



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN

IAA reference: IAA23/10560

Date and time of decision: 20 November 2023 13:13:00

G Ma, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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 [Town], Upper Kurram, Pakistan. [In] August 2013, he arrived in Australia by boat. On 14 June 2017, he lodged an application for a safe haven enterprise visa (SHEV).
2. On 26 September 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa. That decision was referred to the IAA under s.473CA of the *Migration Act 1958* (the Act). On 28 October 2019, the IAA affirmed the delegate's decision. On 14 August 2023, by consent, that decision was quashed by the Federal Circuit and Family Court of Australia and remitted to the IAA for determination according to law. The matter is now before the IAA pursuant to those orders. After the court remittal, the matter was allocated to a different reviewer, who interviewed the applicant and his wife during the review. However, shortly after those interviews, the reviewer ceased to be a reviewer with the IAA. Accordingly, the matter is now before me.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the Act.
4. The review material includes a consular access form and a detention notice that were identified as not previously provided to the IAA when it was referred in 2019. They are administrative in nature, and in my view, not relevant to the assessment of the applicant's protection claims, and therefore, they are not 'new information' in the s.473DC(1) sense.
5. The review material also includes a copy of the applicant's birth certificate, domicile certificate, and character/police clearance certificate, which the Department has also identified as not having been previously provided to the IAA. I note a copy of these documents were attached to the SHEV application, and the delegate referred to them in the primary decision. As such, I am satisfied that this information was before the delegate, and not new information.
6. On 25 October 2019, 13 September 2023, 9 October 2023, 13 October 2023, 26 October 2023 and 29 October 2023, the IAA received submissions with various attachments from the applicant and his representative (the IAA submissions). To the extent that the IAA submissions explain and argue why the applicant disagrees with the delegate's decision and refer to information before the delegate, it is not new information, and I have considered it.
7. The 2019 and 2023 IAA submissions include 'new health information'. This comprises some medical documents and a letter from the applicant's employer that post-date the delegate's decision, new claims concerning deterioration of the applicant's mental and physical health since the delegate's decision, a UK Home Office report on healthcare published in 2020¹, and several news articles about mental health dating from 2014 to 2022.
8. This new health information was not before the delegate, and it is new information. I am satisfied that the new health information that post-dates the delegate's decision could not have been provided to the delegate before the delegate's decision and meets s.473DD(b)(i). I am satisfied that on its face, the information in the medical documents, the letter, and the new claims, is credible personal information that may have affected the consideration of claims if

¹ UK Home Office, Country Policy and Information Note Pakistan: Medical and healthcare provisions, September 2020.

known, and s.473DD(b)(ii) is met. Given that the information from the UK Home Office report on healthcare and the news articles is general country information, and not personal information in the relevant sense, it does not fall within s.473DD(b)(ii). The new health information that post-dates the delegate's decision is pertinent to the applicant's claimed fear of harm in Kurram and throughout Pakistan for reasons relating to his health conditions after the primary decision. Having considered all the relevant matters, including my s.473DD(b) assessment, I am satisfied there are exceptional circumstances justifying consideration of it. As for the articles that were published before the delegate's decision, I am not satisfied that this information could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is not met. As it is general country information, and not personal information in the relevant sense, s.473DD(b)(ii) is not met. Given that s.473DD(b) is not met, I am prohibited from considering it. While unnecessary to consider s.473DD(a), I have nonetheless considered it. This information that post-dates the delegate's decision adds very little value to the materials already before me, and taking account of my s.473DD(b) assessment, I am not satisfied that s.473DD(a) is met.

9. The 2023 IAA submissions include new claims regarding the applicant's Shia religious views and activities in Australia that post-date the delegate's decision. As this information was not before the delegate, it is new information. This information relates to events that post-date the delegate's decision and I am satisfied that it could not have been provided earlier to the delegate. I am also satisfied that on its face, it is credible personal information that may have affected the consideration of claims if known. Section 473DD(b) is met. Taking those findings into account, and noting that this information pertains to the applicant's claimed fear of harm for reasons of his religion and political opinion, I am satisfied that there are exceptional circumstances to justify considering it.
10. The 2023 IAA submissions refer to and attach a suite of country information, news articles and social media information concerning the situation of Shia Turis and the general security situation in Kurram and across Pakistan that post-date the delegate's decision, such as the DFAT Country Information Report Pakistan published in January 2022, the UK Home Office Country Policy and Information Note Pakistan: Shia Muslim published in 2021, the Pak Institute for Peace Studies (PIPS) Pakistan Security Report published in 2023, and news article from Dawn, Punjab News Express, and The Guardian published in October 2023, October 2022 and July 2021 respectively. This is general country information, and not personal information in the relevant sense, and therefore, it does not meet s.473DD(b)(ii). Given that this information post-dates the delegate's decision, I am satisfied that it could not have been provided prior to the delegate's decision. Section 473DD(b)(i) is met. I note that the delegate and the applicant relied on earlier versions of some of these reports, which are now several years old. This new information gives an update to the situation in Pakistan and is pertinent to the applicant's claimed fear of harm as a Shia and for reasons relating to the situation in Pakistan. Having considered all relevant matters, I am satisfied there are exceptional circumstances to justify considering this information.
11. The 2019 IAA submission attaches several sources of country information that pre-date the delegate's decision, an untranslated article by Dailiyurdu.net, an undated letter purportedly from the President of Tahreek-e-Hussaini [Town], a letter purportedly from Anjuman-e-Hussania dated '23/09/019' (some pages of this letter appear missing), and a letter purportedly from a PhD candidate at Columbia University that pre-dates the delegate's decision. This information was not before the delegate. It is new information.
12. Absent English translations, I am unable to read the Daiyurdu.net article. The contents of the letters and other documents refer to incidents of bombings and attacks in Pakistan, and about

politics in Pakistan and about 'Raiwind Markaz' (described as a complex consisting of a main mosque, madrasa and residential areas in Raiwind city near Lahore). This new information seems to have been provided to support the applicant's claims about the history of violence and the situation in Pakistan from around 2017 to mid-2019. No explanation has been provided as to why this new information, which pre-dates the delegate's decision, could not have been provided to the delegate before she made the decision. I am not satisfied that it could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is not met. This information is general country information, rather than personal information in the relevant sense. Hence s.473DD(b)(ii) is not met. As s.473DD(b) is not met, it is unnecessary for me to also consider s.473DD(a). Nonetheless, I have also considered it. This new information is now dated. The substance of the new information adds very little, if any, value to the materials before me. As noted above, I have now before me a range of updated and independent country information on the relevant issues. Considering all the relevant matters, including my s.473DD(b) assessment I am not satisfied there are exceptional circumstances to justify considering it.

13. A copy of the UK Upper Tribunal decision - *KK and RS (sur place activities: risk) Sri Lanka.*, United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 27 May 2021 is attached to the IAA submission. It is relevantly submitted that the findings in this decision (about DFAT's reporting for its 2019 Sri Lankan country report) must be heeded in terms of the veracity of DFAT country information, and that the same criticisms are directly applicable to the 2022 DFAT report on Pakistan because it also refers to 'on the ground knowledge etc' in describing its sources of information. In short, this UK decision has been adduced to support the representative's argument that in addition to DFAT information, wider reports and information ought to be considered to ensure a thorough assessment of country information into the reasonably foreseeable future.
14. I do not accept that the findings and criticisms in this UK decision are directly applicable to the 2022 DFAT report on Pakistan. The UK decision considered a completely different DFAT report - a previous version of DFAT's assessment with respect to another country, that has no relevance to this applicant. The contents, substance, sources, and timing of the DFAT report on Sri Lanka that was considered by the UK Upper Tribunal, were totally different to those in this DFAT report on Pakistan. The information in the UK decision does not relate to the applicant, nor has any bearing on his protection claims. In short, I do not consider this decision to be relevant. As such, this is not 'new information' in the s.473DC(1) sense. In any event, I have considered not only the DFAT report on Pakistan but also a range of contemporaneous and reliable sources of country information in assessing the claims.
15. The 2019 IAA submission also includes new claims: that the applicant is on the 'hit list' of the Taliban and Sunni terrorist groups, and he is well known to them as his [shop] in Pakistan was a 'meeting place to oppose' these groups, and his family were being tortured by an 'informer' of the groups asking them to bring him back and hand him over to them, and he openly protested against their atrocities so his name is kept on the 'target killing list'.
16. This information was not before the delegate, and it is new information. It concerns events that were said to have occurred while the applicant was in Pakistan in or before 2013, which pre-dates the delegate's decision by several years. I am not satisfied that it could not have been provided to the delegate before the delegate's decision. No details or particulars have been provided to support these new claims, and in my view, they amount to no more than bare assertions. This, together with the delay in advancing these claims, leads me to consider that the new information is not prima facie credible personal information that may have

affected the consideration of the claims if known. I am not satisfied that s.473DD(b)(i) or (ii) is met.

17. In the 2023 IAA submissions, the applicant raised new claims and attached various documents about his relationship with his wife in Australia and associated threats of honour violence and discrimination. This information was not before the delegate, and it is new information.
18. The IAA exercised its discretion under s.473DC(3) to invite the applicant and his wife to attend interviews to provide new information in relation to the applicant's claims, especially in relation to the new claims regarding their relationship, their families' attitudes, and the associated threats. On 10 October 2023, the applicant's wife attended an interview via video link in the morning (the wife's IAA interview). I note that although an interpreter in the Mandarin language was present at the wife's IAA interview, the applicant's wife has a good command of the English language and did not require the interpreter's assistance. The applicant attended a separate interview via video link later the same day, where he was assisted by his representative and interpreters in the Pashto language (the IAA interview). As noted above, these interviews were conducted by another reviewer.
19. I have listened to the audio recordings of these IAA interviews. I note that before the start of the IAA interview, the applicant objected to the first interpreter, and so the IAA engaged a second interpreter. At the end of the first half of that interview, the representative raised interpreting issues and identified some errors made by the second interpreter. During the break, the representative raised concerns with the reviewer about the quality of interpreting of the second interpreter. The IAA obtained a third Pashto interpreter to assist with the second half of the interview. In the second half of that interview, the applicant and representative also identified several interpreting errors by the third interpreter. Towards the end of the IAA interview, the applicant expressed that the interpreters made some errors at the interview and asked whether his representative could clarify and make amendments in relation to them. The reviewer responded by allowing clarifications to be made in writing after the interview.
20. In relation to the evidence given by the applicant and his wife at the IAA interviews, to the extent that their responses at those interviews include new information, I am satisfied that it was in relation to matters that post-date the delegate's decision (for example, the development and nature of their relationship, their marriage, their families' responses, their current relationship etc). As such, I am satisfied that this information could not have been provided to the delegate. I am satisfied that, on its face, the new information is credible personal information that may have affected the consideration of his claims had it been known. Section 473DD(b) is met. Taking account of this assessment, and that the new information was given in response to the IAA's invitation to provide evidence in relation to key events which arose after the delegate's decision that pertains to the applicant's claimed fear of harm upon return, and all the relevant matters, I am satisfied that there are exceptional circumstances to justify consideration of it.
21. After the IAA interviews, the applicant provided additional new information about his relationship and the associated threats of harm in the 2023 IAA submissions. This includes new information described as "double transcription of various extracts of exchanges revealing interpreter errors" of the IAA interview (double transcription of extracts of exchanges). Essentially, this comprises extracts of questions and answers that have been identified as being incorrectly or inaccurately interpreted by the interpreters during the IAA interview. This is submitted to support the allegation that there were interpreter errors and omissions in relaying the reviewer's questions as well as relaying the applicant's answers. It is submitted that this led to communication problems causing the applicant to become confused and

fatigued during the interview, and that any adverse inferences drawn from his IAA interview testimony should take account of the impact of poor interpreting quality.

22. It is apparent from listening to the exchange at the IAA interview that there were some not insignificant interpreting and communication issues that go to the applicant's evidence about his key claims. Obviously, the double transcription of extracts of exchanges, could not have been provided earlier to the delegate. Section 473DD(b)(i) is met. This new information, in my opinion, helpfully remedied the interpreting and communication issues and clarifies the applicant's evidence at the IAA interview. In view of the nature of this information, I am satisfied that on its face, it is credible personal information that may have affected the consideration of the applicant's claims had it been known, and s.473DD(b)(ii) is met. The circumstances of this case, in my view, are rather unusual and out of the ordinary. For these reasons and considering all the relevant matters, I am satisfied that there are exceptional circumstances to justify considering this new information.
23. In relation to the other new information regarding the applicant's relationship with his wife and the associated threats (the new relationship information) that concerns events and materials post-dating the delegate's decision, I am satisfied that it could not have been provided earlier to the delegate. I am also satisfied that it is credible personal information that was not previously known and, had it been known, may have affected the consideration of the claims. Sections 473DD(b)(i) and (ii) are met. With respect to the new relationship information that pre-dates the delegate's decision (this includes a UK Home Office report on Pakistan interfaith marriage published in 2016, and Amnesty International Report published in 2018), this is general country information, rather than personal information in the relevant sense, and it does not fall within s.473DD(b)(ii). I note that this has been adduced to support the applicant's fear of harm for reasons of his marriage and having defied the family wishes to marry his cousin which occurred after the delegate's decision. In the circumstances, I consider that this country information would have been irrelevant when the matter was before the delegate, and as such, I am satisfied it could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is met. The whole of the new relationship information bears upon the applicant's fear of harm in connection with his relationship. I also note that the 2016 UK Home Office report on interfaith marriage seems to be the latest edition of this report. Overall, I am satisfied that there are exceptional circumstances to justify considering it.
24. I obtained a UNHCR report regarding religious minorities from Pakistan.² It contains information regarding family law in Pakistan, including marriage registration and problems faced by non-Muslim women who cannot legally register their marriages. This information pertains to the applicant's claimed fear of harm arising from his mixed marriage with his non-Muslim wife. I am satisfied that there are exceptional circumstances to justify considering it.

Applicant's claims for protection

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

- The applicant is a Pashtun Turi Shia from [Sub-village], [Village], [Town], Upper Kurram, Khyber Pakhtunkhwa (KP) Province. He grew up with his parents, [sisters] and [brothers]. After completing four years of education, in [Year] he began working as an [apprentice] in a [shop] in a market. In [Year], he opened his own [shop] in the market.

² UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 1 January 2017, CISED50AD3775.

- There were sectarian conflicts between Shias and Sunnis that started in 1987, again in 1996, and in 2007. Many Shias have been killed. Life has been difficult for Shias.
 - In 2010 or 2011, while he was on a business trip in [Country 1], some strangers informed him about attacks on Shias from [Town] by the Taliban. He stayed hidden with the help of a local person and returned to [Town] around midnight. This event showed it was unsafe for Shias even in another country.
 - In March 2012, he was caught up in a terrorist attack while he was on his motorbike passing through a market when a bomb blast happened. His [Body parts] were injured during this incident. He still suffers from the pain due to the shrapnel injuries to his [Body part].
 - [In] June 2013, he attempted but was prevented from leaving Pakistan at the Islamabad airport because he was from [Town].
 - [In] June 2013, he left Pakistan via the Islamabad airport.
 - In October 2021, he married [Ms A] (who is an ethnic [Country 2] born, irreligious, and an Australian citizen) in Australia, against his family's wishes and tribal custom.
 - His family, relatives and wider tribe viewed his intermarriage with [Ms A] and refusal to marry his cousin as dishonourable and shameful. They accused him of apostasy, betraying their tradition, selling them out, and rebelling against the tribe and threatened to kill him.
26. He fears harm from the Tehreek-e-Taliban (TTP) ('the Taliban') and other Sunni extremist groups, such as Daesh and Lashkar-e-Jhangvi (LeJ), because he is a Pashtun Turi Shia from [Town], and because Pashtun Turi Shias are perceived as anti-Sunni extremist groups, pro-US and pro-Iran. He has a heightened profile because he worked as an apprentice and owned a [shop] and people would recognise him. He fears honour killing, blood feud and punishment as he entered into a 'love marriage' with [Ms A] and rejected the proposal to marry his cousin, and that his interfaith and inter-caste marriage is considered illegal in Pakistan. He also fears harm for his wife, who is easily identifiable as a non-Muslim ethnic [Country 2]. Further, he fears harm because of an inadvertent disclosure of his information by the Department (data breach), because of his perceived wealthy status as returnee failed asylum seeker from the west, and due to his deteriorating health conditions.

Refugee assessment

27. 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

28. 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.

29. 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'. There is no evidence to suggest that he has a right to enter and reside in a third country and I find that s.36(3) does not apply.

30. I accept that the applicant is a Pashtun Turi Shia from [Sub-village], [Village], [Town], Upper Kurram in the former FATA. The Turis are a Shia Pashtun Tribe of about 500,000 people. Nearly all Turis are Shias. Most Turis live in [areas of the Kurram Agency]. Kurram has a significant Shia population. Upper Kurram is estimated to be around 80 percent Shias. Turis are identifiable by tribal names, accents, and residence in known Turi areas. Shias constitute 10-20 per cent of the population in Pakistan. An estimated 20 to 40 million Shias live throughout Pakistan.³

31. I accept the applicant's education and work history are as claimed, and that his parents, [siblings] and their families are living in [Town]. I also accept that the applicant is a practising Shia and that his family are conversative Shias. This is supported by the various documents that the applicant has provided, his detailed and persuasive evidence at the SHEV interview regarding his religious faith and practices in Pakistan and Australia, his tribe and family background, his work and education history, and the landscape and landmarks in and around his home village. I consider that if he were returned to Pakistan, he would very likely return to [Town], where he was born and raised, and has family ties and tribal links.

32. I accept that Shia Turis have faced a long history of violence in Pakistan, and there was violence against Shia Turis particularly in the period before and around the time the applicant last departed Pakistan in 2013. Between around 2007 when the war started and 2014, Turis faced significant violence from Sunni extremist groups, such as the TTP, who targeted them for their Shia faith, especially in [Town]. 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.⁴

33. I accept that the applicant was caught up in an explosion in March 2012 while passing through a market on his motorbike and sustained shrapnel injuries as claimed. I also accept that in 2010/2011 while on a business trip in [Country 1], some local people informed him about attacks by the Taliban and helped him. These are supported by the applicant's specific and consistent evidence throughout the application processes. Based on the medical evidence dating from August 2014 to September 2023, the letter from his employer dated 8 September

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 25 January 2022; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Shia Muslims in Pakistan, 29 July 2013, CR801F5B628; and the Pak Institute for Peace Studies (PIPS), "Pakistan Security Report January 2023", January 2023. See also other country information in the review material and the IAA submissions.

⁴ Ibid.

2023, and the applicant's evidence, I accept that because of the injuries from the 2012 bomb blast, he has deformity of [Body part], and his condition deteriorated this year due to complex regional pain syndrome, which has debilitating impact on his overall health and adversely affects his capacity to perform his job as a [worker] in Australia. I accept that he regularly consults his doctors due to chronic pain and inflammation and requires ongoing treatment. I also accept that being a bomb blast victim, he may have a bad memory of that incident and experienced insomnia, but in the absence of medical diagnosis, I do not accept that he has mental illness as he now claims.

34. I accept that the applicant and [Ms A] are in a genuine spousal relationship, and that they were married in Australia in October 2021. At the IAA interviews, the applicant and [Ms A] were questioned at some length about their relationship and the associated threats from the applicant's family. They both gave persuasive, detailed, consistent and meaningful oral evidence about matters such as the timing and circumstances in which they met, when and how their relationship turned into a romantic one, what they like about each other, the development of their relationship during the COVID 19 lockdown, the bachelor party that the applicant had with his friends in July 2021 soon after his marriage proposal, why they decided to pursue their relationship despite their cultural and religious differences and against his family's traditions and approval, why and how the applicant rejected his family's proposal to marry his cousin, [Ms A]'s past marriage and background, the applicant's family's and relatives' objection to their relationship and mixed marriage, their living arrangements before and after their marriage, how they spent time with each other, the social activities that they engage in together, and how [Ms A]'s family were all very supportive of their marriage and her parents will be coming to Australia to visit them at the end of this year etc., which I accept. Extensive materials about their relationship and marriage, for example, marriage certificate, photos of them in different settings, evidence of their text communications over several years, joint rental and electricity bills etc. have also been provided in support.
35. When asked at the IAA interviews, both the applicant and [Ms A] said that [Ms A] is never religious. The applicant said he raised the topic of religion with her once and tried to explain more about his Shia religion because he did not want to commit adultery, but she had no interest about religion and refused to discuss. He respects her, he is illiterate and did not want to force his religion upon her, so they had no more conversation about it. [Ms A] also described how the applicant practises his religion regularly in a room at home, with the door closed, and said that she respects his religion despite having no interest in it. They also gave evidence that they have not talked about religion after marriage and may discuss this in the future when they have children. When asked about the applicant's family in Pakistan, [Ms] A said candidly that she has no idea about his family, mainly because she did not understand their language and could not communicate with them. She also said that she felt his family did not like her. When asked whether the applicant has ever told her how his family felt about the marriage, she replied 'no'. When asked if she has asked the applicant about this, she said yes, once. She also said he could not even answer her, he was really sad and disappointed, and when she asked him further, he could not even answer her. She said she respected him, she knew something happened, but she did not want to keep asking and pressuring him. When asked what gave her the feeling that his family did not like him, [Ms A] said because she overheard the applicant and his [brother]'s phone conversation, where his brother was very angry and spoke loudly. She did not know their language but was scared by his brother's loud voice, tone, and 'angry feeling'. She said the applicant never told her what had happened, but she could feel something was wrong. The applicant also gave detailed and convincing evidence about his family's hostility towards his relationship with [Ms A] and their threats.

36. The applicant gave evidence at the IAA interview that before his marriage, he used to contact his family around every two weeks. When asked how he thought his family would react to his relationship with [Ms A], given that they are deeply conservative and had arranged and expected that he would marry his cousin, the applicant responded 'this is it', this was why he was angry because his rights were violated, and he did not even know nor get to meet this cousin and they just told him to marry her. He also said that he has no feelings for his cousin, and he knew at the time that his family would not like his relationship with [Ms A]. He added that his [brother] spoke with him at the time. When asked when he first spoke to his family about his relationship, he said it was when he was going to get engaged with [Ms A]. When asked about this conversation, he said that through his [brother], his family told him they have arranged for him to marry his cousin, they did not endorse him marrying this non-Muslim girl, 'you have to listen to us', and that 'if you marry her, we will kill you'.
37. When asked how he responded, the applicant said that in a civilised manner he tried to explain to his family that he wished to proceed with the marriage with [Ms A], but they told him he was not allowed to do so and threatened to kill him. He added that his parents, his cousin's family and relatives were present when he spoke to his [brother] during this phone call. When asked, he said that his cousin's family also threatened to kill him because he rejected their marriage proposal, and this started in 2021, when his cousin's brother called him using no caller ID. He said that after this, he blocked all the no caller ID and private calls on his phone using a built-in feature in his mobile. When asked how his family found out about his marriage with [Ms A], the applicant said he was not sure, and speculated that they could be informed by some people here, or they might have found out from his Facebook because he shared social media posts about his marriage on it, where his friends congratulated him on the posts.
38. When asked about his last contact with his family, the applicant said he secretly contacted his mother after the marriage, and his mother said that if he were to marry his cousin and leave [Ms A], she could help resolve their family and tribal problems, and there was no other option. His mother also conveyed to him the honour threats made against him by the family, the tribe and village community. He said it is against their customs and tradition for him to marry someone outside their faith and tradition, and the authorities have permission to kill for honour if anyone betrayed the tribe and committed rebellion. He also said that his wife is ethnically distinct and easily identifiable as a non-Muslim ethnic [Country 2]. When asked, he said he ceased contacting his mother now as he was not getting any positive outcome from their side.
39. At the wife's IAA interview, when asked if the applicant had to return to Pakistan, whether she would return with him, [Ms A] expressed that this was a difficult question. She said he is her future, they cannot be separated, she did not wish to separate from him, he could not survive there, and she could not go to Pakistan as it was not safe. She then asked a number of rhetorical questions, for instance, who can support and look after me if he goes back? What would I do? She said she could not even imagine being separated from him. She explained that it was 'darkness time in my life' and he was like 'the light' of her life and 'he saved me' from that 'darkness time in my life'. She then started talking about her bad memory (about her past marriage). She apologised for not being able to give more details about her past relationship when asked earlier. She said this question 'really open my guard', and explained it was because she thought she had already buried that bad memory. She became audibly emotional. She then continued to reveal details regarding her thoughts about her past relationship journey and gave further evidence about her current relationship with the applicant, their love for each other, and how separation would affect them, and that they cannot live separately.

40. At the IAA interview, when asked whether he and his wife had discussed what he would do if he had to return to Pakistan and whether she would return with him, the applicant said they have no intention to return and have not thought it through yet. He said if he is forced to return, his wife has to go with him, and it is impossible for them to be living apart from each other. When put to him that at her interview [Ms A] indicated that she would not be able to go to Pakistan, the applicant responded that they have no intention to go to Pakistan, and he might have to convince her to go back with him if he was forced to return.
41. In the IAA submissions provided after the IAA interviews, the applicant and [Ms A] gave additional written evidence in support of their continuing and genuine relationship, including details about why and how they depend on each other for emotional and other forms of support. [Ms A] also stated that after the IAA interviews, they discussed what would happen if the applicant had to return to Pakistan, and they both decided and confirmed that they cannot live apart from one another. It is submitted that if forcibly repatriated, they would immediately reconvene their lives together in Pakistan.
42. I consider the oral and written evidence from the applicant and [Ms A] regarding their religion, relationship, threats from the applicant's family and tribe, and what they would do if he returned to Pakistan to be persuasive. I accept that [Ms A] is non-religious, and she has no intention or desire to convert to Shia Islam. I accept that the applicant, who is a Shia Turi Pashtun from Kurram, entered into a mixed marriage with [Ms A], who is irreligious, non-Muslim, an ethnic [Country 2], previously divorced and an Australian citizen, and that the applicant rejected his family's arranged marriage to his cousin. These, I accept, are viewed by his family, relatives, tribe and the community as dishonourable and shameful. I accept that they accused him of apostasy and threatened him with honour violence through his [brother] and his cousin's brother as claimed. In the circumstances of this case, I accept that if the applicant returns to Pakistan, [Ms A] would in fact go to Pakistan with him as they depend on each other, and would not in fact wish to be separated, despite challenges and safety issues. There is no evidence before me to indicate that [Ms A], being an Australian citizen, would be prevented from travelling to Pakistan, if she chose to do so.
43. Country information⁵ indicates that although marriage between different faiths and sects in Pakistan is not uncommon, not all are considered legal. Under Islamic law, Muslim women cannot marry non-Muslim men. Muslim men can marry Muslim women, or women who are 'People of the Book', identified as Christians and Jews. Pakistan's legal framework does not provide for civil or common law marriage. Instead, marriages are conducted by religious authorities. Women of non-Muslim religious groups cannot have their marriages registered, and it is reported that they face difficulties related to accessing health services, inheritance, voting, obtaining a passport and buying or selling property. Inter-ethnic marriage is generally disapproved by most Pakistani families.
44. There have been reports of some couples in mixed faith marriages receiving threats, being attacked, or facing pressure to separate by unaccepting families or clerics, or religious extremists. Some couples may also find themselves subjected to harassment by the Pakistani police, who raid and search their homes, arrest them, and may even charge them with "pre"-martial sex or adultery, which is considered an offence and is punishable by imprisonment for up to five years and a fine. Arranged marriages are the traditional norm in Pakistan society and

⁵ DFAT, "DFAT Country Information Report Pakistan", 25 January 2022; UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan", 1 January 2017, CISED50AD3775; Anees Maryiyam, "'Honor Killings' Continue Unabated in Pakistan", The Diplomat, 28 July 2022; UK Home Office, "Country Information and Guidance Pakistan: Interfaith marriage", January 2016; UK Home Office, "Country Information Note Pakistan: Internal relocation", April 2023. See also other country information in the IAA submissions.

would usually be with a partner from their own religious or ethnic community. This is very much the case across Pakistan as a whole. It is reported that western observers are often surprised to discover that affluent urban Pakistani families (who may otherwise seem outwardly no different to a Western family in their dress and behaviours) will nonetheless still expect their children to meet the expectation of entering into an arranged marriage with a partner from their own ethnic community. Moreover, couples who transgress from family expectations (and enter into “love” marriages) may be subjected to significant pressures, threats, and violence from their families, and may face becoming victims of “honour” crimes. Some families have sought to bring charges of kidnapping against partners they see as forcing their child (usually daughter) into marriage. Forced religious conversions (to Islam) and marriage are known to have occurred against Christian and Hindu women and girls.⁶

45. State protection may be unavailable in cases where the police are complicit with families seeking to prosecute transgressing couples or individuals, whether under blasphemy laws, for having “pre-” marital relations, or if accusing one of the partners of abduction. It is likely that local police would assist the family in asserting pressure on the transgressing couple rather than offering protection to them. There have been some cases where higher courts have ruled in favour of couples in such predicaments in recent years but the progression of such a case to higher courts can take years and, in most cases, the offending couple will not have the opportunity or the means to argue their case in this way. The statistics associated with honour killing indicate the extent to which numerous individuals are never able to survive family reprisals. Moreover, in the lower courts the effects of the Islamic law, such as *Qisas* and *Diyat*, are such that the persons accused of such killings may be forgiven, or subject to little punishment or a financial settlement, if such is the choice of the murdered victim’s family.
46. The so-called ‘honour killings’, in which family members murder relatives perceived to have brought dishonour on the family, are common in Pakistan. Human Rights Watch estimates there are about 1,000 honour killings in Pakistan each year. Honour killings can be carried out in response to behaviour including refusing an arranged marriage, forming an unapproved romantic attachment, or ‘immodest’ dress or behaviour, including social media posts. While young men can be targets of honour killing, most victims are female. Once a threat of honour killing is established, the victim remains at risk even if he or she relocates. In some cases, victims have been killed years after the initial transgression. In tribal areas honour killings are sometimes ordered by traditional *jirga* councils.⁷
47. Considering the totality of the evidence before me, I accept that the applicant fears being persecuted because of his love marriage with [Ms A]. I accept that his marriage transgressed the honour of his family and tribe, defied their expectation that he would marry a Muslim woman within their community, and offended against their religion. I consider the above country information also supports the applicant’s claims that his marriage to [Ms A], who is irreligious, is not considered nor recognised as legal in Pakistan, and that his family and tribe threatened him with honour killing. I accept that [Ms A] is ethnically distinct and easily identifiable as a non-Muslim ethnic [Country 2], and that she would seek to join the applicant in Pakistan if he were forced to return. I also accept that unless [Ms A] converts to Muslim, which she would not do, they will not be able to legally register their marriage in Pakistan. Also, in this case, I accept there is a small, but nonetheless real chance of the applicant facing harassment, charges, and punishment by the Pakistani authorities who deem their intermarriage illegal and perceive them as having sexual relations outside of marriage. I accept that there is a real chance of the applicant and [Ms A] being subjected to significant

⁶ Ibid.

⁷ Ibid.

pressures, violence and discrimination by the applicant's family, relatives, tribe, extremist groups, and wider community in [Town], and across Pakistan, if they return to Pakistan now or in the reasonably foreseeable future.

48. In this case, I am satisfied that the persecution feared by the applicant is for reasons of religion, and that this is the essential and significant reason for the persecution. I consider the persecution involves serious harm in the form of serious physical mistreatment including threat to life, and systematic and discriminatory conduct.
49. As noted above, the information before me indicates that the authorities are complicit with families seeking to prosecute transgressing couples or individuals, including under blasphemy laws, and assist the family in pressuring the couple rather than offering protection. Religious extremism and intolerance are on the rise in Pakistan. DFAT assesses that people accused of blasphemy are at high risk of extrajudicial violence and the death penalty, and high risk of societal and official discrimination in the form of popular denunciation, unfair trials and inadequate state protection. The risks are especially acute for members of religious minorities, including Shia.⁸ I am satisfied that in this case, effective protection measures will not be available to the applicant against the harm he fears from non-state actors for reasons of religion. I also consider that there is a small but real chance of the applicant being subjected to harassment, mistreatment, and prosecution by the authorities under blasphemy law. Further, the country information above indicates that once a threat of honour killing is established, the victim remains at risk even if they relocate, where some victims were killed years after the initial transgression. I accept that [Ms A] is easily identifiable as a non-Muslim ethnic [Country 2], and that the applicant is recognisable as a Turi Shia by his tribal name and accent. I consider that being a couple with such distinctive appearance and attributes, it is likely that they would attract attention, and that the applicant's family, wider tribe and community, would become aware of their return in the foreseeable future and would seek to harm them, even if they were to move to another area of Pakistan. Given the deep-seated societal prejudice against mixed marriage (especially marriage between a Muslim man and an irreligious woman of a different ethnic group), I also consider that they would face significant social discrimination and violence from anti-Shia and other extremist groups and the community elsewhere in Pakistan. In the circumstances of this particular case, I am not satisfied that the harm feared is localized. The information above is that women of non-Muslim religious groups cannot have their marriages registered, and they face difficulties in relation to accessing basic services, such as health services and identity documents. I accept on the evidence that [Ms A] may not be able to access basic services and to obtain work in Pakistan. I accept that the applicant speaks some English, but he is illiterate, and cannot speak the Urdu language. I accept that he only had four years of education, and he suffers from recurrent and chronic pain due to the shrapnel injuries, and that he requires ongoing treatment. I accept that his current employment is on a 'heavily concessionary basis' and is not sustainable. I accept that his worsening health condition would continue to adversely impact on his capacity to work, and that he would not be able to find gainful work and shelter to support himself and his wife if they were to relocate to another area upon return. On the evidence, I am satisfied that the real chance of persecution extends to all areas of Pakistan. Furthermore, I consider that s.5J(3) does not apply. I consider that requiring the applicant to modify his behaviour to avoid a real chance of persecution would require him to alter or conceal his true religious beliefs or entering into or remain in a marriage to which he is opposed, which is a kind of modification that an applicant cannot be required to make under s.5J(3)(c).

50. I am satisfied that the applicant has a well-founded fear of persecution.

⁸ Ibid.

51. Having reached this conclusion, it is unnecessary for me to also consider whether the applicant faces a real chance of harm on other bases.

Refugee: conclusion

52. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.