



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA18/05681

Date and time of decision: 21 January 2019 12:00:00
S Ryan, 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 national of Pakistan and arrived in Australia [in] October 2013. On 3 February 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 13 September 2018 and referred the matter to the IAA on 14 September 2018.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The portions of the submission to the IAA made up of argument responding to the delegate's decision, and reasserting claims and evidence that was before the delegate are not new information and I have had regard to those matters.
4. Under s.473DD(b) the applicant must satisfy the IAA in relation to any new information given by the applicant that either the new information was not, and could not, have been provided to the delegate before the decision was made, or, that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims. Additionally, under s.473DD(a), the IAA must be satisfied that there are exceptional circumstances to justify considering the new information.

Conduct of delegate and former legal representative

5. The applicant and his representative contend that the conduct of his former legal representative and the delegate, taken together with the applicant's limited knowledge of the process and inability to make informed decisions and instruct his lawyer amount to exceptional circumstances that justify the IAA considering the new information being put forward.
6. The applicant has claimed that his former legal representative did not adequately assist him in understanding the refugee determination process, in that he did not provide any guidance to the applicant prior to the interview, prepared a 'weak' post-interview submission to the delegate that did not include country information, and did not explain the circumstances under which new information would be accepted by the IAA. He claimed his former representative provided him with him with the document 'Important information about your Protection visa interview' (Information Sheet) but did not discuss this with him, and nor did the delegate. Having reviewed the audio record of the SHEV interview it is clear that the delegate did discuss the Information Sheet with the applicant directly. The delegate indicated the purpose of the SHEV interview and then referred specifically to the Information Sheet that he advised had been provided with the 'Invitation to Interview' correspondence. The delegate advised that the Information Sheet contained an explanation of Australia's protection obligations and asked the applicant to confirm whether or not he had read and understood that information. He confirmed that he had.
7. The delegate advised the applicant that it was his responsibility to raise all of his claims for protection and provide evidence in support of those claims. The delegate also advised that, in the event his application was refused and the application is reviewed, that he may not be able to raise new claims to be considered at that review. In response to the delegate's question as

to whether he had any questions the applicant responded by stating that he had no questions at that point, but would raise them later if he did. The information before me does not support the assertion that the delegate did not discuss the matters contained in the Information Sheet with the applicant at the SHEV interview. Furthermore, his affirmative response to the delegate's question about whether he had read and understood the Information Sheet contradicts his claim that he had not. In considering the capacity of the applicant to understand the refugee determination process and receive advice and provide instruction to his legal representative, I note that the applicant speaks, reads and writes in multiple languages, including English, and has completed a tertiary qualification in Pakistan.

8. The applicant claimed that the conduct of the SHEV interview had distressed and frustrated him. He claimed he didn't understand the relevance of some questions, and that he was affronted and rattled when the *'case officer kept telling me to stop speaking'*. The applicant has also claimed that he was very nervous as he had been told beforehand by friends that [specific case officers] would not fairly assess his application and that he would be refused. I accept that the process of giving oral evidence in a protection interview can be stressful; however it is not apparent from the audio recording of the SHEV interview that the applicant was in a state of distress, such that he was unable to articulate his claims for protection or respond to the delegate's questions. On the contrary the interview appeared to be conducted in a calm manner. The delegate interrupted the applicant on two occasions to remind him to keep his sentences brief, explaining that this would enable the interpreter to accurately interpret his responses. The delegate also interrupted lengthy responses on a few occasions during the 'identity and background' portion of the interview and requested the applicant limit his responses to directly addressing his question. The delegate explained that he would have opportunities to articulate his claims for protection at a later point. At two subsequent points during the interview the delegate interrupted the applicant while he was describing his experiences in [an Australian immigration detention facility] to advise that these experiences were not relevant to his SHEV application.
9. I accept that the applicant may have felt affronted by the delegate's manner in the instances described above. Nevertheless I note that he had provided numerous lengthy responses to open questions about his claims for protection. I consider the applicant demonstrated he had a degree of agency in the flow of the interview at a point where he interrupted the delegate to advise that he wished to continue with a particular answer and the delegate agreed he could continue. The delegate provided the applicant with a summary of the key issues that may have formed part of the reasons for refusing his application and provided him with a short break to confer with his legal representative. The applicant advised that he would be instructing his legal representative to provide further written submissions responding to the issues raised by the delegate in the SHEV interview and a submission was later provided to the delegate. The delegate concluded the interview by asking the applicant whether there was anything else he would like to provide as part of his protection claims and the applicant responded 'No'. I am not satisfied that the conduct of the interview has materially affected the applicant's ability to raise all his claims and evidence and respond to the delegate's questions and concerns. I am satisfied that the applicant was given notice during the assessment of his SHEV application of the key determinative issues in his case, and that he has had a real and meaningful opportunity to respond.
10. The applicant was assisted by a qualified legal practitioner in preparing his written application and was advised at multiple points throughout the assessment of his SHEV application that it was his responsibility to include all details relevant to his case and provide any supporting documentation. The applicant and his current representative criticise the former legal representative post-interview submission as it was not 'extensive' and did not introduce

country information. While I note that the applicant is critical of the assistance given by his former legal representative, I am not satisfied on the evidence before me that his representative has disregarded his instructions, misrepresented his claims, or that the representative's conduct has been the subject of a formal complaint.

11. Considering the matters discussed above, I do not regard either the conduct of the delegate or the actions of the applicant's previous legal representative amount to circumstances that are exceptional.

Country information

12. The range of country information submitted by the applicant's representative has all been published prior to the delegate's decision. Much of the information is presented in support of argument with the delegate's finding that the applicant does not face a real chance of serious harm if he were to return to area of Pakistan outside of his home region, or that it would be reasonable for the applicant to relocate to another area of the country. For the reasons outlined below I have concluded that the applicant does not face a real chance or real risk of harm in the area he would return to, and so the question of his ability to relocate to another area of the country does not arise for consideration. The submission also presents information concerning the methods by which sectarian militants threatened Shias in 2012. I have otherwise accepted that Sunni militant groups like the *Tehrik-e-Taliban Pakistan* (TTP) have employed coercive and threatening tactics issue such as issuing written threats to Shia people. I do not consider the information provided with the submission on this topic further assists this assessment. I am not satisfied that there are exceptional circumstances to justify the consideration of this information.

General Practitioner (GP)'s letter

13. The letter issued by a GP on 2 October 2018 relates the applicant's mental health at the time of examination and is new information. It confirms that the applicant is suffering from depression and anxiety which was information provided by the applicant's counsellor and was before the delegate. The GP further relates that the applicant is taking medication to manage his symptoms. Noting that the letter is an update on the applicant's state of health that occurred after the delegate has made his decision, I am satisfied the applicant could not have provided the delegate and that there are exceptional circumstances to justify the consideration of this information.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:
 - He is a Shia Muslim from the Pashtun Turi tribe. He was born and raised in [Parachinar] district of the Kurram Agency of Khyber Pakhtunkhwa Province (KPP).
 - From around 2007 Shia people in Parachinar became the target of the TTP as they fought for control of the area with various tribes, including the Turi. The Parachinar area is virtually blockaded and vehicles on the roads around it are ambushed by the TTP.
 - He left Parachinar in November 2006 to complete a [degree] in Peshawar. During that time he received threatening phone calls from Sunni militant groups. He travelled home from Peshawar during study breaks and he narrowly avoided being killed in two attacks on convoys in which he was travelling in April 2008 and March 2010.

- He knows of many Shia people who have been killed or injured by the TTP, including his cousin who was abducted by the TTP and was subsequently released after paying a ransom.
- The TTP target well-educated Shias.
- While completing a [degree] in Parachinar he worked for his brother's [shop] and was concerned for his safety during this time as the TTP consider [that some of the products the shop provided are] against their religious beliefs. His brother has since closed the shop and fled Pakistan to seek asylum [overseas].
- He arrived in Rawalpindi in November 2010 to undertake further studies. He commenced a [course] in February 2012 but was targetted by various Sunni militant groups militants with repeated threats by phone and in writing, and abandoned his studies after one semester. He fled Pakistan as a result of these threats.
- He fears that, as a result of his personal details being publicly released whilst in detention in Australia in 2014 that he would come to the adverse attention of the Pakistan intelligence agencies as he will have been assumed to have sought asylum.
- He is unable to live in any part of Pakistan as the TTP operates throughout Pakistan. The TTP particularly target Turi Shias and he is easily recognisable as such on the basis of his name, religious practice, accent and national identity card.

Refugee assessment

15. 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

16. 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.
17. I accept the applicant is a practicing Shia Muslim, is of Pashtun ethnicity and is from the Turi tribe. He was born and spent most of his life in [Parachinar] in the Kurram Agency in the

Federally Administered Tribal Areas (FATA) of Pakistan. The applicant has never been married and his parents and [his] brothers live in Parachinar. He has another brother who is in [Country 1]. The applicant grew up in Parachinar, before completing two years of education in Peshawar between 2006 and 2008, and then returned to Parachinar to complete a [degree]. He then lived in Rawalpindi for one year before commencing studies towards a [qualification] in 2012. He completed only one semester before withdrawing from that course. The information before me does not suggest that, if he returned to Pakistan that he would seek to live in Rawalpindi, or that he would still be eligible to recommence the course he studied in 2012, or that he has any material ties to the city. I find that Parachinar, where he has resided the majority of his life and where his family continue to reside, is the area to which the applicant would return. I accept that, if he returned to Parachinar, the applicant would very likely regularly attend public areas and events frequented by Shias, such as markets, mosques and Shia ceremonies.

18. During the SHEV interview the delegate advised that he considered the applicant's oral account of having received threats from the TTP whilst in Rawalpindi to be inconsistent with the account in his written application. The applicant responded that his experiences in Pakistan, the length of time that had elapsed since the events, and his experiences of detention in [Australia] have impacted on his ability to remember things accurately. The applicant claims that the immense emotional trauma, social and psychological hardship he has experienced has impacted his mental health condition. In the post interview submission his representative referred to a letter prepared by the applicant's mental health social worker on 20 August 2018. As related by the mental health counsellor and by his GP in October 2018, I accept that the applicant has been diagnosed as having symptoms consistent with depression, anxiety and stress. The counsellor reports that the applicant attributed these symptoms to events he has witnessed in Pakistan, his experiences in immigration detention, his fears for the well-being of his family and separation from them, and the uncertainty surrounding his life and visa status in Australia.
19. I accept the observations made by the counsellor and GP and accept that the applicant suffers from symptoms caused by his experience of depression, anxiety and stress. However I attach little weight to either of these letters as independent, corroborative evidence of the applicant's claim to have a well-founded fear of persecution in Pakistan; noting that the counsellor's account appears to be based solely on the applicant's own account of his circumstances in Pakistan. I also note that the counsellor's letter is an informal summary and indicates only that the applicant had commenced mental health counselling two weeks prior and is willing to continue attending counselling. Neither letter provides an assessment as to the extent to which his ability to recall events or give evidence in support of the SHEV application might be affected by his condition. Nor does either letter provide detailed information about the applicant's current mental health condition, or a prognosis for his recovery.
20. The report on the applicant's mental health is presented in the context of the impact his condition may have had on the applicant's capacity to recall events and dates. His current legal representative noted the delegate's assessment of the applicant's mental health and access to health care in Pakistan, and pointed out that this was never raised as a concern by the applicant and is irrelevant. He has not asserted that he will be unable to obtain treatment for his medical condition or that he faces a real chance of persecution or significant harm on this basis, and I am satisfied that is so.
21. Nevertheless, I accept that the passage of time, the stress of giving oral evidence in an interview, and the applicant's mental health condition have impacted on his ability in the SHEV interview to recall events from 2011 and 2012 precisely, and I take this into account. I have

considered whether these factors could explain the significant inconsistencies and discrepancies in his account of having been personally targeted by sectarian militants whilst in Rawalpindi and I am not satisfied that they can. I consider the applicant's oral account of his experiences in Rawalpindi to be significantly inconsistent with his earlier written statement; particularly in relation to the timing, frequency and nature of the threats he received. The written account specifies names, places and dates and was based on claims prepared whilst the applicant was in [detention] in 2013. I note also that, during the SHEV interview, the applicant referred to his memory of events being 'fresh' at the time he was preparing his written claims.

22. During the SHEV interview the delegate put to the applicant that his evidence was significantly inconsistent with information he provided in this earlier written statement and he responded that he had difficulty recalling exact dates due to the passage of time, his experiences in [detention] and his memory issues as a result. In the submission to the IAA the applicant's representative has contended that the applicant's mental health condition has affected his recall of minor details, but argues that, even taking this into account, his oral testimony was '*almost entirely consistent.*' I do not find this to be the case, nor do I accept that his issues recalling events and timelines whilst providing evidence during the 2018 SHEV interview can explain the significant inconsistencies and scant information within the 2017 SHEV application that was based on an account prepared in 2013, and noting that both accounts were prepared with the assistance of a legal representative.
23. In his 2017 written statement he claims that, whilst living in Rawalpindi between November 2010 and May 2012, he received weekly phone calls and one threatening letter [in] November 2011, but did not specify who it was from, or whether it was specifically addressed to him. The applicant claimed he did not take the threatening phone calls seriously, and it was only after receiving a letter under his door from an extremist militant group [in] November 2011 that he understood the threats were serious, abandoned his studies and left Pakistan. These events appear incongruent with his account of his educational and residential histories where he claims to have been living in Rawalpindi since November 2010, but only commenced studies at university in February 2012. He stated he withdrew from the course in April 2012, and then left Rawalpindi in May 2012, at which point he departed Pakistan. From this timeline it appears he commenced his studies five months after having received the threatening letter that he states was the reason he quit his studies and fled Pakistan. Noting that the delegate was not satisfied that these events had occurred, I consider the applicant's subsequent submissions do not clarify these events, and, even taking into account the explanations provided, do not adequately explain these inconsistencies.
24. The applicant's account given in the SHEV interview of having been threatened by militants whilst studying is significantly different to his written claims. Towards the end of the interview he stated that he had received many threatening phone calls from extremists whilst studying in Peshawar in 2010, and that this was the reason he returned to Parachinar to continue his tertiary studies. I find it telling that he did not mention having been personally threatened by militants in Peshawar in his earlier written statement (in which he describes his time in Peshawar in some detail), and nor did he mention Peshawar in an earlier part of the SHEV interview when he recounted his experience of having received personal threats from militant groups. He had introduced this claim only after the delegate had indicated he was considering whether the applicant could relocate to another city. Noting the above, and in the absence of any corroborating evidence, I do not accept that this occurred.
25. During the SHEV interview the applicant claims to have been one of many Shia students in Rawalpindi who received threatening phone calls and letters, that his friends took the letters

to the police who advised that such threats were common and took no action. The applicant claimed that the phone calls escalated to the point where he was receiving them weekly. When asked by the delegate to specify how many letters he received and when, he said that the share house in which he was staying received one letter for all the people staying there, and he later received another letter personally addressed to him around six weeks before he left Pakistan in May 2012. During the SHEV interview he has claimed to have received multiple letters and that, as a result of the intensive harassment, he and his friends changed addresses every two months to avoid attacks. From the applicant's evidence he had retained the threatening letters that he received, but despite being on notice that the delegate had concerns with the veracity of this aspect of his claims, he did not provide any of the threatening letters that he claimed to have received and retained.

26. During the SHEV interview the applicant also claimed that he is aware of Shia students studying at a [tertiary] level who have received similar threats, some of whom have been killed, kidnapped or have disappeared. The delegate asked him why he did not mention this in his written statement and he said he had mentioned the case of [Mr A]. In the post interview submission he named five persons, but did not provide any further information concerning the circumstances of these people, or independent information corroborating his claims that they have been targeted in this manner. I note that [Mr A] was one of the persons mentioned in the written statement as an acquaintance he had once met who had been one of a number of people kidnapped whilst travelling in a convoy between Peshawar and Parachinar. This does not appear to accord with the applicant's characterisation of this person being part of a cohort of Shias who, like him, were [students] in Rawalpindi who had been targeted by sectarian militants and have come to harm.
27. In its 2016 report DFAT cite an analyst reporting that Rawalpindi had become a focus of insurgent militant groups driven out of Karachi and the FATA. Country information before me also confirms that the sectarian Sunni groups frequently used tactics such as text messages and letters with sectarian threats in order to intimidate and coerce minority communities such as the Shias. However the country information before me does not support the applicant's claim that Shias are selectively targeted by sectarian militia groups on the basis that they are educated or seeking an education. While DFAT, EASO and ACCORD indicate that Islamist groups such as the TTP do undertake targeted attacks on schools, colleges and universities in Pakistan, the schools appear to be targeted as they are the sites of liberal or secular curriculum, or as symbols of the Federal government, particularly as security forces are known to occupy and operate out of educational institutions in the FATA. The 2016 DFAT report indicated that militant and criminal groups involved in kidnapping have been known to target minorities perceived to have wealth, including those perceived to be wealthy migrants from tribal areas. The country information before me (including EASO, DFAT and ACCORD) indicates that the great majority of casualties from sectarian militant group attacks on Shias are from large-scale indiscriminate attacks rather than target killings. Targeted attacks on individuals are generally focussed on prominent Shias such as tribal elders, religious and political leaders and high-profile professionals.
28. The applicant has not claimed to have ever held a prominent role in his village or at university in Peshawar or Rawalpindi, to have been a member or activist in a religious or political group, participated in peace negotiations, been a member of a tribal or religious militia, or to have undertaken any other activities that might draw the adverse attention of the TTP or another Sunni militia group. This, of course, does not preclude the possibility of a person not fitting these profiles being threatened or harmed, but taken together with the concerns I have noted above, I am not satisfied the applicant's claim to have been the subject of a sustained series of personalised threats of harm or death by members of various sectarian militia groups is

credible, and I do not accept these events occurred as described. I consider that he has fabricated evidence regarding the frequency and personally targetted manner in which he was harassed and threatened by sectarian militia groups whilst in Rawalpindi.

29. Notwithstanding the above finding, I accept that the applicant may have been one of many thousands of Shia people living in Rawalpindi who received messages of sectarian hatred that were broadcast to his community, or was aware of such messages, and was aware of the sectarian groups' ongoing intent to commit violence against Shia communities. I accept that the applicant may have held a genuine fear for his safety; particularly in the context of his experiences in the FATA, and the periodic attacks on Shias living in Rawalpindi by Sunni militants that occurred during this period. I also accept that this environment may have been the reason or part of the reason he quit his studies in Rawalpindi and left Pakistan.
30. The applicant has claimed that his family ran a [store] in Parachinar and that while he occasionally helped out at the store he was worried about his safety as the TTP are known to target any businesses connected to [a specified] industry. While I note that the applicant advised his brother sold the [store] and has left Pakistan to seek asylum, there is no information provided by the applicant that suggests the family's [store] or any person associated with the store was ever threatened or attacked, either at the time he worked there or any other time. The information before me does not suggest that either the applicant or any member of his family have been threatened, harmed or otherwise come to the adverse attention of sectarian militants as a result of their association with the [shop].
31. There is no credible evidence before me that either the applicant or his family have ever been personally targeted by the TTP or any other sectarian militant group in Parachinar. I do not accept that the applicant has had a personal, adverse profile with the TTP or any other militant or sectarian organisation. The information before me confirms that the TTP and other Sunni militias have targetted Shia civilians in Parachinar, and I accept that the applicant may be readily identifiable to these groups as a Turi Shia Pashtun from Parachinar, and that as such, they may assume he is, like the rest of his community, opposed to their organisation and its aims.
32. I accept that the applicant has had a number of highly affecting personal experiences of violence in his home region, Peshawar, and Rawalpindi; including surviving attacks made by the TTP on convoys on the roads to Parachinar, receiving threatening messages and knowing similarly situated people who have been harmed, kidnapped, killed or who have disappeared. His recounting of his experiences and events in Parachinar was consistent, detailed and plausible, and is supported by independent country information. I accept that, in the context of his personal experiences and the long-term unrest and violence in his home region, the applicant holds a subjective fear of harm if he were to return to Pakistan. However for the following reasons I am not satisfied that that fear is well founded.
33. The European Asylum Support Office (EASO) notes that the Kurram Agency is located alongside Pakistan's north-western border with Afghanistan. The Department of Foreign Affairs and Trade (DFAT) advise that Shias make up 80 per cent of the population of Upper Kurram Agency, in which Parachinar is the largest town. Shias living in Kurram Agency are largely made up of the two Pashtun tribes found in Upper Kurram Agency that have clans following the Shia sect; the Turi and the Bangash.
34. Country information confirms Kurram Agency has been the site of decades of sectarian tension between Sunnis and Shias that has periodically catalysed into intense fighting. The arrival of the pro-Taliban Pakistani militias in 2007 caused the violence to flare again in Kurram Agency

and there was significant fighting between Sunni militias (that included TTP as well as Bangash and Mangal Sunni tribespeople) and Shia militias. The Middle East Institute notes that the applicant's home region, Parachinar, had particular strategic value to the Sunni militants as it was the capital city of Kurram Agency, had a predominantly Shia population, and was a vital passageway between Pakistan and Afghanistan. According to Zahab the TTP's tactic was to stoke sectarian and tribal tensions in the FATA to fuel conflict, expand their control, and keep the Pakistani government forces out of the region. During the most intense period of the conflict Sunni militias controlled the Thall-Parachinar Road that connected Upper Kurram to Peshawar (and the rest of Pakistan) resulting in shortages of food and medicines in Upper Kurram.

35. EASO, DFAT and FRC all assess that the security situation in the FATA has improved significantly as a result of the Pakistan Armed Forces' continuous counter-terrorism operations that commenced in 2014 (Operations 'Zarb-e-Azb', 'Rajgal', and 'Radd-ul-Fassad'). Contemporary country information before me describes how the TTP and other Pakistani sectarian militant groups have been greatly weakened by the successive military operations undertaken in the FATA. EASO now describe the Pakistani security forces' current operations in the FATA being out of the 'main combat phase', and that they are now able to focus on clearing isolated pockets of the insurgency. The sources noted above, and my analysis of data to April 2018 from the South Asia Terrorism Portal (SATP) on sectarian violence against Shias shows that there has been an escalation of fatalities from violence in those provinces that earlier experienced a decline, while an inversely opposite trend was observed in other provinces. I particularly note that in recent years violence against Shias in Balochistan and Sindh has spiked, while violence in the FATA has declined.
36. I accept that the Sunni militant's significant territorial losses in FATA and Khyber Pakhtunkhwa Province (KPP) has not translated to the complete elimination of the threat posed by these groups. Contemporary country information before me indicates Pakistan continues to face significant security threats in some areas from insurgent, separatist and sectarian militant groups and highlights the highly regionalised nature of conflict and security risk in Pakistan, which makes it difficult to summarise with broad observations at a national level. While diminished, the TTP and other Sunni sectarian groups have shown some capacity to undertake limited and sporadic attacks in Pakistan throughout 2017 and 2018; particularly in provinces like KPP, Balochistan and Sindh. The Pakistani pro-Taliban groups, in particular, have shown that they have regrouped in Afghanistan, and were able to carry out a series of high profile and complex attacks in 2017 by infiltrating inside Pakistan with the help of local sympathisers.
37. This saw a sharp spike in violent, sectarian attacks by Sunni militants in Kurram reported in the first part of 2017. EASO observed that after Shias in FATA had experienced two comparatively peaceful years (there was only one sectarian attack in FATA in 2015 and one in 2016), there were three large-scale attacks targetting Shia civilians in Parachinar carried out by sectarian Sunni militants in January, March and June 2017. The scale and nature of the attacks in the first half of 2017 highlighted the vulnerability in the security arrangements that were in place in Kurram Agency at that time, particularly for Shias.
38. The situation in Parachinar is somewhat different to the rest of the FATA; the Shia population is much more concentrated and are the overwhelming majority. DFAT's September 2017 reported the Pakistani armed forces took over control of the city's checkpoints. I note the same DFAT report cited unnamed third party sources speculating violence would likely increase again after a period of relative calm, and that DFAT's assessment at that time was that the risk of sectarian violence for civilians in Kurram Agency, particularly in Parachinar, was higher than in other parts of the FATA. Some analysts attributed the attacks in Parachinar in the first half

of 2017 to be the actions of an Afghan affiliate of Islamic State and other affiliated groups. However this was expressly denied by the Pakistan military, and DFAT assessed that it was unclear the extent to which Islamic State was operational in Pakistan and directly involved in those violent attacks in Pakistan, or whether attacks claimed by Islamic State were in fact conducted by other militant groups motivated by shared ideological goals.

39. DFAT noted in September 2017 that the splintering of pro-Taliban militant groups meant that their capacity for cohesive campaigns of coordinated attacks had been reduced, but has also resulted in a larger number of smaller groups competing with each other, potentially resulting in more nimble and unpredictable security threats. EASO made similar observations in August 2017 that the reduced capacity of militant groups to carry out large scale attacks has led to an increase in more targeted attacks on individuals. While I note DFAT and EASO expressed some caution about the prospects for durable security arrangements in Kurram Agency in their 2017 reports, they both noted the significant drop in sectarian and other violent incidents and casualties in Kurram in the second half of 2017. Further to this I note that the April 2018 SATP report showed there did not appear to have been any further sectarian attacks on Shias in Parachinar, or the FATA more widely, since June 2017. There is no other evidence provided that indicates that there has been any subsequent deterioration in the security landscape in Kurram Agency or the FATA more broadly.
40. The information before me does not indicate that, since June 2017, Shias in Parachinar have been unable to conduct rituals, attend festivities and shrines or observe specific holidays, such as Muharram, or that militants have used these or any such high profile public event to conduct attacks on Shias. I note the continuing operations of the United Nations Office for the Coordination of Humanitarian Affairs in Kurram Agency in monitoring the return of more than 22,000 families to their homes in Kurram, many of whom had been displaced since the conflict escalated in 2008. DFAT's September 2017 report confirmed large numbers of internally displaced persons returning to their villages following the improvements to the security situation in the FATA.
41. The return of such large numbers of internally displaced persons in Kurram in recent years may also be seen as tangible evidence supporting the EASO observation in 2017 that the Pakistani government has had some success in regaining public trust from the people of FATA in its ability to provide durable security in the FATA. Country information indicates the road connecting Parachinar to Peshawar is open and has remained under control of the Pakistan authorities for a number of years without a major security incident.
42. In his statements in the August 2018 SHEV interview, the submission made to the delegate in September 2018, and in the submission to the IAA in October 2018 the applicant has reiterated his claim that his home region, Parachinar, is not safe. The applicant has presented country information relating historical incidents of violence against Shias in Kurram Agency and more recent sectarian violence in other regions across Pakistan. None of the information presented by the applicant or his representative indicates that there has been any further violence against Shias in Kurram or Parachinar since the three attacks in the first half of 2017, or that the security situation in Parachinar (or Kurram Agency more broadly) has deteriorated in 2018.
43. The applicant has contended that militant attacks can be seen as a pattern of waves, where it is 'good' for six months and then 'bad' for the next six months. In the submission to the IAA the applicant's representative argues that the SATP statistics reflect the volatility and lack of a reliable pattern of stability in the security situation in Pakistan. It is clear that some of the underlying causes for insurgent and sectarian militancy in Kurram Agency, and Pakistan more broadly, remain unresolved, and that, despite significant improvements, there remains a

degree of fragility to the current security arrangements in Kurram. Nevertheless it is also clear that the scale of the violent unrest and the frequency and severity of sectarian attacks in the FATA has been reduced significantly, over a number of years, and that the absence of further militant actions after the three attacks in Parachinar in the first half of 2017 suggests those unfortunate incidents do not appear to represent the commencement of a new pattern of violence or unrest. I do not regard the three 2017 attacks in Parachinar amount to a reversal of the longer term security trend showing a steady decline in sectarian and other forms of violence in the FATA, which is evidence of the significant diminishment of the capacity of the TTP and other sectarian militant groups to undertake attacks in Kurram Agency. Rather, in the context of the more recent history of the area, the absence of any ongoing attacks for what may now be regarded as a sustained period indicates a significant reduction in the risk of harm.

44. In light of the information before me, particularly that of the changing country conditions in Parachinar, I consider the chance of the applicant being killed or otherwise harmed for the reason of being an educated Pashtun Shia Muslim from the Turi tribe in Parachinar is remote. I am not satisfied the applicant faces a real chance of harm on this basis.
45. The applicant claimed that he feared being arrested by Pakistani government security agencies as a result of his personal details being publicly released whilst in detention in Australia. He fears that he and his family members who are in Pakistan may come to the adverse attention of the Pakistan security agencies as he will have been assumed to have sought asylum. He confirmed that his family have not been contacted by Pakistani government however expressed fear that this may be a reason he would be 'taken' by the Pakistani government if he returned to Pakistani.
46. The applicant's personal information (name, date of birth, nationality, gender, and detention details) was temporarily available for public access on the Department of Immigration's website for a brief period in February 2014, and I accept that this report may have been downloaded for distribution or republication. I am willing to accept that it may be inferred from such matters as the applicant being in immigration detention that he was seeking asylum.
47. There is no evidence before me indicating that the applicant's basic personal information has been accessed by either the Pakistan authorities or some other party in Pakistan as a result of the data breach, either during the period of the data breach or at some point afterwards. The applicant did not claim that the TTP or any other sectarian group had accessed his data and did not claim to fear harm on this basis. Even if it were the case, I do not consider this would materially change his profile with such groups. As a Turi Shia from Parachinar he will be assumed by sectarian groups to be their opponent.
48. DFAT assessed in 2017 that, despite an increasing conservatism and religiosity across the country, individuals in Pakistan are 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. DFAT further notes that the influence of the West is pervasive in Pakistan, and that many Pakistanis live abroad and return to Pakistan, or have relatives who do so. DFAT assesses that people who have spent time living in Western countries are not subject to discrimination or violence on this basis. DFAT's assessment does not indicate that a person who has lived and sought asylum in a Western country faces a real chance of harm if returning to Pakistan. I have found that the applicant does not face a real chance of harm by a sectarian militant group for the reason of being a Turi Shia Muslim in Parachinar. I am not satisfied that he faces a real chance of any harm should it become known to these groups that he is person who had lived in Australia or sought asylum.

49. The applicant departed Pakistan on a genuine passport issued in his true identity and did not bypass official exit procedures, however he has since disposed of this passport. If returned to Pakistan, the applicant will need to apply for a temporary passport and provide his personal details. The manner of his return will make it apparent to Pakistani authorities that the applicant may have spent some time in immigration detention and may have sought asylum in Australia. I am not satisfied the applicant faces a real chance of harm as a returning asylum seeker and I am not satisfied that the potential disclosure of his personal details in the data breach would materially change these circumstances or otherwise give rise to a real chance of harm.
50. DFAT understands that those returned to Pakistan are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. There is no information before me is that the applicant departed illegally, is wanted for crimes in Pakistan, or committed any offences while abroad, or that he would be suspected of being involved in human trafficking or people smuggling operations.
51. DFAT also advise that some returnees to the tribal areas of Pakistan have come to the attention of Pakistani security forces after being identified by intelligence agencies as “suspects or collaborators” either of sectarian militant or Pashtun nationalist groups. The applicant has claimed that he is readily identifiable in Pakistan as a Shia Muslim and I accept this is the case. Given this, and without more, it is highly unlikely he would be suspected to be a collaborator with a Sunni militant group. He does not claim to have ever trained or fought with, or otherwise been associated with Shia militant groups or Pashtun nationalist groups, or claim that he has ever been suspected of such activity. There is no information before me that would indicate that, if returned to his home region he would be of any risk of coming to the attention to Pakistani security forces on this basis.
52. I am not satisfied the applicant faces a real chance of harm on the basis that his personal information was disclosed, or having returned from a Western country where he has sought asylum.

Refugee: conclusion

53. I am not satisfied that the applicant has a well-founded fear of persecution. 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

54. 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

55. 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.

56. I am not satisfied that the applicant would face a real chance of any harm on the basis that he is an educated Pashtun Shia Muslim from the Turi tribe in Parachinar with a mental health condition, who has previously worked in a [specified store], whose personal information was disclosed and who would returned from a Western country where he sought asylum. As 'real risk' and 'real chance' involve the application of the same standard, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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