaningful opportunity to present his case on the issues under consideration.

Applicant's claims for protection

15. The applicant's claims can be summarised as follows:
 - The applicant is a Pashtun Turi Shia from [a] sub village, [Village 1] village, Parachinar, Upper Kurram, Khyber Pakhtunkhwa (KP) Province. He grew up with his parents, brother, and sister. His father works as a farmer, and his brother helps his father out on the farm. After completing [a grade], he helped his father on his farm. He then worked

as a [Occupation 1] [in] Peshawar for a few months in 2003. After that, he resumed helping his father on his farm up until he went to [Country 1] in 2009.

- In 2007, the conflict between the Taliban and Shia Muslims started in and around the Kurram Agency. There was fighting everywhere, including near their village.
- In 2009, he went to [Country 1], and resided in [a city] on a [temporary] visa and [worked].
- In around 2012, he returned to his village in Pakistan via Peshawar. He travelled via a taxi from Peshawar airport to a hotel and stayed for one night. He did not tell anybody that he was coming back. After that night, he caught a passenger bus from Peshawar to Parachinar and then a taxi back to his village. He was lucky traveling between Parachinar and Peshawar as he knew it was a dangerous route. After returning to Pakistan, there was a lot of violence around their village.
- In March 2013, he left Pakistan.
- He fears harm from the Tehreek-e-Taliban (TTP) ('the Taliban') and other Sunni extremist groups, such as Daesh, Al Qaeda, Lashkar-e-Islam, Lashkar-e-Jhangvi (LeJ) and Sipah-e-Sahaba (SSP) and the Pakistani authorities for being a Shia Turi Pashtun from Kurram, and because Pashtun Turi Shias are perceived as pro-US, pro-Iran, anti-Taliban and being active in armed opposition to Sunni extremist and militant groups, such as the Haqqani network. He fears being imputed with the political opinion of anti-extremist, anti-Taliban, pro-US and pro-Iranian, and as a member of the particular social group of Pashtun Turi Shia of Parachinar.

Refugee assessment

16. 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

17. 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.

18. Based on his identity documents, I accept that the applicant was born in [year] in Kurram Agency, and that he is a national of Pakistan. Pakistan is the relevant 'receiving country'.
19. I accept that the applicant is a Pashtun Turi Shia from a sub village in the [Village 1] village, Parachinar, Upper Kurram. He has demonstrated familiarity of the natural landscape and landmarks around his home village and gave detailed evidence regarding his Shia faith and practices in his village and in Australia during his SHEV interview. The Turis are a Shia Pashtun Tribe of about 500,000 people. Nearly all Turis are Shias. Most Turis live in Parachinar and other areas of the Kurram Agency. Kurram has a significant Shia population. Kurram was estimated to have a population of 615,372 according to the census of 2017. Upper Kurram is estimated to be around 80 percent Shias. Turis are identifiable by tribal names, accents, and residence in known Turi areas. Pashtuns are the second largest ethnic group in Pakistan, with an estimate of 20-25 million Pashtuns live in Pakistan. Pashtuns are physically diverse, though stereotypically fair-skinned with light-coloured hair and eyes that distinguish them from other Pakistanis. Pashtuns may also wear distinctive clothing, such as the red-and-black 'Pashteen hat' (reportedly a symbol of the Pashtun Tahafuz Movement (PTM)). Pashtuns are represented at all levels of society in Pakistan, including in Pakistan's security forces. Most, but not all, Pashtuns are Sunnis. Shias constitute 10-20 per cent of the population in Pakistan. An estimated 20 to 40 million Shias live throughout Pakistan. Generally, Shias are able to practise their Shia religion and to establish places of worship without official interference or discrimination. Shias are well represented in parliament and regularly contest elections for mainstream political parties.²
20. I accept that the applicant went to school in [Village 1], and he worked on his father's farm for several years before and after a few months of work as a [Occupation 1] in Peshawar. I accept that he lived and worked [in] [Country 1] for about two years, and he then returned to live at the family home. His family has been growing crops and vegetables to support themselves, and sometimes he would send money to his family from Australia. I accept that his parents and brother are residing at the family home in [Village 1], and his sister and her family are also living in the same village. According to the applicant, his only family connections are in the Parachinar area. I consider that if he returns to Pakistan, he is very likely to return to [Village 1], where he has family ties, tribal network and support.
21. Towards the end of the SHEV interview, when asked if he wished to add anything else, the applicant said that he had a [medical] [condition]. He said sometimes this problem is severe and sometimes it is not. When asked, he said he has been receiving medical treatment in Australia. He saw his doctor a few days earlier. His doctor told him they could not do anything about it. It is possible [that it will get worse]. His doctor advised him to drink lots of [water]. He also presented a [report] issued on 17 July 2019, and a medical certificate dated 16 October 2019 from the applicant's [GP]. The medical certificate states that the applicant was suffering from [medical conditions] for which he presented to Emergency of hospital in past. He still has ongoing pain which may necessitate further treatment", and requests "your authority to look at his case favourable as this will provide him chance to get a good quality medical treatment for his conditions". His former representative said that the applicant's health conditions, amongst other things, would be practical barriers for relocation. In the post-interview submissions (and repeated in the 2020 IAA submissions), it is submitted that his condition would make relocation unreasonable as he may encounter difficulties in

² DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Shia Muslims in Pakistan, 29 July 2013, CR801F5B628; and EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050.

accessing adequate medical treatment for his condition in the future given the risk of discrimination from the authorities (in the context of official discrimination and ethnic profiling of Pashtuns in Punjab or areas that they are a minority), which may affect his ability to subsist and find work in a different city in Pakistan. No further medical evidence has been provided.

22. I accept that the applicant suffered from [a medical condition], and he received treatment in Australia in 2019. However, the medical evidence does not indicate that he has been prescribed with ongoing medication. Although his 2019 GP's certificate flagged at that time the applicant may require further treatment, there is no medical evidence that he underwent or scheduled any further treatment in the three and half years that has since passed. On the medical evidence presented, I am not satisfied that the applicant has a condition requiring ongoing treatment.
23. The applicant's former representative submitted to the delegate that there has been a 50-years history of conflict and violence against Shia Turis and Bangash and Hazara communities. The Kurram Agency remains of strategic interest for extremist groups because its proximity to the Afghanistan border, and the Kurram District has been the site of conflict and dangers historically. Hence, it was said that there is a possibility of resurgence in violence over the next two to three years. It was also submitted that a range of internal and global risk factors must be considered in assessing harm in the future. These include: the potential impact of the Taliban's control in Afghanistan on terrorist activity in Pakistan following the withdrawal of US troops; the increasing political relations between Pakistan and Saudi Arabia that may result in the persecution of Shias in Pakistan; the perception of Turi Shias as supporting the Iranian regime as a result of the conflict in Syria; and the possibility of increased motivation of Sunni militant groups in Pakistan to target Shia Turis. The representative also referred to: the growing transnational strength of anti-Shia extremist groups that might possibly weaken the Pakistani government; that Sunni militant groups continue to operate and maintain a presence across Pakistan; increasing attacks on political leaders and workers, and the risk of anti-Taliban groups such as the Awami National Party (ANP) should apply to the risk of Turis; the cyclical nature of the violence in Pakistan; the increasing repression of media and increasing religious extremism in Pakistan; and the growing global violence towards Shias. Extracts from various sources of information and documents, such as letters from religious and political leaders, a social activist, and PhD candidate who was a former journalist in Pakistan, and country information annexure, have been provided to support these submissions. A link to a YouTube video published in September 2019 regarding the rise of religious extremism and Shias in Pakistan more generally, was also provided to support the point about increase in religious extremism. Moreover, it was submitted that much of the 2019 DFAT report relies on media reporting, and the existence of a media blackout in Pakistan relating to the reporting on sectarian violence means that the 2019 DFAT report should be given limited weight.
24. The IAA submissions, including the attached January 2020 'expert report', also repeat some the above arguments and submissions, such as the presence of terrorists, the security situation, the rising societal intolerance and religious extremism, and the global relationships between Pakistan, its neighbouring countries, and the US etc. The author states that he is a Hazara Shia from Parachinar. He is an Australian permanent resident. He is legally qualified in Pakistan. He worked [in countries], and he has been providing 'expert opinion and advice' in Australia to applicants belonging to Pakistan and Afghanistan since 2016. He lists his Australian address and mobile number. It seems from the report that the author self-identifies as an expert but is not aligned with any organisation. He has undertaken some brief periods of settlement services work in Australia. He refers to periods of employment in

2012/2013 and 2009 [for] [employers], and one in 2004 as a [researcher]. There are several publications listed – on a variety of topics from 2007 and 2009. As noted above, he was engaged by the applicant to provide this report. Relevantly, the author states that the Pakistani government’s recent promises (such as the 2019 ‘five-year development plan’ for former FATA for tourism promotion, investments, and the return of Sunni families to Parachinar and the return of Shia families displaced from Sadda) are mere political promises which have not materialised, and that “currently no Sunni family is residing in Parachinar (except government officials) neither a Shia family in Sadda”. However, these comments are externally inconsistent with the country information referred to in the delegate’s decision that: in 2018, 10 displaced Sunni families had returned to Parachinar and had been welcomed by Turi Bangash Shia elders, and six Shia displaced families had returned to Sadda;³ it was also reported in 2019 that 322,921 of the 339,701 families that had been displaced from the former FATA due to violence there had returned to their original location, and the remaining displaced families were from North Waziristan and Khyber;⁴ and that the government had undertaken work for the projects it had announced. For instance, in June 2019, the government has allocated Rs162 billion for the merged tribal districts in the next budget with the development outlay totalling Rs100 billion (including Rs59 million for the 10 years Tribal Decade Strategy, and funding for construction of roads and infrastructures, and a medical college in Parachinar),⁵ Rs5 billion had already been allocated for seven Tribal Areas Electric Supply Company (Tesco), energy and power projects,⁶ and the government has undertaken work on a program to promote tourism and identified several tourist sites in Kurram for development.⁷ The author does not suggest that he has been in Parachinar or Pakistan in recent years such that he has more up-to-date direct evidence that rebuts these information. I give weight to the country information cited, which is reliable and independent.

25. The author also opines that the Turi Bangash Shia tribe in Parachinar is under siege by the Sunni tribes who have occupied the Shia lands from all sides surrounding Parachinar and there is tribal enmity, and the Sunni tribes are trying to tighten the siege. The report lists the occupied Turi lands by other tribes such as the Massozai and Mengal Sunni tribes. The raw data of the claimed occupied Turi lands has not been provided, and the basis for the opinions is far from clear. Also, I note that information in the review material⁸ indicates that Kurram has been home to a number of different tribes and non-Pashtun ethnic groups, such as the Massozai, Bangash, Mangal and Zaimusht tribes, and some of these tribes also observe Shia Islam. Turi Shias and the majority of the Shias have been living in Upper Kurram region of the Kurram Agency, and Sunnis have been dominating Central and Lower Kurram. The author

³ Express Tribune (Pakistan), “Sunni tribes start returning to Parachinar 11 years after displacement”, 20 June 2018, CXBB8A1DA30592; Samaa, “As Fata merges with KP, Parachinar’s Shias tell Sunnis it is time to come home”, 28 June 2018, 20190111113428; Tribal News Network (Pakistan), “Six Shia families repatriated to Sadda after 37 years of displacement”, 4 July 2018, CXBB8A1DA30721; and Ahlul Bayt News Agency (Iran), “Families of displaced Shia, Sunni Muslims begin return to their homes in Parachinar of Pakistan”, 24 June 2018, CXBB8A1DA40019.

⁴ Urdu Point, “339,701 TDPs Families Repatriated to Native Hometowns in Erstwhile Fata”, 9 October 2019, 20191015111832.

⁵ Dawn (Pakistan), “Tribal districts fetch Rs162bn in next budget”, 16 June 2019, 20190620135442; and Dawn (Pakistan), Medical college to be set up in Parachinar in three years’, 21 July 2019, 20190723110901

⁶ Dawn (Pakistan), “Tribal districts fetch Rs162bn in next budget”, 16 June 2019, 20190620135442.

⁷ Urdu Point , “KP Govt Undertakes Work On Inclusive Plan To Bolster Tourism, Sports In Merged Areas”, 2 July 2019, 20190719110204; Dawn (Pakistan), “Tribal districts fetch Rs162bn in next budget”, 16 June 2019, 20190620135442; Urdu Point, “FAO Organizes Agriculture Expo In Districts Kurram, Parachinar Of KP”, 28 June 2019, 20190701111457; Dawn (Pakistan), “Govt plans to explore tourism potential in Kurram, Orakzai”, 7 January 2019, 20190110141300; and Associated Press of Pakistan, “Minister directs for developing potential tourists sites in Kurram districts”, 19 June 2019, 20190620104837.

⁸ Shia Muslims in Pakistan, 29 July 2013, CR801F5B628; Ali, I., “Shiite-Sunni Strife Paralyzes Life in Pakistan’s Kurram Tribal Agency”, Jamestown Foundation, Terrorism Focus, 2008, Vol. V, Issue 17, p.6; and Rehman, Z.U., “The battle for Kurram”, The Friday Times, Vol. XXIV, No.03, 2-8 March 2012.

states that the applicant's visa to [Country 1] was not renewed because he was discriminated due to associated defamation that Turi Shia tribe are opposed to the Taliban and Al-Qaeda. However, no independent sources of information have been cited in support, and in my view, the opinion relating to why [Country 1] refused to renew the applicant's visa is speculative. The C.V. states that the author had 'exposure visit' to [Country 1][and] other countries, but does not otherwise indicate that he has expertise in relation to [Country 1] visa processing. Nor is it apparent from the face of the report that the author had personal knowledge of the matters in relation to the applicant that he recounts. The author refers to examples of incidents to support his view that there have been recent Turi Shias persecution in Pakistan. However, I note that one of these examples dates back in 2012. It is also not apparent from the information cited that some of the incidents (such as those in 2017, April 2018, December 2018, and July 2019) relate to individuals from the Turi tribe, or Shia Muslims. In relation to the incident in December 2019 where a prominent Shia leader who was also a renowned poet, was gunned down by an unknown man at his home in Lakki Marwat, I note that the country information cited does not say that the victim was from the Turi tribe, or that he was targeted for being a Turi Shia. Similarly, the country information cited regarding the other examples also does not say that the victims were targeted for being Turi Shias.

26. The author comments that the killing of Iranian General Qasem Soleimani by the US on 3 January 2020 changed the security situation in Pakistan, because it may lead to the possibility of an all-out US-Iran war affecting Pakistan and Afghanistan, and because of the proxy war between Iran and Saudi Arabia, and the global relationships between Pakistan and these countries. The author also relies on information that on 5 January 2020 Shias and other people protested in Karachi and Islamabad to condemn the US killing of General Soleimani chanting "Death to America", to say that in general Shias are perceived as pro-Iran as they are used by the Iranian government in their favour, and Shias are perceived as opposed to the Pakistani government and the mainstream Sunni people who are supporters of Saudi Arabia. In my view, these opinions are speculative, and not well supported by the country information relied upon. The information regarding the killing of General Soleimani and the subsequent protests and calls for further protests, of themselves, do not establish that Shias are perceived as opposed to the Pakistani government or the Sunni people, or are regarded as pro-Iran, or that they are used by the Iranian government. I also note that there is an apparent tension between the information that the Shias condemned the US strike, and the representatives' submissions that Turi Shias are perceived as pro-US, such that the applicant faces harm for being perceived as pro-US. The author further opines that Turi Shias have been, and are being, specifically persecuted throughout Pakistan individually and collectively irrespective of any social or political profile, and that the presence of terrorists and the specific persecution faced by the Turi Shia tribe makes it worse for the applicant at home. He states that if the applicant is forced to return, he will be faced with multiple security threats and violation of his fundamental socio-economic and human rights, will not be able to live a normal life, and that he satisfies the criteria to be granted the status of a refugee. The opinions are, in my view, no more than subjective views not backed up by independent information. While I acknowledge that depending on the expert's experience and authority, the expert may themselves be the source of the opinion evidence provided, in this case, having carefully examined the content of the report and the author's background and experience, and for the reasons given, I am not satisfied that the author can be regarded as the reliable or accurate source of the opinion evidence given. I have concerns about the reliability, independence and objectivity of this report. I am also not satisfied that this report establishes the applicant's case.
27. I have considered the claimed global and local factors, including but not limited to the impact of the Taliban takeover of Kabul in 2021, and the materials as a whole. However, I am of the

view that the above statements are not well supported by the materials, and I am not satisfied that the anticipated effects of much of these factors are anything more than assumptions or conjecture. The country information does support that there is presence of militant groups in Pakistan, and that there has been an uptick of violence in some parts of Pakistan, but the information before me has also points to a sustained downward trend of violence in Pakistan over an extended period of time. I consider it speculative to suggest that these factors, or the anticipated consequences or effects of these factors, will trigger a return to sectarian conflict or otherwise impact on the social-economic situation, the political situation, the general security situation in Pakistan such that it would give rise to a real chance of harm to the applicant in this case. Although persons with certain profile or profession, such as political and religious leaders and workers, activists, journalists, poets, security forces, and doctors may be subject to harassment and violence in particular areas of Pakistan, the applicant does not fall within these profiles.

28. I reject the proposition that the Taliban's treatment of other anti-Taliban groups, such as the ANP, or the PTM, is indicative of the risk to Turi Shias. ANP is a secular Pashtun nationalist political party that promotes opposition to the Taliban. PTM is a Pashtun human rights movement that opposes the Taliban and accuses the Pakistani government of collaborating with terrorists. The PTM and the ANP have been involved with large-scale demonstrations seeking protection against state oppression and human rights abuses against Pashtuns (who are predominantly Sunnis, but not exclusively). The Taliban's support base is primarily Pashtun, and National Action Plan (NAP) and the military operations against the extremists groups have reportedly led to official discrimination and racial profiling in terrorism-related arrests of Pashtuns. The Taliban has attacked ANP members due to its secular ideology, support for the military and the military operations.⁹ The evidence is that members of ANP and PTM have a very different profile to ordinary Pashtun Turi Shias. And they have a completely different profile to that of the applicant, who is a Shia and was never politically active. I do not view this to be an analogous situation. I am not satisfied on the evidence that the applicant would be imputed by anyone as being pro-US, pro-Iran, anti-government, anti-Taliban or other groups, or active in armed opposition to Sunni extremist and militant groups. I consider the claims and submissions in this regard to be speculative and unsupported by credible evidence.
29. While the 2019 DFAT report has been replaced by the 2022 DFAT report, I do not accept the submission that the 2019 DFAT report should be given limited weight because it relies on media reporting, which is repressed by the Pakistani government. The reports compiled by DFAT do not rely only on media reports. They draw on DFAT's on-the-ground knowledge and discussions with various sources in Pakistan. They also take into account of information from a wide range of government and non-government sources, including but not limited to information produced by: the South Asia Terrorism Portal, the US State Department, the UN Office of the High Commission for Human Rights. I note that some of these sources of information are also relied upon by the applicant. Also, DFAT reports were prepared for the specific purpose of protection status determination. Moreover, I have considered the latest version of the DFAT report in conjunction with a range of other authoritative and independent publications, in addition to the 2019 DFAT report.
30. I accept that Shia Turis have faced a long history of violence, and that there was violence against Shia Turis particularly in the period before and around the time the applicant last left Pakistan in 2013. Between around 2007 when the war started and 2014, Turis faced

⁹ DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; and DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

significant violence from Sunni extremist groups, such as the TTP, who targeted them for their Shia faith, especially in Parachinar. Militants frequently stopped and killed Turis travelling on roads, and there was a significant spike in profiling and targeted killings between 2009 and 2014 along the Tall-Parachinar road, which links Kurram Agency and Peshawar. The materials provided by the applicant about the history and the violence in this period are broadly consistent with other country information in the review material. I accept that the applicant's home village is close to Afghanistan, they were surrounded by the Taliban, their travel was restricted, and there was cruelty of the Taliban against people in Parachinar.¹⁰

31. However, there has been a significant change in the situation in Pakistan since the applicant left for Australia in 2013.
32. In 2014 the Pakistani government launched military operation *Zarb-e-Azb* and announced a comprehensive plan of action, the NAP to confront the insurgent threat. Operation *Zarb-e-Azb* continued in 2015 and 2016. Although there was an uptick of violence in 2017 in Kurram as compared to 2016, military operations *Radd-ul-Fasaad* and *Khyber-IV* were launched in response to this violence. This has led to a sustained decreasing trend of violence, particularly in Parachinar and Kurram since 2017. Significantly fewer road attacks were reported by Turis in 2018, as military operations forced militants into the mountains. The confidence of the minorities and the security situation were improved by the continuing security measures, the building of military fencing in Kurram and the tightening of Afghanistan-Pakistan border controls. The Turi community advised DFAT that the military implemented a 20 to 30 square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located. Security forces issued cards to access the red zones, which can be obtained by residents on presentation of identity documents. The government has also provided security assistance to Shias to travel by road to Iran and Iraq on religious pilgrimage. The anti-insurgency operations and security measures have considerably weakened the operational capacity of militant organizations, substantially reduced the number and severity of attacks against Pashtun Shia Turis in Kurram and contributed to a higher level of security in Khyber, including former FATA. In recent years, Pakistan has taken multiple legislative, administrative and operational measures to fulfil the conditions set out by the Financial Action Task Force (FATF). As a result of Pakistani authorities' efforts that has made significant improvements to strengthen the effectiveness of its framework for combating terrorism financing, the Financial Action Task Force (FATF) removed Pakistan from the "increased monitoring list"(or "grey list") in October 2022.¹¹
33. As evidenced by the submissions and information provided by the applicant and the materials before me, extremist groups have maintained a presence in parts of Pakistan, and the threat of terrorism has not been completely eliminated. Some incidents of violence have occurred;

¹⁰ Abou Zahab, M, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", *The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media*, edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402; Middle East Institute (United States), "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 200", December 2014, CIS2F827D91993; Mahsun, MK, "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, April 2010, CIS18543; DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; and DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

¹¹ DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; PIPS, "Pakistan Security Report January 2023", January 2023, 20230227094910; PICSS, "PICSS Annual Security Assessment Report 2022", 2022, 20230227094415; PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526; PIPS, "Pakistan Security Report 2019", 5 January 2020, 20200114102703; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; CRSS, "Uptick in violence Pakistan's Continuous Challenge Annual Security Report 2021", 18 May 2022, 20220629103851; and Ikram Junaidi, Dawn (Pakistan), "Security situation not as bad as before 2008, 2013 polls: report", 27 February 2023, 20230228115025. See also materials referred to in the delegate's decision and provided by the applicant.

for instance, in January 2023 a bomb attack in a Sunni mosque inside Peshawar's police facility, where hundreds of mostly police officers had gathered for prayers, killed over 100 people and injured many others;¹² in March 2022 the Islamic State Khorasan (IS-K) claimed an attack on a Shia Mosque in Peshawar that killed dozens and injured 186 people; in June 2022 there were two sectarian-related attacks in Sadda town and Topaki village in Lower Kurram, and in August 2021 there was a grenade attack on a Shia procession in Punjab. There was also a rise in violence in 2021 and 2022 as compared with 2020 and 2021 respectively. The rise was from low levels in 2021/2022 in KP. Despite the higher levels in those years, the incidents in KP against Shias were sporadic (Shia religious scholars/community targets hit by militants in KP were 0 and 2, in 2021 and 2022 respectively). The weight of information is that there has been significant and sustained improvement in the condition in Parachinar and Upper Kurram, and throughout Pakistan more generally over a long period of time.

34. In response to an uptick in violence in mid-2021, Pakistani authorities stepped up anti-terrorism operations in 2022, and security forces actions in KP intensified particularly after the 2022 Peshawar Shia Mosque attack.¹³ Although the PIPS and PICSS reports indicate there is a possibility that violence will go up further, these statements, of themselves, do not establish that the applicant faces a real chance of harm. In terms of the pattern and targets of the recent violence, notably, most of these attacks have targeted security and law enforcement agencies. In its 2023 report, PIPS notes that 77 percent of the total attacks recorded in KP targeted personnel of security and law enforcement agencies.¹⁴ There has been a decline in attacks on civilians in KP in 2022, where seven attacks, or four percent of the total attacks in KP, targeted civilians.¹⁵ Notably, in 2022, only three terrorist attacks occurred in Kurram District (out of the 169 attacks in KP province), which killed four people and injured three people.¹⁶ It is reported¹⁷ that during 2022 Pakistan faced 380 terrorist attacks in which 539 people were killed and 836 injured, and during 2007 Pakistan faced 639 terrorist attacks in which 1,940 people were killed and injured 2,807. In 2018, 579 people were killed in terrorist attacks and 960 were injured. The data showed that the current situation is not much different from 2018. I am cognisant that the assessment of 'real chance' is not simply about a matter of comparisons of the level of violence and safety relative to an earlier point in time. Rather, it is an 'absolute' assessment.¹⁸ Also, the extent to which past events are a guide to the future depends on the degree of probability that they have occurred, the regularity with which and the conditions under which they have or probably have occurred and the likelihood that the introduction of new or other events may distort the cycle of regularity.¹⁹ The information indicates that the security forces are now better trained and equipped than they were prior to the introduction of the NAP.²⁰ During 2022, the security forces foiled many attacks in the 209 military operations/actions conducted, which

¹² While the representative submitted that this attack was on a Shia Mosque, the information from the attached news article from Australian Institute of International Affairs does not state it was a Shia Mosque. I note however that the news article published by the ABC News states that this was a Sunni Mosque: see ABC News (Australia), "Blast at mosque in Pakistan's Peshawar targets police, at least 59 people killed", 31 January 2023, 20230131081555.

¹³ CRSS, "Uptick in violence Pakistan's Continuous Challenge Annual Security Report 2021", 18 May 2022, 20220629103851; PIPS, "Pakistan Security Report January 2023", January 2023, 20230227094910; and PICSS, "PICSS Annual Security Assessment Report 2022", 2022, 20230227094415.

¹⁴ PIPS, "Pakistan Security Report January 2023", January 2023, 20230227094910.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ikram Junaidi, Dawn (Pakistan), "Security situation not as bad as before 2008, 2013 polls: report", 27 February 2023, 20230228115025.

¹⁸ *CJE16 v MICMSMA* [2019] FCA 1663 at [33]-[34].

¹⁹ *MIEA v Guo* (1997) 191 CLR 559 at 574-5.

²⁰ Ikram Junaidi, Dawn (Pakistan), "Security situation not as bad as before 2008, 2013 polls: report", 27 February 2023, 20230228115025.

killed 232 suspected militants and arrested 280 others nationally (including 53 operations in KP, which killed 93 militants and arrested 59 militants). Most of these operations were aimed at targeting the TTP – a major actor of violence in 2022, and some were directed at IS-K. In 2022, security and law enforcement agencies also arrested 129 suspected terrorists and members of militant groups in 66 search and combating operations conducted all over the country as part of military operation *Radd Fasaad*.²¹ Further, the authorities claimed to have eliminated the mastermind and facilitator of the March 2022 Peshawar Shia Mosque attack.²²

35. The Pakistani government also began to review its counter-terrorism strategy in late 2022, where a “comprehensive review of professional and organisational matters of the army was undertaken”. The National Counter-Terrorism Authority (NACTA) proposed the setting up of a National Counter-Terrorism Department (NCTD) in December 2022. The proposed NCTD would operate under NACTA on the federal level and will be authorised to conduct counter-terrorism operations across Pakistan. The government is also considering some targeted operations to flush out militants in the KP and FATA. Also, it is reported that Pakistan with its better mechanisms and structures against money laundering and terror financing now will also be able to keep an eye on terror financing that might help fight terrorism in Pakistan. Moreover, Pakistan’s improving ties with the interim Afghan government coincided with its warming up of relations with the US. It is reported that Pakistan will keep pressing the Afghan government to act against the TTP but at the same time will strengthen relations based on its main focus on regional connectivity. The US-Pakistan Counter Terrorism cooperation is expected to grow in the coming months especially against Al Qaeda and TTP while the US-Taliban cooperation against Daesh is also likely to increase.²³ Pakistan may provide its airspace and some land facilities to the US without publicly announcing it. The US has also expressed its support of Pakistan’s war against terrorism and defended Pakistan’s rights to defend itself against terrorism.²⁴
36. Nevertheless, I note that in its early 2022 report DFAT assessed that Turis in Kurram faced a ‘moderate risk’ of sectarian violence due to their Shia faith, and it assessed that Shias in Pakistan faced a ‘moderate risk’ of sectarian violence although the situation has improved considerably in recent years. The term ‘moderate risk’ is defined as DFAT being ‘aware of sufficient incidents to suggest a pattern of behaviour’. Despite this assessment, it is plain from the other authoritative and more recent reports before me, such as publications from the PIPS and PICSS, which contain detailed statistical information on events over the years, that while there have been sporadic incidents in Kurram, there has been a clear trend of decreased reports of attacks against Shia Turis after 2017, which continued into 2019 and to date. This was due to the ongoing improvement in the security situation in Parachinar and the Kurram Agency. DFAT does not report on specific incidents during the relevant period that would indicate otherwise. DFAT also assessed in its early 2022 report that Shias face a ‘moderate risk’ of societal discrimination in the form of anti-Shia protests and community violence, and that 70 per cent of blasphemy cases (in 2020) were against Shias. Although the DFAT report refers to some 40 Shias including clerics were charged with blasphemy following *Muharram* in 2020 and a protest against Shias occurred in Karachi and Islamabad, it is not apparent that these involved Turi Shias from Kurram. DFAT does not otherwise report specific incidents of anti-Shia protests or community violence in Parachinar or Kurram. The other recent and authoritative publications before me also do not reflect this DFAT assessment.

²¹ PIPS, “Pakistan Security Report January 2023”, January 2023, 20230227094910.

²² PICSS, “PICSS Annual Security Assessment Report 2022”, 2022, 20230227094415.

²³ PICSS, “PICSS Annual Security Assessment Report 2022”, 2022, 20230227094415.

²⁴ PICSS, “PICSS Annual Security Assessment Report 2022”, 2022, 20230227094415; and PIPS, “Pakistan Security Report January 2023”, January 2023, 20230227094910.

37. Although I accept that religious minorities face rising religious intolerance in some areas in Pakistan, and such intolerance may involve violence and the filing of blasphemy cases against Christians, Hindus, Ahmadis, Shias and Sunnis, as documented in the information before me,²⁵ information from the June 2022 USDOS report²⁶ notes that according to the Center for Social Justice (CSJ), 84 persons were accused of blasphemy in 2021, a significant decrease from 199 persons accused in 2020. Other NGOs also reported that 2021 had seen a decrease in blasphemy cases compared with the previous year.²⁷ Of the 84 persons accused of blasphemy, Sunnis and Shias made up 54 percent (CSJ did not include separate Sunni and Shia figures), Ahmadi Muslims 30 percent, Hindus 8 percent, and Christians 8 percent. 81 percent of cases registered during the year against persons accused of blasphemy were in Punjab.²⁸ The government has never executed anyone specifically for blasphemy.²⁹ I consider the number of blasphemy cases against Shias to be very small, particularly when viewed in context of the 20 to 40 million Shia population in Pakistan. Also, the information does not suggest that such accusations are specifically targeted at Turi Shias from Kurram. I consider it speculative to suggest that the applicant would face such accusation or violence upon return.
38. Overall, is it clear from the information³⁰ that the uptick in violence concentrated in particular parts of the country, has not brought about a noticeable increase in violence against Pashtun Turi Shias in Parachinar or Upper Kurram in the last few years. The question before me is whether there is a real chance of this applicant facing harm in the relevant areas of Pakistan. The general and security situation in Kurram and across Pakistan has substantially improved over a period of time, and that the targets, pattern and location of incidents of violence in more recent times, does not, in my view, indicate that the general security situation is at a level that rises to a real chance of harm to the applicant.
39. The DFAT information³¹ notes that ethnic stereotyping and association of Pashtuns with the TTP has led to official discrimination and ethnic profiling of Pashtuns in terrorism-related arrests, especially in Punjab or areas where they are a minority. The applicant's area in Upper Kurram, is a Shia majority area. In its 2022 report, DFAT assesses that Pashtuns in conflict-affected areas such as (without specifying which region(s) in) KP and Balochistan face a 'moderate risk' of violence by state security forces. It also assesses that elsewhere in Pakistan, Pashtuns generally face a 'low risk' of official and/or societal discrimination and a similar risk of violence to other ethnic groups in the same locations, although the risk

²⁵ See e.g. DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; International Crisis Group, "A new era of Sectarian Violence in Pakistan", Asia Report number 327, 5 September 2022, and the article published by The Print published on 12 March 2022.

²⁶ US Department of State (USDOS), "2021 Report on International Religious Freedom: Pakistan", 2 June 2022, 20220603112306.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; PIPS, "Pakistan Security Report January 2023", January 2023, 20230227094910; PICSS, "PICSS Annual Security Assessment Report 2022", 2022, 20230227094415; PIPS, "Pakistan Security Report 2020", 15 June 2021, 20210630123526; PIPS, "Pakistan Security Report 2019", 5 January 2020, 20200114102703; EASO, "EASO Pakistan Security Situation - Country of Origin Information Report", 27 October 2021, 20211101110050; CRSS, "Uptick in violence Pakistan's Continuous Challenge Annual Security Report 2021", 18 May 2022, 20220629103851; Sirajuddin, Dawn (Pakistan), "Death toll from Peshawar mosque bombing rises to 101 as police say 'major arrests' made", 1 February 2023, 20230202103534; ABC News (Australia), "Blast at mosque in Pakistan's Peshawar targets police, at least 59 people killed", 31 January 2023, 20230131081555; and Ikram Junaidi, Dawn (Pakistan), "Security situation not as bad as before 2008, 2013 polls: report", 27 February 2023, 20230228115025. See also other materials provided by the applicant.

³¹ DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359; and DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

increases if they come to the attention of the authorities for any reasons. It states that "Pashtuns involved with the PMT or the ANP face specific, heightened risks, as do Shia Pashtuns (see Turis, Bangash)". Under the "Turis" section, DFAT assesses that "Turis face a similar risk of official and societal discrimination to other Pashtuns based on ethnicity (see Pashtuns)". However, DFAT does not provide specific examples or details about discrimination and ethnic profiling of Pashtuns that formed the basis of its 'moderate risk' assessment from state security forces. Such assessment is also not supported by the other materials before me.

40. The country information and materials provided by the applicant, including those attached to the IAA submissions, are broadly consistent with the abovementioned country information. The applicant also sought to rely on AAT decisions, which was provided to the delegate, to support his case. I do not consider that these now somewhat dated AAT decisions assist him. My role is to focus on the circumstances of this particular applicant. Notwithstanding the complex situation and challenges, the information in the authoritative and contemporaneous publications above makes plain that the significant and sustained improvement in the general security situation in Pakistan in recent years is the result of the continuing counter-terrorism efforts by the Pakistani government over the last nine years. I do not accept the assertions that the government cannot or is unwilling to protect him or Shias, or that Turi Shias are considered a security threat, or that the government's efforts were not enough to counter terrorism or to curb the increased prominence of extremist groups, or that the government supports or has no political will to punish terrorists, or that the government is just trying show they are doing something about terrorist threats but are not serious about it, or that they are trying to portray the situation in his home area as prosperous to improve their standing in the international community.
41. I accept that the applicant suffered from a [medical] condition and received treatment in Australia in 2019. The 2019 medical certificate indicated that he may need further treatment for the pain associated with the condition, but there is no further medical evidence indicating he was scheduled for, or received treatment in, the three and half years since that certificate was issued. The 2019 evidence does not indicate that he has been prescribed with medication, nor does it provide further details as to the extent of any ongoing treatment needs. The applicant's own evidence was that his doctor told him they could not do anything and advised him to drink more water. I am not satisfied that he has a condition requiring ongoing treatment now or in the reasonably foreseeable future. The applicant's family continue to reside at home in [Village 1]. The applicant is an ordinary Pashtun Turi Shia from [Village 1]. He has never personally come to the adverse attention of any groups or anyone. I do not accept that he would be considered pro-Iran, pro-US, anti-Taliban or extremist groups, or anti-government. In light of the country information above, even noting his claims that his village is close to the [Afghan border], around [not far] from the Parachinar city, and surrounded by Sunni villages where everyone knows each other well, and the historical enmity between the Sunnis and Shias, I am not satisfied that the chance of the applicant facing harm by anyone to be any more than remote. I consider that he would continue to be able to freely practise his Shia faith in the same manner upon return to [Village 1] or Upper Kurram - a Shia dominant area, without a real chance of harm. Also, his own evidence at the SHEV interview was that [Village 1] is a big village with sub villages, and there is an Imambargah in every sub village including in his sub village, where he used to go every day. He went to [Country 1] in 2009 and returned to Pakistan in 2012, and travelled through Peshawar, Parachinar and [Village 1] without issues. Given the substantial improvement of the security situation and the general situation, I am not satisfied that upon return, there is a real chance of him facing harm when travelling on the roads. Although the 2019 DFAT report referred to travelling on the Tall-Parachinar road as safe during the day but may be not at

night, the 2022 DFAT report no longer reports this. I am also not satisfied on the evidence that there is a real chance of him or his family facing harm by the Taliban, the other extremists, the Pakistani authorities, any other groups or anyone for reasons relating to his or his family's profile, religion, ethnicity, views or political opinion, or membership of a particular social group. Although the DFAT information above notes that ethnic stereotyping and association of Pashtuns with the TTP has led to official discrimination and ethnic profiling of Pashtuns particularly in areas where they are a minority, the applicant is not a Sunni Muslim, he has not been associated or involved with the TTP, the PTM, or the ANP, and on his evidence, he can easily be recognized as a Shia Turi through his Shia tribal name, accent, Shia practices, and his identity document. I consider the chance of him facing such harm in Upper Kurram to be remote. The evidence is that Upper Kurram is a Shia dominant area. Given the recent information, including the substantial improvement in the security situation and general situation in Kurram, I am not satisfied there is a real chance of him facing discrimination or harm by the Sunni community upon return.

42. In the submitted expert report, the author states that according to the *Passport Act 1974*, illegal entry and exit Pakistan will face imprisonment of up to one year, a fine, or both, and if refoiled, the applicant will face prosecution, and that he will face grave consequences once criminally charged and convicted. However, the applicant's own evidence was that left Pakistan legally with his own Pakistani passport. The information³² is temporary documents are issued by the government to 'genuine' returnees (someone who exited Pakistan legally irrespective of how they entered destination countries) when they arrive. Involuntary returnees or those who travel on emergency travel documents are generally interviewed and released, unless they wanted for crimes in Pakistan, or departed illegally. Those who return voluntarily and with valid travel documents are typically processed like any other citizens returning to Pakistan. According to the applicant, he departed Pakistan via Lahore airport, and there is no apparent reason why he could not return via that same airport. He has not committed any criminal offence, and the evidence does not suggest that he would be so perceived. On the evidence, I am not satisfied that the applicant will face a real chance of imprisonment or harm for illegal entry and/or exit. I am also not satisfied that the processing on arrival at the airport would give rise to a real chance of any harm to him. The evidence does not support that the applicant would not be able to access [Village 1] safely and legally, upon return. I am not satisfied that he would face a real chance of harm from anyone for being a Pashtun Turi Shia returning failed asylum seeker who spent time abroad in Australia, if he returns to [Village 1] now or in the reasonably foreseeable future.
43. I am not satisfied that there is a real chance of the applicant facing harm for any reasons now or in the reasonably foreseeable future if he returns to Pakistan.
44. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

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

³² DFAT, "DFAT Country Information Report Pakistan", 25 January 2022, 20220125094359.

Complementary protection assessment

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

Real risk of significant harm

47. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
48. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
49. Given that the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons detailed above, I find that the applicant does not face real risk of suffering harm for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Pakistan, there is a real risk that the applicant will suffer significant harm for any reasons.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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