



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA16/01076

Date and time of decision: 16 December 2016 11:02:00
Alison Nesbitt, 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 an 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 Shia from Pakistan. In May 2016 he lodged an application for a temporary protection visa (TPV).
2. [In] October 2016 a delegate of the Minister for Immigration and Border Protection refused to grant the visa.

Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's representative provided a submission to the IAA [in] November 2016. The submission includes the new claim that the applicant is a member of the Pashtun Shia Turi tribe and links to approximately 46 items of new country information. I note that the applicant has indicated that he is illiterate and while he received some assistance in the preparation of his TPV application, it was not professional assistance.
5. Section 437DD requires that the IAA must not consider any new information unless it is satisfied that there are exceptional circumstances to justify considering the new information. In relation to information provided by the applicant, there is a further requirement that the applicant must satisfy the IAA that the new information was not, and could not have been, provided to the delegate before the delegate made her decision, or that the new information is credible personal information that was not previously known and, had it been known, may have affected the outcome of the applicant's claims.
6. The IAA 'Practice Direction for Applicants, Representatives and Authorised Recipients' directs applicants, representatives and others seeking to provide new information to the IAA to provide an explanation as to why the information could not have been given to the Department before the decision was made, or the information is credible personal information which was not previously known and may have affected consideration of the applicant's claims, had it been known. I note that the submission from the applicant's representative does not include any such explanation.
7. In relation to the 46 links to new information, these appear to be links to country information and news items accessed at various points over the last five years. I have reviewed the information before the delegate and the links provided by the applicant's representative. None of the 46 linked items was before the delegate. The links are organised under the following headings:
 - Reports and statements on political and security situation in Parachinar in Kurram Agency in Pakistan, and specific to the problems of Turi
 - Reports and statements on persecution against religious minorities and in particular against Shia's in Pakistan
 - Islamic extremism in Punjab, particularly in Lahore
 - Influence and network of Islamic terrorists in Pakistan.

8. The applicant's representative submits that the information to which he has provided links is not new information as the applicant previously mentioned that he was a member of the Turi tribe and there is enough evidence to confirm that Turi Shias face a real risk of harm. I have reviewed the applicant's TPV application, the recording of the TPV interview, and the records of two earlier interviews with officers of the Department and found no mention of the claim that the applicant is a member of the Turi tribe. The basis of the applicant's representative's argument that the claim that applicant is a member of the Turi tribe, and the 46 linked pieces of information are not new information is unclear. I find that the claim that the applicant is Turi and all 46 linked items are new information.
9. In relation to the claim that the applicant is a member of the Turi tribe, I note that the applicant did not include this information in earlier responses to questions regarding his ethnicity. I acknowledge that standard questions on the application form regarding ethnicity are not well adapted to eliciting information about applicants' multi-layered cultural identities. Information before the delegate indicates the Turi tribe live mainly in the applicant's home area of Upper Kurram district of Kurram Agency.¹ I am satisfied that the information that the applicant is a member of the Turi tribe is credible personal information which was not previously known and may have affected consideration of the applicant's claims, had it been known. As this fact was not considered by the delegate I am satisfied that there are exceptional circumstances to justify the consideration of this information.
10. In terms of the links to new information provided, the applicant's representative submits generally that these links show that Shias in Pakistan continue to be persecuted including by hard-line Sunni Muslims, the Pakistani authorities are unwilling or unable to stop the killing of Shias, the Taliban and other groups have stepped up attacks against Shias, sectarian violence is endemic throughout Pakistan, and members of the Taliban have influence in the Government including the security and armed forces, are present throughout Pakistan and consider non-Muslims apostates.
11. None of the linked items post-dates the delegate's decision made on 11 October 2016. While I am conscious of the fact that the applicant received no assistance in the preparation of his TPV application or during his TPV interview, there was a range of recent and credible information before the delegate addressing the risks faced by Shias in Pakistan, including Turi Shias from Parachinar, sectarian violence in Pakistan, agents of violence in Pakistan, and the security situation in Parachinar, Kurram Agency and Pakistan in general.²
12. Having regard to all the circumstances, I am not satisfied that exceptional circumstances exist to justify the consideration of this information.

Applicant's claims for protection

13. The applicant's claims are contained in the information referred and subsequently given to the IAA. They can be summarised as follows:

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

² DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265; European Asylum Support Office (EASO), "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710; FATA Research Centre, "Pakistan Security Report: First Half 2016", 4 August 2016, CIS38A80121730; United States Commission on International Religious Freedom (USCIRF), "USCIRF Annual Report 2015 - Pakistan", 30 April 2015, CISEC96CF1676; DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

- He is a Pashtun Shia from the Turi tribe from a village near Parachinar in Upper Kurram District in Kurram Agency in the Federally Administered Tribal Areas (FATA) of Pakistan. He lived in his village, working [in] the family [business], until 2009. There was fighting and killing and his life was in danger. Shias from Parachinar were targeted in attacks.
- In his TPV interview, he claimed that in around 2007, he was involved in two incidents, about two to three months apart, in which in a car or bus that he was travelling in from Parachinar to Peshawar was stopped and turned around by Pakistani authorities because the Taliban had attacked a vehicle or vehicles ahead of his vehicle. He was not physically harmed in these attacks.
- In his entry interview he claimed that these two incidents took place around 12 years ago and three months ago. He said that the most recent incident occurred in early 2013 after he returned from [country 1] to Parachinar. He was driving to Peshawar when the Taliban started shooting at the cars ahead. Government officials told him to turn around. Nothing else happened to him after returning to Pakistan from [country 1].
- From approximately 2008 to November 2012 he lived and worked in [country 1] as a [occupation]. He travelled to and from [country 1], and lived and worked there legally. He had to leave [country 1] because the government cancelled his visa because he is a Shia. He is afraid that the Taliban will kill him if he returns to Pakistan because he is Shia, and especially because he is a Shia from Parachinar.
- The danger to him is in every area of Pakistan because the enemies of the Shia from Parachinar are everywhere. He can be identified as a Shia from Parachinar because of the details on his national identity card and because of the Pashto language he speaks and/or his accent. The Pakistani Government cannot protect him because they cannot ensure security and safety from terrorist attacks.

Refugee assessment

14. 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

15. 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.
16. The applicant made generally consistent claims in his April 2013 entry interview, his May 2016 TPV application and in his September 2016 interview with the delegate in relation to his TPV application. Essentially, the applicant claims that he fears he will be harmed because he is a Shia from Parachinar, or as a result of the security situation in his area of origin; a village close to the city of Parachinar in the Upper Kurram District of Kurram Agency in the Federally Administered Tribal Areas (FATA) of Pakistan.
17. The applicant appeared to provide consistent and candid responses to the delegate's questions during the interview conducted for the purposes of his TPV application. He provided his original Pakistani passport and national identity card as proof of his identity. I find him to be a generally credible witness.
18. The applicant has provided several original documents in support of his claimed identity. Information before the delegate confirms that his village is in the Upper Kurram District of Kurram Agency, to the southeast of the city of Parachinar.³ I accept that the applicant's name is as claimed and that he was born in a village in the Upper Kurram area of Kurram Agency in FATA, Pakistan in [year].
19. The applicant relied on a Pashto interpreter in his entry and TPV interviews and I accept that he is Pashtun. The applicant claims he is a Pashtun Shia Muslim from the Turi tribe. Information before the delegate indicates that Upper Kurram District's inhabitants are predominantly Shia (approximately 80%) and that the Shia Muslims in Upper Kurram are mainly from the Turi tribe, the only wholly Shia Pashtun tribe.⁴ The evidence provided by the applicant during the TPV interview regarding religious practices peculiar to Shias was credible and I accept he is a Shia Muslim. The applicant's claim to be Turi was not raised before or during the interview with the delegate and has not therefore been explored with the applicant. Nevertheless, in view of the information discussed, I am willing to accept that the applicant is a member of the Turi tribe.
20. The applicant claims that in around 2007 he was involved in two incidents which took place about two to three months apart. In both incidents, a vehicle in which he was travelling from Parachinar to Peshawar was stopped and turned around by Pakistani authorities because vehicles ahead had been attacked. He believed that the Taliban were responsible because they occupied the area in question and that the Taliban targeted the vehicles in question because they were coming from the direction of Parachinar and were therefore believed to have Shia passengers. The applicant was not physically harmed in these attacks.
21. There is some discrepancy in the applicant's evidence in relation to these incidents. In the entry interview conducted on April 2013, the applicant claimed that he experienced one such incident approximately 12 years ago, while the second such incident occurred "three months ago". In his TPV interview conducted in September 2016, the applicant indicated that these two incidents occurred about two to three months apart, with the first incident occurring in around 2007. There is no reference to these incidents in the applicant's TPV application, which

³ Office for the Coordination of Humanitarian Affairs (OCHA), "PAKISTAN: FATA - Kurram Agency - Areas Notified and De-Notified as Unsafe or Safe", 1 June 2012, CIS23524.

⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

is brief and was completed without professional assistance. In a bio data interview conducted in May 2013, the applicant indicated that he left Pakistan because of the security situation and did not mention these incidents.

22. I have considered whether the amount of time that has elapsed since these incidents were claimed to have occurred, and the applicant's level of education and numeracy, may account for these discrepancies. However, while I accept that these factors might account for some variation in dates, I do not think they can adequately account for the great difference between an event claimed to have occurred approximately eight years ago before his departure for the [country 1], and an event claimed to have occurred just under four years ago after he returned from the [country 1] to Pakistan. I therefore have some concerns about the veracity of the applicant's claims in this respect. Nevertheless, in view of information discussed below regarding the security situation in Kurram Agency around 2007, I am willing to accept that one or two such incidents occurred in 2007. Having regard to the inconsistencies in the applicant's evidence, I do not accept that a similar incident occurred in the brief period during which the applicant resided in Kurram Agency between returning from [country 1] in November 2012 and leaving Pakistan in early 2013.
23. The applicant claims to have worked in [country 1] as a [occupation] from approximately 2007-2009 to November 2012. He provided an original ([country 1]) identity card which records his nationality as 'Pakistan', with the expiry date [date]. He also provided an original [country 1] [occupation]'s licence that was issued in [date] and expires in [date]. I accept that the applicant was employed as a [occupation] in [country 1] as claimed and in view of the date of issue of the licence, I find that he started work as a [occupation] in the [country 1] in June 2008.
24. The applicant claims he was obliged to leave [country 1] because the [country 1] government required all Shias to leave the country. Information before the delegate includes a report that the [country 1] Government has cancelled the residency permits of some non-citizen Shia Muslims and instructed them to leave the [country 1].⁵ I accept that the applicant was employed a [occupation] in the [country 1] from 2008 to November 2012 on a legal basis and that he left when required to do so by the [country 1] authorities. There is no evidence before me to suggest that the applicant has a right to enter any other country apart from Pakistan.

The Taliban and security situation

25. The United States Commission on International Religious Freedom (USCIRF) reported that during 2015 the Pakistani Government grappled with a challenging security environment and initiated efforts to fight the Pakistani Taliban. However, despite these efforts, the USCIRF reported that Pakistan continued to experience chronic sectarian violence targeting Shia Muslims, Christians, Ahmadi Muslims, and Hindus.⁶ The Department of Foreign Affairs and Trade (DFAT) reported in 2016 that Pakistan continues to face security threats from terrorist, militant and sectarian groups.⁷
26. The European Asylum Support Office, citing data provided by the Pakistan Institute for Peace Studies, reported that 625 terrorist attacks were carried out by militant, nationalist/insurgent

⁵ US Department of State, "United Arab Emirates - Country Reports on Human Rights Practices 2013, 27 February 2014, OG1F18C90185.

⁶ United States Commission on International Religious Freedom, "USCIRF Annual Report 2015 – Pakistan", 30 April 2015, CISEC96CF1676.

⁷ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

and violent sectarian groups in Pakistan in 2015.⁸ This was a decrease of 48 per cent compared to 2014. About 46 per cent of the reported attacks exclusively targeted the personnel of security forces and law enforcement agencies.⁹ Civilians were the apparent targets in 15 per cent of attacks. A total of ten per cent of the terrorist attacks reported in 2015 had sectarian targets, mainly members of the Shia and Sunni communities and places of worship.¹⁰ Thirty nine attacks targeted tribal elders.¹¹ DFAT reports that sectarian attacks have historically targeted individuals, places of worship, shrines and religious schools.

27. Although sectarian violence has affected all religious and sectarian groups, Shias represent a higher proportion of those attacked and killed.¹² According to the Center for Research and Security Studies (CRSS), for example, 58 per cent of fatalities from sectarian violence (122 of 212 deaths) from January-June 2015 were Shia.¹³ The majority of these casualties were from large-scale attacks rather than targeted killings. DFAT reports that Shia political leaders and professionals such as doctors, academics, lawyers and teachers have been individually targeted in sectarian attacks, particularly in Sindh province.¹⁴
28. Kurram Agency is the only tribal agency in the FATA to have a significant Shia population. Kurram Agency has a history of sectarian violence between Sunni and Shia and a period of intensive fighting between Sunni and Shia occurred from 2007 to 2012.¹⁵ While the information before me includes discussion of the different tribes present in Kurram Agency, the conflict and violence in the Agency is characterised as sectarian rather than tribal in nature. There is no information before to suggest that there is any particular risk of harm to Shias from Parachinar because they are Turi.
29. Militant groups reported to be present in the FATA include the Tehreek-e Taliban (TTP), Mehsud Taliban, Lashkar-e-Islam, Jamaat-ul-Ahrar, al-Qaida, and the East Turkistan Islamic Movement.¹⁶ Since 2004, the Pakistani army has conducted military operations in the FATA aimed at breaking the power of the Pakistani Taliban and affiliated organisations, with serious impacts on socio-economic life in the region including the destruction of educational institutions and reductions in agricultural output.¹⁷ Especially from 2009, the operations against the Taliban have been a source of insecurity, causing massive displacement from the region.¹⁸
30. On 15 June 2014 the Pakistani army launched a major offensive to eradicate terrorists codenamed operation Zarb-e-Azb. The main targets were militant strongholds in the North Waziristan tribal region where insurgents enjoyed sanctuary, although FATA has also been the location of anti-militant activities associated with operation Zarb-e-Azb.¹⁹ On 25 December 2014, after consultation with different political parties, Pakistani Prime Minister Nawaz Sharif announced a 20-point comprehensive plan of action, the National Action Plan (NAP), in order to confront the terrorist threat.²⁰ As operation Zarb-e-Azb continued in 2015, the Pakistani

⁸ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

¹⁴ Ibid.

¹⁵ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

²⁰ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

army was active in the tribal areas, targeting a wide array of militant groups²¹ Since the implementation of NAP a decline in violence has been reported.²²

31. DFAT reported in January 2016 that since the commencement of operation Zarb-e-Azb in June 2014, Pakistan military operations against terrorist and militant groups in FATA and Karachi have substantially reduced the level of generalised and sectarian violence throughout the country. According to DFAT, credible sources have reported a 75 per cent reduction in the number of sectarian and terrorist attacks throughout Pakistan from September 2014 – September 2015.²³ DFAT reports that the Center for Research and Security Studies (CRSS), said there were 77 per cent less targeted killings and 57 per cent less terrorist attacks in the first six months of 2015 than in the corresponding period in 2014 (there were 411 target killings and 150 terrorist attacks over this period in 2015, compared with 1,242 targeted killings and 346 terrorist attacks over the same period in 2014). CRSS and others attribute this decline to operation Zarb-e-Azb and the NAP.²⁴
32. The European Asylum Support Office (EASO) refers to a South Asia Terrorism Portal (SATP) report of a 50 per cent reduction in the number of civilians killed in violent incidents in Pakistan in 2015 compared to 2014. The EASO report provides similar data from a number of reputable sources. While the precise figures vary, all sources reported significant reductions in the number of civilians killed in violent incidents in 2015 compared to 2014 and concluded that this reduction was caused by a decrease in violent incidents in 2015.²⁵
33. The SATP compared the total number of people (including civilians, militants and members of the security forces) killed in violent incidents in the first quarter of 2016 with the number killed in the first quarter of 2015 and reported a 50 per cent reduction.²⁶ According to data in the first quarter analysis report of 2016 conducted by CRSS, 872 fatalities (including civilians, militants and members of the security forces) were counted, a decline of almost 37 per cent compared to the first quarter of 2015.²⁷ SATP data on Shias killed in Pakistan show a strong improvement in 2014, with Shia killings falling from 399 deaths in 2012 and 504 in 2013, to 116 in 2014. The number of Shias killed in Pakistan in 2015 was reported to be 251, higher than 2014 but still lower than the numbers killed in 2012 and 2013.²⁸
34. According to the Pakistani Institute for Conflict and Security Studies (PICSS), the overall security situation in the FATA improved in 2015 as a result of military actions in the area. The Pakistan Institute for Peace Studies (PIPS) reported that 149 terrorist attacks were carried out, a decline of 36 per cent compared to 2014.²⁹ These incidents included attacks on security personnel and facilities. The European Asylum Support Office reported in July 2016 that an Austrian Fact Finding Mission found that the situation in the FATA had improved significantly since the start of operation Zarb-e-Azb.³⁰
35. The Fata Research Centre (FRC) reported that there was a decline of 40 per cent in militant violence in the FATA region in 2015 compared to 2014.³¹ The FRC counted 293 incidents of

²¹ Ibid.

²² Ibid.

²³ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

²⁴ Ibid.

²⁵ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

²⁶ Ibid.

²⁷ Ibid.

²⁸ South Asia Terrorism Portal, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837.

²⁹ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

³⁰ Ibid.

³¹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

violence in the FATA, including attacks on and by militants.³² In 2015 the regions reported to be most affected by terrorist attacks in the FATA were North Waziristan, South Waziristan and Khyber Agency, due to operation Zarb-e-Azb which was mainly carried out in these areas.³³

36. The FRC reported that 35 violent incidents took place in Kurram Agency in 2015, killing 111 and injuring 112 (including militants and members of the security forces).³⁴ Most of the incidents in the first quarter of 2015 occurred in Lower Kurram. According to FRC, this is explained by Lower Kurram District's borders with North Waziristan, over which militants fled into Kurram Agency. PIPS counted 17 terrorist attacks in Kurram, which killed 47 and injured 95 (including militants and members of security forces). A major incident occurred in December 2015 when an IED exploded at a market close to Parachinar city, killing at least 23 people.³⁵
37. EASO reported that by 2015 most of the areas in the FATA had been cleared of militants, resulting in a significant decline in militant attacks.³⁶ As a result of operation Zarb-e-Azb most of the militants are reported to have fled to Afghanistan.³⁷ The FRC reported in August 2016 that intensive military operations in FATA and intelligence based operations in the rest of the country have been highly significant in dismantling militant networks in Pakistan.³⁸ DFAT report that military operations against terrorist and militant groups in the FATA as part of counter-terrorism military operation Zarb-e-Azb continue in 2016.³⁹ The FRC reported in August 2016 that military sources have advised that operation Zarb-e-Azb is about to reach its culmination.⁴⁰
38. The Pakistani government is reported to have taken initiatives in 2016 to restore and improve daily life in the FATA including work on reopening and repairing bazaars and schools and the return of displaced people in the FATA.⁴¹ DFAT reported that returns of displaced persons to homes in Kurram Agency recommenced on 1 October 2015 following a nine-month suspension because of ongoing military operations.⁴² The United Nations Office for the Coordination of Humanitarian Affairs (OCHA), reported that by 19 May 2016, 68 per cent of the families displaced from Kurram Agency had returned to their homes.⁴³ Thirteen thousand and seven families were reported to have returned in the period January to May 2016. DFAT reported that over 3,700 families returned to Kurram Agency in 2014, including Parachinar and surrounding villages in Upper Kurram.⁴⁴
39. Despite the improvements in the security situation discussed above, the FRC reported in August 2016 that militant activities in the first half of 2016 increased by 36 per cent compared to the previous six months.⁴⁵ FATA was reported to be the most disturbed region of Pakistan in this period, recording 302 deaths and 135 injuries as a result of violent incidents.⁴⁶ These figures included deaths of, and injuries to, militants and members of the security forces,

³² EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ FATA Research Centre, "Pakistan Security Report: First Half 2016", 4 August 2016, CIS38A80121730.

³⁹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴⁰ FATA Research Centre, "Pakistan Security Report: First Half 2016", 4 August 2016, CIS38A80121730.

⁴¹ Ibid.

⁴² DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴³ Office for the Coordination of Humanitarian Affairs (OCHA), "Pakistan: FATA Return Weekly Snapshot (from 13 to 19 May 2016)", 19 May 2016, CIS38A8012993.

⁴⁴ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴⁵ FATA Research Centre, "Pakistan Security Report: First Half 2016", 4 August 2016, CIS38A80121730.

⁴⁶ Ibid.

including as a result of military operations.⁴⁷ The FRC report does not provide an analysis of casualties by Agency (area) within the FATA, but I note that Kurram Agency was less affected by violence than other parts of FATA in 2015.⁴⁸ In another FRC report cited by EASO, the FRC reported five militant attacks had occurred in Kurram Agency in the first three months of 2016, with three people were killed and two injured (including militants, civilians and members of security forces).⁴⁹

40. The SATP reported that the number of deaths of Shias reported in Pakistan in 2016 to 28 August 2016 was 18, suggesting a likely improvement for 2016 compared to 2015, when 251 Shias were reported to have been killed in the year.⁵⁰ DFAT assessed in January 2016 that there is a low level of sectarian violence overall in the FATA, although the level of generalised violence varies throughout the FATA, with violence greatest in North Waziristan and Khyber Agencies because of ongoing military activity associated with operation Zarb-e-Azb. DFAT assessed there is a low level of generalised violence in Kurram and Orakzai Agencies. DFAT also reported that serious crime has substantially reduced throughout Pakistan as a result of operation Zarb-e-Azb.⁵¹
41. I accept that the applicant was stopped, but unharmed, on one or two occasions, by attacks by the Taliban or another Sunni militant group on a vehicle ahead of his vehicle during trips from Parachinar to Peshawar in approximately 2007. I do not accept that a similar incident occurred in the brief period during which the applicant returned from [country 1] to Pakistan before travelling to Australia (approximately November 2012 to early 2013). The applicant has not claimed that he or his family have experienced any other incidents of harm at the hands of the Taliban or other Sunni militants on the basis of their identity as Shias from Parachinar or Turi Shias from Parachinar, nor has he claimed that he or members of his family have been targeted by the Taliban or any other Sunni militant group on the basis of their identity as Shias from Parachinar or their membership of the Turi tribe.
42. DFAT assesses there is a low risk of sectarian violence for most Shias in Pakistan and a moderate threat of sectarian violence for prominent Shias such as high-profile professionals. There was also information before the delegate to suggest that tribal elders and religious leaders have been targeted in sectarian attacks. I note that the applicant has worked [in] his family's [business] and as a [occupation]. The applicant has not claimed that he or any member of his family has a profile as a Shia professional, tribal elder or leader, or religious leader.
43. In considering the chance of harm to the applicant as a Shia Muslim or a Shia Muslim from the Turi tribe in his village near Parachinar in Upper Kurram, I have weighed reports of violence in FATA against recent information suggesting a reduction in sectarian violence and an overall improvement in the security situation in Kurram Agency, and in Upper Kurram, where Parachinar is located, in particular. I have considered the recent report of the FRC suggesting that violence in Pakistan in the first six months of 2016 increased compared to the last six months of 2015, but I note that report provides limited information regarding civilian casualties in FATA and no analysis of the differential incidence of violence in the different agencies making up the FATA.

⁴⁷ Ibid.

⁴⁸ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

⁴⁹ Ibid.

⁵⁰ South Asia Terrorism Portal, "Shias killed in Pakistan since 2001", 28 August 2016, CX6A26A6E8837.

⁵¹ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

44. I am mindful of advice that there is a degree of fragility to the current more settled security situation in Parachinar. DFAT noted that a 13 December 2015 IED attack on a market in Parachinar which killed 25 people and injured 62 others highlighted a level of vulnerability in the security arrangements in place in Parachinar, while the FRC warns that the reluctance and inability of the Afghan government to take action against militants who have moved from Pakistan into Afghanistan to escape military operations in Pakistan has allowed them to regroup and re-establish their networks in these areas, with the result that the increasing operational capacity of Pakistani Taliban based in Afghanistan poses a significant threat to the security situation of Pakistan.⁵²
45. Having regard to the range of information before me, I place particular weight on DFAT's assessment that there is a low level of sectarian violence overall in the FATA and a low level of generalised violence in Kurram Agency in view of the recent and credible nature of the report, and its specific consideration of the situation in Kurram Agency. While I accept that incidents of violence may occur in Parachinar from time to time, I am not satisfied that there is a real chance that the applicant would suffer serious harm in or near Parachinar on the basis of his identity as a Shia from Parachinar who is a member of the Turi tribe, or as a result of the security situation in Parachinar.
46. The applicant claims to have departed Pakistan from Lahore airport, flying to [town 2]. There is no evidence before me of any risk associated with the use of Lahore airport. DFAT understands the Thal-Parachinar Road providing access to Parachinar from Peshawar remains open and there have been no major security incidents on the road in 2015.⁵³ Federal security forces continue to maintain armed checkpoints along the road, which is used by both civilian and military vehicles.⁵⁴ In view of the lack of evidence of recent issues associated with the use of this road, I am satisfied that the applicant can safely access his village near Parachinar by flying to Lahore airport, traveling by plane or car to Peshawar and from Peshawar to Parachinar and his village by car via Thal.

Unsuccessful Turi asylum seeker returning from Australia

47. DFAT reports that unlawful emigration is an offence in Pakistan, usually punishable by a small fine. The applicant claims that he departed Pakistan legally, using his genuine Pakistani passport, which he retained on his arrival in Australia. There is no evidence before me to suggest that the applicant has committed or would be suspected to have committed the offence of illegal emigration.
48. The applicant has previously presented his passport to representatives of the Department and there is no evidence to suggest that he would not be able to use this passport to return to Pakistan. DFAT reports that there is no information that returnees travelling on Pakistani passports are punished on return.
49. The applicant's representative claimed that the applicant fears harm as a Turi male who has lived in the west. DFAT reports that western influences are pervasive in Pakistan and many Pakistanis live abroad and return to Pakistan, or have relatives who do so.⁵⁵ DFAT assesses that people who have spent time living in western countries are not subject to discrimination or violence on this basis.⁵⁶ There is no evidence before me to suggest that unsuccessful Turi

⁵² FATA Research Centre, "Pakistan Security Report: First Half 2016", 4 August 2016, CIS38A80121730.

⁵³ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

asylum seekers are targeted in attacks by the Taliban, any other armed Sunni group, or any other group or person.

50. I am not satisfied that there is a real chance of harm to the applicant now or in the foreseeable future, as an unsuccessful Turi applicant for protection who would be returning to a village near Parachinar after living in Australia, a western country, for approximately four years.

51. I have considered whether the applicant, as a Shia from Parachinar from the Turi tribe, and as a person who will be returning to a village near Parachinar as an unsuccessful Turi asylum seeker after living in Australian for approximately four years, faces a real chance of harm. I am not satisfied that any combination of the applicant's circumstances would combine to expose the applicant to a real chance of harm in or near Parachinar.

Refugee: conclusion

52. 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

53. 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

54. 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.

55. I have concluded that the applicant does not face a real chance of serious harm as a Shia from Parachinar from the Turi tribe, or as an unsuccessful Turi asylum seeker who would be returning to a village near Parachinar after living in Australian for approximately four years, or as a result of any combination of these matters. As 'real risk' and 'real chance' involve the application of the same standard,⁵⁷ I am also not satisfied that the applicant would face a real risk of significant harm on these grounds.

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.