



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA23/10573

Date and time of decision: 23 October 2023 13:04:00
R Mikhail, 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 citizen of Pakistan from Kurram District who arrived in Australia [in] July 2013.
2. On 8 and 12 August 2013 he attended an Irregular Maritime Arrival and Induction Interview when he was being held at [Immigration Detention Centre] (Entry Interview).
3. On 6 March 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection).
4. On 2 November 2017 he attended an interview before a delegate of the Minister for Immigration (delegate) (PV interview).
5. On 9 April 2018 the delegate refused the grant of the visa. In his decision, the delegate accepted the applicant's claims and found he would face a real chance of persecution on account of being Sunni who sold goods to Shia customers after being threatened to not do so by the Taliban. The delegate found that this did not apply to all areas of Pakistan and that it was reasonable for the applicant to relocate to Lahore, Islamabad, or Rawalpindi.
6. On 18 August 2018 the IAA affirmed the decision.
7. On 9 August 2022 the Federal Court of Australia remitted the matter to the IAA, ordering it to determine the matter according to law.
8. On 17 November 2022 the IAA, again, affirmed the decision.
9. On 11 August 2023 the Federal Circuit and Family Court of Australia remitted the matter, by consent, to the IAA requiring that it determine the matter according to law.

Information before the IAA

10. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
11. Included in the review material were the written record and audio recordings of the Entry Interview held with the applicant on 8 August 2013 and 12 August 2013 whilst he was in immigration detention. The delegate did not make any reference to the Entry Interview in the PV interview nor in his decision. It is not apparent that this material was before the delegate at the time of his decision. In this interview the applicant provided information about his identity and the reasons he left Pakistan. It would normally be expected that the decision-maker would have regard to it. I am satisfied there are exceptional circumstances to justify considering this material.
12. In its provision of the review material to the IAA in 2023, the Department included additional material that it indicated was not provided with the original referral of this matter to the IAA in 2018. This included three departmental forms. They are a 'Request for consular access for people in immigration detention' signed by the applicant in 2013, a 2013 'Section 189(3) Detention of unlawful non-citizens who are in an excised offshore place' in respect of the applicant and a 2013 'Biographic Details Confirmation Form (BioForm)' signed by the applicant.

There is no reference to these materials in the delegate's decision. I do not consider these items relevant as they are routine departmental forms with no apparent material bearing on this assessment.

Submissions received in 2018 and 2022

13. In 2018 the IAA received submissions on behalf of the applicant. The submissions included argument in response to the delegate's finding that it was reasonable for the applicant to relocate to another area of Pakistan and included new information. In October 2022 the IAA received further submissions from the applicant which included argument in support of the applicant's case and new country information.
14. In a subsequent submission received by the IAA in September 2023, it advised that, as necessitated by the five-page limit for submissions mandated by the IAA Practice Direction, the 2018 and 2022 submissions were withdrawn on the condition that the IAA receives and considers submissions provided to the IAA in September 2023. I have decided to accept the September 2023 submissions as they refer to the most recent arguments and country information provided in support of the applicant's case. Consequently, I have not had regard to the 2018 and 2022 submissions. However, as there is no limit on the new information that can be provided to the IAA, I have nevertheless assessed below, any new information that was cited and/or attached to the 2018 and 2022 submissions.
15. Cited in the 2018 submissions were two 2018 *New York Times* articles (one of which cited a Human Rights Watch report) and a 2015 document from www.aawaz.org.ok which I am satisfied are new information. The *New York Times* articles both pre-date the delegate's decision by several months and concern reports of extra-judicial killings by police that targeted Pashtuns in Pakistan. The 2015 document from the above website refers to the process of renewing one's national identity card in Pakistan. This information has been provided in support of the applicant's submission that it is not reasonable for him to relocate to another area of Pakistan. I note this submission was prepared by the same representative who attended the PV interview. At that interview the delegate made it clear that he was considering whether it was reasonable for the applicant to relocate to another area of Pakistan. At the end of that interview the delegate advised that any information provided to the Department, before a decision was made, would be considered. No submissions have been provided as to why these reports could not have been provided to the delegate before his decision. In the circumstances, I am not satisfied s.473DD(b)(i) is met. The information is not credible personal information in the relevant sense and does not satisfy s.473DD(b)(ii). I am not satisfied there are exceptional circumstances to justify considering this new information.
16. The 2018 submission also states that the applicant faces risks from radical militants and discriminatory authorities present in the Punjab region given he had spent over four years in a western country which resulted in a change in his characteristics and general personality including his dress sense, manner of speaking, manner of practising his religion and general demeanour. I am satisfied this is a new claim as it was not raised before the delegate. No submissions have been provided as to why this was not raised before the delegate. I am not satisfied s.473DD(b)(i) is met. No further details or evidence was provided as to how the applicant's personality and characteristics had changed as a result of living in a western country, beyond the general assertions above. No independent information was provided in support of this claim. Given this and the late timing of this claim, I am not satisfied this new claim is credible personal information that may have affected consideration of the claims. Section 473DD(b)(ii) is not met. I am also not satisfied there are exceptional circumstances to justify considering this new information.

17. Referred to in the 2022 submissions (and attached) were new country information reports. The reports were published in 2022 and post-date the delegate's decision and satisfy s.473DD(b)(i) of the Act. They are not credible personal information in the relevant sense and do not satisfy s.473DD(b)(ii). I accept the submission that, it has been a number of years since the delegate's decision and that these provide more up-to-date country information relevant to assessing these matters. Given this and that s.473DD(b)(i) is met, I am satisfied there are exceptional circumstances to justify considering this new country information.

Submissions received in August 2023

18. In August 2023 the IAA received further new country information in respect of this matter. This included four news articles dated in 2023 that relate to recent events that have occurred in Kurram District. These articles post-date the delegate's decision and satisfy s.473DD(b)(i) of the Act. Although the reports identify individuals, they have been provided as general country information and, for that reason, I am not satisfied they are credible personal information. Section 473DD(b)(ii) is not met. It is submitted this information relates to recent events in the applicant's home area which may affect the IAA's conclusion about whether he faces a real chance/risk of serious/significant harm should he return to that area. The articles report on recent clashes between Sunni and Shia tribes in Kurram. Given s.473DD(b)(i) is met and the subject of the reports and that they are quite recent, I am satisfied there are exceptional circumstances to justify considering this new country information.

Submissions received in September 2023

19. As noted, the IAA received submissions in September 2023 in relation to this matter. The submission includes claims that were before the delegate and argument in support of the applicant's claims. It also cites and attaches new country information. Some of that country information was provided to the IAA in the October 2022 and August 2023 submission, which I have already assessed above and accepted. In regard to the remaining new country information reports, they all post-date the delegate's decision and satisfy s.473DD(b)(i). They are not credible personal information in the relevant sense and do not satisfy s.473DD(b)(ii). The reports concern information about the applicant's area of Kurram District and reports about recent developments in the security situation there and an update on recent negotiations between the Taliban and the Pakistani government. Given this, and that s.473DD(b)(i) is met, I am satisfied there are exceptional circumstances to justify considering this new country information.

New country information obtained by the IAA

20. I have also obtained new country information on the security situation in Pakistan. These reports post-date the delegate's decision by some years and provide a more recent picture and assessment on the security situation in Pakistan. I am satisfied there are exceptional circumstances to justify considering these reports.¹

¹ 'Pakistan Security Report January 2023 (PIPS)', Pakistan Institute for Peace Studies (PIPS), January 2023, 20230227094910; 'PICSS Annual Security Assessment Report 2022', Pakistan Institute for Conflict and Security Studies (PICSS), 2022, 20230227094415; 'Pakistan Security Report 2021', PIPS, January - June 2022, 20220201113110; 'Pakistan Annual Security Assessment Report 2021', PICSS, 4 January 2022, 20220209092645; 'COI Focus - Pakistan: Security situation', Office of the Commission General for Refugees and Stateless Persons (Belgium), 28 February 2023, 20230628143902; 'Pakistan Quarterly Security Report- Q2-2023', Centre for Research and Security Studies (CRSS), July 2023, 20230804161234; 'Terrorism in Pakistan Soars 79% in First Half of 2023', PICSS, 2 July 2023, 20230804133120; M, Khan, 'Peace Finally?', *The News* (Pakistan), 30 July 2023, available at <https://www.thenews.com.pk/tns/detail/1095129-peace-finally>

IAA Interview

21. On 29 September 2023 the IAA invited the applicant to an interview on 12 October 2023, which he attended with his legal representative. During that interview, the applicant provided new information regarding his claims for protection in response to questions put to him and in response to concerns raised with him. In the circumstances, as this new information was provided in response to questions put to him at the interview, I am satisfied it could not have been provided before the delegate made his decision and it satisfies 473DD(b)(i) of the Act. On their face, and without necessarily accepting the substance of these new claims as credible at this stage, I am satisfied the new information is capable of being believed and was not previously known and may have affected consideration of the applicant's claims. Section 473DD(b)(ii) is met. Given this, I am satisfied there are exceptional circumstances to justify considering this new information.
22. At the end of that interview, the applicant was provided up and until close of business 18 October 2023 to provide any further information or response to concerns raised with him at interview. On 20 October 2023, the IAA received submission on behalf of the applicant which concerned legal argument in response to concerns raised with the applicant about his evidence during the IAA interview. I have considered these submissions in my assessment.

Applicant's claims for protection

23. The applicant's claims, as outlined in his application for protection and other material before the delegate, can be summarised as follows:
 - He was born in [Year] in [Village], Kurram Agency, Khyber-Pakhtunkhwa province (KP).
 - He is a Pashtun [Tribe] Sunni Muslim citizen of Pakistan.
 - He used to run his family [products] shop in [Town 1] and had a good relationship with his Shia customers. When the sectarian clashes erupted in 2007, Shia people were besieged, and they were facing hardship in receiving [products], so he used to supply them [products] in secret. The Taliban found out about his relationship with the Shia community and sent him a message ordering him to immediately stop his business with the Shia people and repent. He was scared but continued selling them [products] from his home at night until his cousin [Mr A], who had links to the Taliban, informed the Taliban.
 - In June 2013, the Taliban came to his shop and did not find him and saw his brother and kidnapped him. The Taliban contacted the applicant's home and told him their leader wanted to see him.
 - Realising the danger, the applicant decided to flee Pakistan immediately. He knew the Taliban would not kill his brother for his actions and that they had to eventually free him. When he left Pakistan in June 2013, the Taliban tortured his brother but elders from his village intervened and secured his release in return for a ransom amount of PKR800,000 and assurance that his brother would hand the applicant over to Taliban. His brother was released when the applicant arrived in Australia.
 - His Shia customers helped him escape from Pakistan and due to his good dealings with the Shia community in [Town 2], he was assisted with accommodation and finding job
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by Shia friends in Australia. Since his arrival to Perth, he lives with his [Town 2] Shia friends.

- He fears being seriously harmed or killed in Pakistan by the Taliban and their allies because he defied their demands by continuing to assist the Shia community.
- He fears [Mr A] will cooperate with the Taliban and locate him in Pakistan. [Mr A] holds a grudge against the applicant and his family because the applicant was more successful in life than him and his family.
- He fears that the Taliban and [Mr A] will seek to kill or harm him so that applicant does not seek to avenge the abduction of his brother and loss of property. He fears harm as a Pashtun [Tribe] member.
- He cannot relocate to other areas of Pakistan because he does not have other family and relatives in other parts of Pakistan to assist him. He is illiterate and does not understand Urdu. Since his arrival to Australia, he remains the sole financial provider to his entire family, and he will not be able to look after his family in a new city with no job prospects. It is very expensive to live in other major cities in Pakistan and he will not be able to afford the cost of living. He will face greater risks and threats to his life by moving to other areas of Pakistan.
- Now that he has lived in Australia, he will face even greater risks of harm from Taliban as they label failed asylum seekers to be spy of westerners and infidels.
- He also fears harm from Sunni militant groups who are active in Kurram.

Refugee assessment

24. 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

25. 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.

26. The applicant provided copies of his Pakistan national identity card and accredited translation, his untranslated Birth Certificate, Pakistan driver's licence and domicile certificate. They confirm his claimed identity, his residence in [Village], [Town 1], Kurram Agency and Pakistan citizenship. The applicant also spoke fluent Pashto during his departmental interviews and country information that was before the delegate indicates that Pashtuns are characterised by their use of the Pashto language. Pashtuns also traditionally live with members of their own tribes and sub-tribes in KP.² Country information that was before the delegate also confirms that the [tribe] live in lower Kurram.³ Further, the population of KP is mostly Pashtun and predominantly Sunni and lower Kurram is majority Sunni.⁴
27. I am satisfied of the applicant's claimed identity and Pakistani citizenship. I am satisfied that Pakistan is the country of reference for the purpose of this assessment.
28. The applicant's statement of claims (statement) attached to his application for protection noted that he was from [Village] in [Town 2] in Kurram Agency. His documents however indicate that [Village] is within the [Town 1] area in Lower Kurram which he confirmed during the PV interview. He also indicated that [Town 2] was about half an hour drive from [Town 1].
29. During the PV interview the applicant indicated that his only brother and wife and children still live in [Village]. During the IAA interview he confirmed that his brother was still in their village. No recent information has been provided to the IAA to indicate that his wife and children had moved. I am satisfied that, if the applicant were to return to Pakistan, he would very likely return to his [village] where he lived the entire time he was in Pakistan.
30. The applicant provided a consistent account of his life in Pakistan. I accept that he had his own shop in a market in [Town 1]. It is also plausible the applicant had Shia customers from [Town 2]/Upper Kurram. I accept that, prior to 2007, he had both Shia and Sunni customers.
31. Country information that was before the delegate confirms that sectarian violence erupted in Kurram in April 2007. Local Sunnis were joined by al-Qaida fighters and Taliban from Waziristan who targeted paramilitary forces. [Town 2] in (Upper) Kurram largely comprises Turi Shia. As the violence continued, the road from [Town 2] to Peshawar was blocked, resulting in a shortage of food and medicines. Shiite truck drivers were abducted and beheaded on their way to Kurram. Shiite communities were besieged as Sunnis controlled the road from [Town 2] to Thall. In March 2010, six truck drivers who had been kidnapped were found dead near Thall. A letter found in the pocket of one of the victims said that anyone supplying goods to the [Town 2] Shiite community would meet the same fate. Due to the attacks many Shiites migrated to Upper Kurram or to other cities.⁵ The Tehreek-e Taliban Pakistan (TTP) forces blocked off roads near Sadda, Thall, and Dara Adam Khel, where they checked Shia vehicles and often killed Shia travellers. No aid or supplies were able to reach many Shia areas in Kurram.⁶ Since the summer of 2007, much of the Shia population of Lower Kurram were expelled to Upper Kurram while much of the Sunni population in [Town 2] were forced to Lower Kurram.⁷ Pakistani Taliban

² 'Pakistan Country Information Report 1 September 2017', Australian Department of Foreign Affairs and Trade (DFAT), 1 September 2017, CISED50AD5515 (DFAT 2017)

³ M.K. Mahsud, 'The Battle for Pakistan: Militancy and Conflict in Kurram', New America Foundation, 1 April 2010, CIS18543

⁴ DFAT 2017

⁵ M.A. Zahab "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; DFAT 2017

⁶ Mahsud, 2010

⁷ Ibid.

‘ruled the roost’ in Kurram and turned the lower Kurram ‘into their bastion’.⁸ From 2007-2011, an estimated 1,500 people died in the sectarian strife.⁹

32. Having considered the country information before me and the applicant’s evidence, I accept the applicant’s claims that, after the 2007 conflict began, the Shia community in [Town 2] were besieged, and they struggled to access goods. I accept he continued to supply them with goods, particularly as he indicated it was also a source of income for him. I also accept that the Taliban warned the applicant to stop his business with the Shia community but that he continued to supply them with goods in secret. During the IAA interview he gave what I found to be a credible account of having developed a long business relationship with the Shia community over many years and despite the risk to himself, he was prepared to continue to supply them with goods in secret.
33. I am also prepared to accept that, in 2013, the applicant’s brother was kidnapped by the Taliban and held for ransom and was released once the ransom was paid. In accepting this claim, I have given weight to the applicant’s mention of this during his Entry Interview. Country information that was before the delegate also indicates that, during that period, militants were relying on criminal activities, such as kidnapping for ransom, to finance their operations.¹⁰
34. However, for reasons outlined below, I do not accept the applicant’s claim that his brother was kidnapped because [Mr A] informed the Taliban of the applicant’s continued business dealings with the Shia community. There were a number of significant discrepancies that have contributed to my concerns about these claims between his Entry interview, statement, the PV interview, and IAA Interview. It has been submitted that these events took place over ten years ago and the applicant is not a sophisticated man with only a modest level of education. Further, he had been interviewed several times and it is unsurprising that there are small differences in his recounting of claims. I accept that it has been a number of years since the applicant left Pakistan and that he is illiterate and he has been interviewed several times about his claims, but for reasons outlined below, I am not persuaded by this as a reasonable explanation for the number discrepancies in his evidence, the nature of which I do not consider to be small.
35. In the IAA interview the applicant raised a new claim that the people he had hired to deliver the goods to the Shia community in secret were captured by the Taliban. He said they informed the Taliban that it was the applicant’s goods, and this is how the Taliban found out he was still supplying goods to the Shias, and they subsequently kidnapped his brother. I note that in his statement and during his PV interview he had claimed the Taliban found out about his activity from [Mr A]. During the IAA interview, I observed that he had not raised this claim before. He responded that he has provided this information at his PV interview. I noted to the applicant that that did not appear to be the case. He responded that this was a long time ago and referred to stress he was experiencing in Australia. During the IAA interview he later claimed that [Mr A] had been regularly passing on information about his dealings with the Shias to the Taliban, but the Taliban eventually had the evidence after they captured his drivers, and they kidnapped his brother the next day. I am not satisfied of the applicant’s explanation why his narrative of events had changed at the IAA interview, and I find the omission of any reference to the kidnapping of his drivers in his statement and at the PV interview, significant.

⁸ ‘Country of Origin Information Report - Pakistan’, United Kingdom Home Office, 17 January 2011, available at <https://www.refworld.org/docid/4d37e8622.html>

⁹ A. Rafiq, ‘Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007’, Middle East Institute, 1 December 2014, CIS2F827D91993

¹⁰ Zahab, 2013

36. In his statement of claims and during the PV interview the applicant claimed that he received a call from the Taliban two days after they kidnapped his brother, and he left Pakistan two days after receiving that call. During the IAA interview, when asked what happened after he found out his brother had been kidnapped, he said he fled the country. He was asked if he had been contacted directly by the Taliban, he said he definitely had not, and he had disconnected his landline. It was noted to the applicant that this was different to what he claimed in his statement and during the PV interview. In response, he said it had been ten years and he does not remember things very clearly and the information he was providing at this interview was coming from his mind and not a piece of paper or recording and he cannot read, and he is sharing whatever comes to his mind and he has stomach problems. When asked if he could recall, now, if the Taliban contacted him then, he said he was not able to read what he had told me and cannot remember and cannot recall how he found out. Although I accept the applicant is illiterate and it has been many years since these events purportedly occurred, they were significant events that led to his departure from Pakistan so I find it difficult to believe that he could not remember whether the Taliban called him after kidnapping his brother. I note when first asked at the IAA interview about this, he was emphatic in saying that the Taliban did not call him, and his landline had been disconnected indicating he was not initially confused or unsure in this regard.
37. In his statement, the applicant claimed that he had to sell everything to pay for his brother's ransom and his escape from Pakistan. During the IAA interview, when asked how he raised money to pay for his brother's ransom, he said he had plenty of money available in his account from his successful business. He was then reminded of what he said in his statement which was different. He responded that, when you have a business, money is coming in and out from selling goods. I am not satisfied of his explanation. I do not accept that, when referring to 'selling everything' in his statement, he meant selling goods via his business and only proffered this explanation when challenged.
38. The fact that the applicant's brother was released on payment of money also suggests that was likely the motive and not because they were seeking out the applicant. This is consistent with country information referred to in the post-interview written submissions indicating that it is common for the Taliban to abduct and kidnap people of interest in order to finance their activities and the Taliban abducted and kept in captivity locals who appeared to be a good target for financial gains.
39. During the applicant's Entry Interview, when asked by the immigration officer why he left Pakistan, he said the Taliban caught his brother and they had to pay a ransom for him to be released. He explained that, at night, the Taliban leave letters at your door and ask for money and if you do not pay, they threaten to kill you. The immigration officer then asked whether the Taliban contacted him directly and he said no as they would have arrested and caught him. The immigration officer then asked why they would arrest him, and he responded you have to pay them money or they will kill you. When asked by the immigration officer what he thought would happen to him if he returned to Pakistan, he said he would be killed and cut into pieces because of the letters that had been dropped on doorstops in his village. During the IAA interview, it was put to him that, in the above response at the Entry Interview, he did not state that his brother had been kidnapped because the applicant had been assisting the Shia community against Taliban orders and this may cause me to doubt the credibility of this claim. In response, he said that [Mr A] sent him a letter stating that he needed to present his brother, otherwise his brother will be killed. When asked when he received the letter, he said he could not remember when this happened, whether it was before or after he left Pakistan and it was ten years ago and he is just saying what is in his brain. It was put to him that he did not mention this in his statement or PV interview, that is, that he received a threatening letter

from [Mr A] to present his brother. In response he said that he sees [Mr A] as his big enemy, and he assumed he was the one (who sent the letter).

40. In his statement he stated that, during the Entry Interview he was not made aware that the information he provided would be used for the purpose of assessing his claims and he was instructed to only provide a summary of his claims for protection so the information he provided was incomplete. I acknowledge that these interviews are not for the purpose of assessing an applicant's claims for protection and are conducted whilst the applicants are in immigration detention and without the benefit of legal representation, but they are for the purpose of gathering information about an applicant's background and why they left their country. It is true that, when asking why the applicant left his country, the immigration officer said that he should provide a brief answer and that the officer did not need much detail and just needed a quick answer, but as noted above, the officer also asked a number of follow up questions which provided the applicant with an opportunity to provide further information on these matters. He was specifically asked whether he was contacted by the Taliban directly and why he thought he would be arrested by the Taliban and why he thought he would be killed on return. I am satisfied he had reasonable opportunity in this interview to mention his current claims at least briefly in regard to why he was specifically being targeted by Taliban.
41. The applicant's claim, in response to the above concern, that [Mr A] had sent him a threatening letter to present his brother, is also at odds with his original claim that the Taliban were seeking the applicant and only kidnapped his brother when they could not find the applicant.
42. A post-interview submission sent to the delegate after the PV interview, stated that the applicant faced retaliation from his [Mr A]'s opposing tribe but did not state on what basis he faced such retaliation and what opposing tribe [Mr A] belonged to. During the IAA, when asked why he feared harm from [Mr A], the applicant said [Mr A] would not leave him and is now claiming the applicant is drinking alcohol in Australia and the Taliban is back in the mountains around Kurram. He did not make any reference to a tribal feud with [Mr A].
43. In post-interview written submissions to the delegate, it was submitted the applicant had a well-founded fear of persecution as a [member of a] tribe of Pashtun ethnicity (Pahan) from the Taliban, and [Mr A], as he feared the Taliban and [Mr A] would seek to kill or harm him so that applicant does not seek to avenge the abduction of his brother and loss of property. The applicant made no such claim in his statement nor during his PV interview nor in the IAA interview when asked why he feared [Mr A].
44. The applicant claims that he was secretly still supplying goods to Shias in [Town 2] in mid-2013. It is submitted his claims are not inconsistent with available country information. During the IAA interview he said that this conflict lasted seven years and, although he could not remember exactly, the government took control of the situation in 2016. However this is somewhat at odds with country information that was before the delegate which indicates that by 2011, Sunni and Shia tribesmen in Kurram came to a peace agreement and the Pakistan Army had launched an offensive to open the Thall-[Town 2] road and¹¹ there was a further truce between the tribes in 2013.¹² Of note, according to the FATA Research Centre, there were relatively few sectarian or other militant attacks in Kurram, the following year, in 2014.¹³ The country information that was before the delegate does not indicate that, in 2013, Sunni

¹¹ Rafiq, 2014

¹² 'DFAT Thematic Report Shias in Pakistan April 2015_Final version approved for release', DFAT, 14 April 2015, CISEC96CF1561

¹³ 'DFAT Thematic Report - Shias in Pakistan', DFAT, 15 January 2016, CIS38A801265 (DFAT 2016)

businessmen from lower Kurram were still being prevented from doing business with the Shia community in [Town 2]/Kurram by the Taliban and the applicant has not provided country information to suggest that was the case.

45. The applicant has claimed at the PV and IAA interviews that his brother continues to reside in their village and there is no credible evidence he came to any further harm from the Taliban despite not obeying their orders to hand over the applicant as a condition of his release. This is despite the applicant's claim that the Taliban consider those who do not comply with their orders as their enemies and liable to death.
46. On the evidence before me, I do not accept that [Mr A] was a Taliban informant or member and held a grudge against the applicant and informed the Taliban of the applicant's assistance to the Shia community. I do not accept the applicant's brother was kidnapped by the Taliban because of the applicant's assistance to the Shia community. I do not accept the Taliban found out about the applicant's continued assistance to the Shia community in 2013. I am not satisfied the applicant will face a real chance of harm from the Taliban or any other group or person because he previously supplied goods to the Shia community and/or had a good relationship with the Shia community or because his brother was kidnapped and held for ransom or as someone who is from the [a] Pashtun tribe (Pahan). Even if the applicant were to maintain good relations with Shias on his return to Kurram, I am not satisfied he will face a real chance of harm as a result.
47. During the PV interview, when asked why he feared going back to his village, the applicant said that Daesh (Islamic State) and the Taliban had combined and are much stronger. The delegate noted that these groups were Sunni and were attacking Shia and the applicant said they do not even know if they are Shia or Sunni but acknowledged that the Taliban were attacking Shia.
48. Country information that was before the delegate indicates that, in June 2014, the Pakistan Armed Forces launched Operation *Zarb-e-Azb*, a major offensive against terrorist groups across the country. Operation *Zarb-e-Azb* initially targeted terrorist groups in North Waziristan in the former Federally Administered Tribal Areas (FATA) (where Kurram is located), including the TTP, and gradually spread to other parts of FATA and KP, with smaller, intelligence-based operations taking place across the country. The government introduced a National Action Plan (NAP), which, along with Operation *Zarb-e-Azb*, formed a civil-military effort to combat terrorist, separatist and criminal groups across Pakistan. Among other measures, the NAP ended Pakistan's unofficial moratorium on the death penalty; established military courts to try suspected militants; clamped down on sources of finance for militant organisations; took measures to restrict hate speech; and committed to implementing administrative and development policy reforms, particularly in the FATA. Operation *Zarb-e-Azb* and the NAP were credited with a significant reduction in the number of violent attacks in Pakistan. Further, in 2017, the Pakistan Army announced Operation *Radd-ul-Fasaad*, a nation-wide anti-terrorism operation in accordance with the NAP.¹⁴ According to an Austrian Fact-Finding Mission report, the situation in the FATA improved significantly since the start of Operation *Zarb-e-Azb*. By 2015 most of the areas in the FATA had been cleared of militants which resulted in a significant decline in militant attacks.¹⁵
49. Country information also indicates that, until 2018, the FATA was governed under colonial-era laws called the Frontier Crime Regulations (FCR). These laws deprived residents of some fundamental rights, including freedom of movement and access to justice, and exposed them

¹⁴ DFAT 2017

¹⁵ 'EASO Country of Origin Information Report: Pakistan Security Situation', European Asylum Support Office (EASO), 1 July 2016, CIS38A80121710

to collective punishment. The former FATA agencies are now part of KP province.¹⁶ Residents of KP, including the former FATA, now have access to the regular judicial system, although the option remains to voluntarily refer disputes to traditional jirgas/panchayats under the Khyber Pakhtunkhwa Alternate Dispute Resolution Act (2020).¹⁷

50. The 2023 submissions to the IAA note that the security situation in Pakistan had deteriorated since mid-2021. Provided to the IAA was a 2022 news article which reported that concerns of a TTP resurgence had grown since August 2021, when the Afghan Taliban took over Kabul following the departure of United States and other foreign forces. Also provided to the IAA was another article from September 2022 by *Al Jazeera* which reported that Pakistan's Taliban has accused the military of breaking their June 2022 ceasefire by attacking some of their fighters and there were concerns the Pakistani Taliban were regrouping in the former tribal regions. In its 2021 report the Pakistan Institute for Peace Studies (PIPS) also noted that, after being rooted out from its bases in ex-FATA in 2014, the TTP had gradually made a strong comeback in Pakistan and now posed a significant threat to the country.¹⁸ It noted insecurity and violence at the Pak-Afghan border had been growing gradually since the Taliban took power in Afghanistan. The Taliban had apparently taken a stricter and nationalistic stance in their response to Pakistan's efforts to fence the border.¹⁹ In its report on 2022, PIPS noted that, that year, the Pakistan government had engaged in negotiations with the TTP and the TTP declared a ceasefire in May, but the TTP ended the ceasefire in November 2022.²⁰
51. Also provided to the IAA in 2022 was the report on Pakistan published by the Australian Department of Foreign Affairs and Trade (DFAT) published in January 2022 (DFAT 2022 report). It also noted that, following improvement over recent years, the security situation in Pakistan had deteriorated since mid-2021. Causes of insecurity include domestic politics, religious extremism, ethnic conflicts, gender-based issues, sectarian hatred, economic hardship, petty and organised crime, tensions with India and the situation in Afghanistan. It noted terrorist attacks increased in 2021, following a six-year downward trend. In-country contacts told DFAT that militants in Pakistan were regrouping (especially under the umbrella of the TTP) and expressed concern that the deteriorating security situation in Afghanistan throughout 2021 would increase violence in Pakistan.²¹ PIPS and the Pakistan Institute for Conflict and Security Studies (PICSS) also reported that there had been an increase in militant attacks in Pakistan in 2021 and 2022.²² PICSS also reported that the first half of 2023 saw a rise in terror incidents compared to 2022 and KP emerged as the most affected province with 174 reported militant attacks, 74 of which occurred in the tribal districts (erstwhile FATA). The PICSS Militancy Database showed a 51% rise in terror attacks in the tribal districts during the first half of 2023 compared to the same period in 2022, although there was a 10% and 15% decline in fatalities compared to the first and second half of last year, respectively.²³
52. The 2022 DFAT report also noted that TTP attacks within Pakistan had increased since the Taliban seized power in Afghanistan in August 2021. It noted these attacks had occurred mostly in KP and Balochistan, but also Punjab and Sindh. However, it also noted that under the leadership of Mehsud, the TTP had moved away from targeting civilians – which was

¹⁶ 'DFAT Country Information report Pakistan', DFAT, 25 January 2022, 20220125094359, (DFAT 2022)

¹⁷ DFAT 2022

¹⁸ 'Pakistan Security Report 2021', PIPS, January - June 2022

¹⁹ 'Pakistan Security Report January 2023 (PIPS)', PIPS, January 2023

²⁰ Ibid.

²¹ DFAT 2022

²² 'Pakistan Security Report 2021', PIPS, January - June 2022; 'Pakistan Annual Security Assessment Report 2021', PICSS, 4 January 2022; 'Pakistan Security Report January 2023 (PIPS)', PIPS, January 2023; 'PICSS Annual Security Assessment Report 2022', PICSS, 2022

²³ 'Terrorism in Pakistan Soars 79% in First Half of 2023', PICSS, 2 July 2023

undermining its popular support – to focus on attacks against the Pakistani military and other government representatives. This is reflected in other reports before me about the typical targets of TTP attacks in recent years. In 2021 PIPS noted that over 66 percent of attacks targeted personnel, vehicles and posts of security and law enforcement agencies and only one Sunni religious leader/community member was targeted and killed. In KP over 71 percent of the reported attacks from KP targeted security forces and law enforcement personnel. Pro-government tribal elders and political leaders were other prime targets. The applicant does not fit the profile of other civilian targets noted in this report.²⁴ In November and December 2022, TTP attacks escalated sharply, especially in the KP but, again, most targets were government agencies, including the January 2023 bombing at a mosque used by security forces and government personnel in Peshawar.²⁵ PIPS reported, out of the total 262 terrorist attacks recorded in Pakistan in 2022, again, about 69 percent targeted government agencies and about 77 percent of the reported attacks from KP targeted security and law enforcement agencies.²⁶ Further, PICSS noted that, in 2022, the major concentration of militant activities of the TTP were in North and South Waziristan, Dera Ismail Khan, Tank and Lakki Marwat.²⁷ The Centre for Research and Security Studies (CRSS) also reported that the KP Province saw a 201 decrease in fatalities from terrorism and counter-terrorism violence between the first and second quarter of 2023 and the overall number of fatalities decreased by 21% in the country. It also noted security officials remained the most significant number of victims of terrorist violence in the second quarter of 2023.²⁸

53. DFAT's 2022 report also noted that, besides conducting terrorist attacks, the TTP acts as an 'alternative state' in some parts of Pakistan, collecting taxes and customs duties, and acting as police and courts. It noted that areas of particular TTP influence include and surrounding districts, Tank, Quetta, Kuchlak Bypass, Pashtun Abad, Ishaq Abad, Farooqia Town and parts of Karachi. Although it indicates this list of districts was not exhaustive, it did not specify this was occurring in Kurram District. Other security reports from reputable sources before me also do not indicate this is occurring in Kurram.
54. Submissions to the IAA also referred to a report of extortion demands in the KP province but did not indicate that was occurring in Kurram District and the cited report indicated the Taliban had publicly denied being involved.
55. DFAT's 2022 report also noted that Islamic State (IS) and Al Qaeda both have a presence in Pakistan and have carried out attacks, but it noted their targets have been the Pakistani military and government representatives, and religious and ethnic minorities, and anti-Western attacks. IS has been described as 'primarily an urban phenomenon seemingly comprised of de-centralised units that target Shia sites rather than directly challenging the state.'²⁹ It did not elaborate on what it meant by 'anti-western attacks' but the information before me from other sources do not reflect they are targeting returnees/failed asylum seekers from western countries. I am not satisfied the applicant fits the above profile of targets for these groups.

²⁴ 'Pakistan Security Report 2021', PIPS, January - June 2022

²⁵ 'COI Focus - Pakistan: Security situation', Office of the Commission General for Refugees and Stateless Persons (Belgium), 28 February 2023

²⁶ 'Pakistan Security Report January 2023 (PIPS)', PIPS, January 2023

²⁷ 'PICSS Annual Security Assessment Report 2022', PICSS, 2022

²⁸ 'Pakistan Quarterly Security Report- Q2-2023', CRSS, July 2023

²⁹ 'COI Focus - Pakistan: Security situation', Office of the Commission General for Refugees and Stateless Persons (Belgium), 28 February 2023

56. In its 2022 report DFAT also noted that, whilst the large-scale security operations carried out in 2014-17 had mostly wound down, Pakistan Armed Forces continue to conduct operations against terrorist groups who attack its interests and in response to specific threats and incidents. PICSS reported that, in 2021, in the erstwhile FATA region, security forces conducted 49 notable actions in which 72 suspected militants were killed and 14 others were apprehended.³⁰ In 2022 PICSS reported that security forces foiled many attacks and killed as many as 232 suspected militants and arrested 290 others and the TTP faced many assassinations of its top commanders.³¹ PICSS also reported that, in the first half of 2023, Pakistani security forces had also stepped up their response against terrorism and killed at least 236 militants across the country while 295 suspected militants were also arrested.³²
57. DFAT's 2022 report noted that most militant attacks happen in KP (especially North Waziristan) and Balochistan. Having considered other sources before me, I am not satisfied that is the case in Kurram. In its report on 2021, PIPS reported only one militant attack in Kurram that year whilst resulted in one death which appear to have related to an attack on workers of a cellular company in the Zaimokhet area. It also noted an inter-tribal clash in Kurram which claimed 11 lives between the tribesmen of Piwar and Giddo near Afghan border over the ownership of forest in the upper subdivision of Kurram. There is no indication this dispute relates to the applicant or his tribe or occurred in or near his village.³³ PICSS also reported one civilian death and four injuries in Kurram in 2021.³⁴ In 2022 North Waziristan, again, stood out as the district in KP where most incidents were reported. The Armed Conflict Location & Event Data Project (ACLED) recorded twelve incidents of violence in Kurram in 2022 of which five were attributed to the TTP and eight to government security forces.³⁵ In 2022, PIPS counted three terrorist attacks in Kurram, killing four and injuring three.³⁶ Two sectarian attacks were reported, four cross-border attacks, and a clash between the Para Chamkani and Turi tribesman which did not appear to relate to the applicant's tribe.³⁷ PICSS reported seven militant attacks in the district in 2022 but it noted most casualties were security force personnel.³⁸
58. In regard to the security situation in Kurram in 2023, provided to the IAA were several media articles which reported that, in May 2023, a Sunni man was killed whilst travelling in a car in the Shalozan area and shortly afterwards armed men entered a government school in, Terri Mangal (a village situated a few kilometres from the Pakistan-Afghan border), Upper Kurram and killed seven Shia staff members. There were conflicting accusations as to whether these incidents were as a result of a personal feud or an act of terrorism. The deputy commissioner said it related to a land dispute. One report by *ANI News* stated that Taliban had claimed responsibility for the attack on the school, but the other reports provided to the IAA and obtained by the IAA regarding the same incident, did not make this assertion. This incident did not occur in the applicant's village. It was submitted that a report by *India Narrative* also noted that the Taliban was responsible for these killings, but the report provided to the IAA by the *India Narrative* was about a different incident discussed next. Also provided to the IAA were reports of firefights between Shia and Sunni tribe over a land dispute that occurred in Kurram in July 2023. One report by *India Narrative* alleged the TTP had reportedly been involved from

³⁰ 'Pakistan Annual Security Assessment Report 2021', PICSS, 4 January 2022

³¹ 'PICSS Annual Security Assessment Report 2022', PICSS, 2022

³² 'Terrorism in Pakistan Soars 79% in First Half of 2023', PICSS, 2 July 2023

³³ 'Pakistan Security Report 2021', PIPS, January - June 2022

³⁴ 'Pakistan Annual Security Assessment Report 2021', PICSS, 4 January 2022

³⁵ 'COI Focus - Pakistan: Security situation', Office of the Commission General for Refugees and Stateless Persons (Belgium), 28 February 2023,

³⁶ 'Pakistan Security Report January 2023 (PIPS)', PIPS, January 2023

³⁷ 'COI Focus - Pakistan: Security situation', Office of the Commission General for Refugees and Stateless Persons (Belgium), 28 February 2023

³⁸ 'PICSS Annual Security Assessment Report 2022', PICSS, 2022

across the Afghan border. One report indicates that the clashes broke out between inhabitants of Dandar Sehra and Boshehra over disputed land in upper Kurram. Again, the conflict has been described as a land dispute whilst other claims were that it was a sectarian conflict or a land dispute that took on a 'sectarian colour'. Other country information before me indicates that the tribes came to a truce and agreed to a ceasefire by mid-July.³⁹ This incident does not appear to relate to the applicant's tribe or occurred in his village. No other recent reports were provided to the IAA to indicate these incidents had escalated into a continuing wider conflict in the Kurram area. I am also not satisfied, on the evidence, that militant groups, such as the Taliban, were involved in these incidents.

59. Whilst I accept sporadic incidents like this may well occur again in Kurram in the reasonably foreseeable future, the weight of the evidence does not suggest a material change in the security situation in Kurram District, such that the applicant will face a real chance of harm in the reasonably foreseeable future. The country information before me indicates that the majority of targets in attacks that have occurred since 2021 are government agencies, which the TTP has openly said is their target, and most attacks have occurred in districts other than Kurram. The information also indicates there has been an uptick in security operations targeting militants by the Pakistan government in response to the increase in militant attacks.
60. The post-interview submission to the delegate cited country information which it claimed suggested heightened racism, general stereotype, and bias against Pashtuns, that the number of 'extra judicial killings and enforced disappearances of individuals sharply rose during *Zarb-e-Azb* military operations. It stated that the majority of incidences of disappearances are reported from KP, though I note that it did not cite a country information source in support of this statement and the other examples it cited occurred in Punjab, some distance away.
61. The 2017 DFAT report on Pakistan that was before the delegate noted that DFAT was aware that members of the Pashtun community, particularly in Lahore, had claimed to have been harassed by police and security forces and to have had difficulty obtaining identification. It noted that, since the commencement of Operation *Zarb-e-Azb* and the NAP, large numbers of Pashtuns had been arrested across the country on suspicion of terrorism activities—due largely to the fact that the TTP's support base is primarily Pashtun. It did not indicate this had been occurring in Kurram District.
62. DFAT'S 2022 report also noted that, across Pakistan, ethnic stereotyping, and the association of Pashtuns with the TTP had led to official discrimination and ethnic profiling. It noted in February 2018, the Punjab government issued a notice asking 'the population of Punjab to keep an eye out for suspicious individuals who look like Pashtuns or are from the former FATA, and to report any suspicious activity. DFAT stated in areas where they were a minority, low-level societal discrimination against Pashtuns was common in the form of slurs and ethnic stereotypes. It noted that Pashtuns report frequent blocking of their national identity cards when relocating, which impeded access to property and assets. It also noted that there were credible reports Pashtuns had been targeted for enforced disappearances, especially in conflict-affected regions such as KP and Balochistan. It assessed Pashtuns in conflict-affected areas such as KP face a moderate risk of violence by state security forces, including enforced disappearance and extrajudicial killings. It noted, 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 increases if they come to the attention

³⁹ M. Khan, 'Peace Finally?', *The News* (Pakistan), 30 July 2023

of authorities for any reason. It stated Pashtuns involved with the Pashtun Tahafuz Movement (PTM) or the Awami National Party (ANP) face specific, heightened risks, as do Shia Pashtuns.

63. It is submitted DFAT's moderate risk assessment for Pashtuns in KP could plainly constitute a real chance/risk of serious of significant harm for the applicant.
64. In regard to DFAT's statement that Pashtuns had been targeted for enforced disappearances in the KP, it does not indicate what districts of KP this had been occurring and does not elaborate if these Pashtuns had a particular profile. Other recent reputable sources before me do not suggest state forces have been targeting the Pashtun community, in general, in Kurram in the form of enforced disappearances or extrajudicial killings. I also note the applicant has not claimed to be involved with the PTM and ANP and does not have an, otherwise, adverse profile with the Pakistani authorities. In light of this, I am not satisfied he will face a real chance of harm from any group or person as a Pashtun or because he is a Pashtun from KP.
65. Having considered the country information before me and the applicant's profile, I am not satisfied the applicant will face a real chance of harm from any group or person in Kurram District in the reasonably foreseeable future.
66. It is submitted the applicant will be imputed with a political opinion as an opponent of Sunni extremist groups (particularly the Taliban) as a returnee from a western country. The applicant claims the Taliban label failed asylum seekers as spies of westerners and infidels.
67. In its 2017 report, DFAT noted that western influence was pervasive in many parts of Pakistan, particularly in large urban centres. Western films and music were widely available (though in many cases subject to censorship), and western-branded retail chains operated throughout the country. Both Urdu and English are official languages, and English was taught in many schools and was widely spoken among Pakistan's elite. Many Pakistanis had relatives in western countries and many more aspire to migrate abroad. Those living abroad returned to Pakistan frequently to visit relatives. In that report DFAT assessed that individuals in Pakistan were not subject to additional risk of discrimination or violence on the basis of having spent time in western countries or because of perceived western associations (such as clothing), despite a generally increasing conservatism and religiosity across the country. In its 2022 report DFAT assessed that returnees to Pakistan do not face a significant risk of societal violence or discrimination purely as a result of their attempt to migrate, or purely because they have lived in a western country. Nevertheless, DFAT noted societal or official discrimination or violence can still occur due to the reason they attempted to migrate, or because of behaviour or opinions they displayed while living abroad. I am not satisfied on the evidence the applicant has expressed an opinion, or behaved in a way, that has brought him to the adverse attention of any group or person in Pakistan whilst he has resided in Australia. No other country information before me indicates militant groups, including the Taliban, target returnees/failed asylum seekers from western countries.
68. In its 2022 report, DFAT stated that returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistani law. DFAT understands that people returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. Returnees are typically able to reintegrate into the Pakistani community without repercussions stemming from their migration attempt.

69. The applicant departed Pakistan legally on his own genuine passport. In his application for protection, he indicated he provided his passport to officers whilst in Australian immigration detention, but it was not returned. I accept he no longer has his passport. Without a current passport, he will very likely return to Pakistan on a temporary document, possibly involuntarily. If he were to return to Pakistan in these circumstances, it is likely he will be interviewed. Given he departed legally, was not of adverse interest to the authorities prior to his departure for any reason and he has not claimed to have committed any criminal offences, I am not satisfied there is a real chance his interview will be prolonged beyond the typical couple of hours reported, or that there is a real chance he will be harmed during or after this interview or further detained. I am not satisfied, on the country information before me, that the applicant will face a real chance of harm from the Pakistani authorities, Sunni militant groups or any other group or person, as a failed asylum seeker returning from a western country or in combination with other aspects of his profile.
70. I have also considered whether the applicant will face a real chance of harm on his return trip to his village in Kurram District. In its 2017 report, DFAT noted travellers in remote areas of Pakistan were at greater risk of criminal or militant violence due to their isolation and the limited presence of security forces and many roads in KP and the (former) FATA fit this profile. In its 2022 report, DFAT made no comment nor raised any concern about travel in the area. I have also considered the recent country information on the overall improved security situation on the roads in and around Kurram District and on the Thall-[Town 2] Road. The country information does not support a real chance of harm for someone of the applicant's profile when accessing Kurram. I am not satisfied the applicant will face a real chance of harm whilst returning to Kurram District.
71. I have considered the applicant's claims, his profile, and the country information before me about the security situation in Pakistan and in Kurram District. On the evidence before me, I am not satisfied he will face a real chance of harm from any group or person in the reasonably foreseeable future if he were to return to Pakistan.

Refugee: conclusion

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

Complementary protection assessment

73. 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

74. 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.

75. 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.

76. I do not accept the [Mr A] was a Taliban informant or member and held a grudge against the applicant and informed the Taliban of the applicant’s assistance to the Shia community. I do not accept the applicant’s brother was kidnapped by the Taliban because of the applicant’s assistance to the Shia community. I do not accept the Taliban found out about the applicant’s continued assistance to the Shia community in 2013. I am not satisfied the applicant will face a real risk of significant harm in Pakistan for these reasons.

77. I have considered the applicant’s profile and the country information before me about the security situation in Kurram District and Pakistan and the potential risks for someone like the applicant. I have found the applicant will not face a real chance of harm in Pakistan. Consequently, he will also not face a real risk of any harm in Pakistan.⁴⁰ There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Pakistan, there is a real risk the applicant will suffer significant harm for those reasons.

Complementary protection: conclusion

78. 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.

⁴⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

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.