



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/06839

Date and time of decision: 14 August 2019 14:52:00
D Power, 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 Turi Shia from Pakistan. On 29 December 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 16 July 2019 a delegate of the Minister for Immigration refused to grant the visa. The delegate found that the applicant had a well-founded fear of persecution in Kurram Agency but that he could relocate to another major city in Pakistan such as Lahore or Islamabad. The delegate also found that the applicant did not have a well-founded fear of harm or a real risk of significant harm in those cities on the basis of his faith or ethnicity, due to his former profession as a [occupation], because he would be unable to find employment or otherwise subsist, or as a former asylum seeker and returnee from a western country.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 9 August 2019, the IAA received a submission from the applicant's agent which refutes a number of the delegate's findings. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates or discusses a number of claims made to the delegate.
5. Attached to the same 9 August submission are a number of documents relating to the applicant's medical history. The agent states that because the applicant's doctor was previously on leave, the applicant "could not obtain the report prior to the Department making a decision on his application". There are multiple medical documents attached to the submission but presumably this specific contention refers to the letter from Dr [A] dated 29 July 2019, which post-dates the delegate's decision. It is new information. The doctor notes a history of tension headaches and a "history of fatty liver/NASH". The other attachments are all reports or printouts that pre-date both the delegate's decision and the interview with the delegate. Leaving aside Dr [A]'s letter, the most recent document is dated 4 April 2019 and the oldest document is dated 5 December 2017. The agent has not given any indication how long the doctor was on leave. While I accept that the applicant's doctor may have been on leave for some unspecified period of time, this would not seem to reasonably explain the failure to provide some of the older documents (the December 2017 letter from the applicant's treating neurologist, for example).
6. I note also that even in the absence of documentation, nothing prevented the applicant from raising his medical history with the delegate if it was genuinely a concern. The agent made a submission to the delegate on 7 June 2019 but made no reference any of the applicant's medical issues, despite specifically dealing with the feasibility of the applicant relocating elsewhere in Pakistan. Neither did the agent seek an extension of time to provide further medical information at that time or in the month that followed prior to the delegate making a decision. Neither the letter from Dr [A] nor any of the other documents indicate that the applicant is unable to work or in any way restricted from working. The latest letter dealing with his liver issues appears to indicate that the applicant has made significant progress on improving his diet and losing weight and that his prognosis is now good. The latest report dealing with his headaches, dated 5 December 2017 from a Dr [B], indicates that the applicant

can cope with his headaches, his general health is good and that he has no other medical problems. These reports from the applicant's treating doctors are clearly credible, personal information. However, given the relatively sanguine medical assessments in these letters, I am not satisfied that they may have affected the consideration of the applicant's claims. I also have concerns about the genuineness of the applicant's claim that health issues would affect his ability to relocate, given that he is only now putting forward this information (and raising this concern) despite the subject of relocation being canvassed at length by the delegate. Given all of the above, I am also not satisfied that there are exceptional circumstances that justify consideration of this information under s.473DD.

Applicant's claims for protection

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

- The applicant is a Turi Shia Pashtun from Kurram Agency in Khyber Pakhtunkhwa (KP) province.
- The applicant grew up in [Village], near [Town], where his family worked as farmers.
- The applicant completed high school and attended university, gaining a bachelor's degree. He worked briefly as a [occupation] at a [workplace] in [Town].
- The situation in [Town] was unsafe. From 2007 onwards, extremist groups perpetrated many attacks against Shias in Kurram Agency.
- The applicant was particularly fearful given the prevalence of attacks on [workplaces] and his profession as a [occupation].
- He was afraid that he would be killed every time he left home. He was unable to continue living in such a dangerous environment and in May 2009 he went to [Country].
- In [Country] he worked as a [occupation 2] for four years. He returned home to Pakistan only once, in 2010 for two months, when his mother was ill. He rarely went out at that time and continued to fear being killed.
- In 2013, he was notified that he had to leave [Country] or he would be forcibly deported back to Pakistan, but does not know why. Believing he would be killed in Pakistan, he fled to Australia before being deported from [Country].
- After the applicant left Pakistan in 2013, his [sibling] was caught up in an incident at a market in [Town] when an explosion occurred, killing and injuring many people. His [sibling] was not directly next to the blast but was still injured.
- The applicant cannot relocate anywhere in Pakistan. Extremist groups will target him wherever he goes in Pakistan. He will easily be identified as a [Tribe] Shia and especially vulnerable as he will be without any family support.
- He will be further targeted due to spending time abroad. His way of life and values have changed. The Taliban hate western culture. The Taliban and other extremist groups would target him due to his westernised behaviour.
- The Pakistan authorities are weak and corrupt, and Sunnis dominate the government. Shias have no protection.

Refugee assessment

8. 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

9. 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.
10. I accept that the applicant is a Shia Pashtun from the [Tribe]. The applicant has given a consistent account of his identity and provided a number of documents in support of that identity and to substantiate his claims to hail from Kurram Agency. The applicant spoke fluently and in some detail at interview about the area where he grew up and his religious practice. I accept that his identity, ethnicity, tribal affiliation and nationality are as claimed, that he is a national of Pakistan, and that Pakistan is his country of reference for the purposes of this decision.

Shia [Tribe] Pashtun

11. The applicant grew up in [a village] near [Town] in Kurram Agency. The applicant’s family still reside there. The applicant’s [siblings] farm their own plots of land there. The applicant completed his schooling in [Town] and attended university there, completing his studies in 2008. The applicant claimed that after a brief period [working], he left Pakistan for [Country] in 2009 due to fears for his personal safety and a lack of job opportunities.
12. It is understandable that the applicant held fears for his safety during this time. He graduated from University at a time of heightened sectarian tensions in Kurram Agency, and when Turi Shias were particularly being targeted¹. However, the applicant was never personally harmed during this period or at any other time. When the delegate asked whether there had ever been a specific threat against the [workplace] where he worked, the applicant said no. The applicant

¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

said that after he departed Pakistan his [sibling] had been present when a bomb attack occurred in [Town] market, and that his [sibling] had been injured. However, his [sibling] was not personally targeted by the attack and this appears to be the sole occasion on which his family were directly caught up in the sectarian violence.

13. Nevertheless, targeted sectarian violence against Shias continues to occur in Pakistan, and there have also been specific threats against Turis in KP province². In contrast to the overall improvement in the security situation in Pakistan, the number of terrorist fatalities significantly increased in Kurram Agency in 2017³. DFAT particularly notes three attacks in [Town] in the first half of 2017 that specifically targeted Turis and claimed 120 lives. Although DFAT notes some improvement in the security situation for Turis since the 2017 attacks, it also notes discrimination and violence towards Turis “remains significant” within Kurram Agency, due in part to concerns regarding Iranian influence within the Shia community and the enduring presence of groups such as Islamic State and Al Qaeda⁴. The Pakistan Institute of Peace Studies (PIPS) indicates that KP province suffered the highest number of terrorist attacks in 2018 (although less fatalities overall than Balochistan)⁵. I do not accept, nor has the applicant contended, that he was ever threatened or had a personal profile with any militant group. However, the ongoing sectarian attacks in Kurram Agency and the risks to Turis additional to those faced by Shia in general raise the real question as to whether the applicant would face a real chance of serious harm if he was to return to Kurram Agency or KP province. However, even if the applicant faces a real chance of harm in Kurram Agency and KP, s.5J(1)(c) of the Act requires that the real chance of persecution relates to all areas of the receiving country. For the following reasons, I am not satisfied that this is the case.
14. The applicant made a number of claims that his life would still be in danger wherever he moved. He indicated that people who previously lived in his area in Kurram Agency would be able to identify him and that these people have links with extremists. He indicated that Pakistan was a war zone and he would not be safe anywhere. The applicant’s agent also submitted some news articles to the delegate in support of these claims. Some of the articles refer to ongoing instances of sectarian violence in Kurram Agency of the areas bordering Afghanistan. I accept that sectarian violence against Shias continues in Kurram Agency and the former FATA (now Khyber Pakhtunkhwa province).
15. The applicant’s migration agent also referred to an article which stated that an interior ministry report had declared Islamabad “extremely dangerous”. This article dates from early 2014. I note that the report the article refers to did not find that Islamabad is dangerous based on actual instances of violence but on its assessment that there remain sleeper cells or vestiges of banned terror groups in the city. Another article, detailing a blast at a shrine in a city 20 kilometres east of Islamabad, similarly dates back to 2014. A further article from 2014 talks about fears that previous residents of Kurram Agency feel in Islamabad and details alleged incidents of Turis receiving threatening letters⁶. It is not clear that the articles provide much by way of tangible evidence of violence or sectarian attacks in Islamabad itself. Regardless, these articles were published prior to the implementation of Pakistan’s National Action Plan (NAP) which had (and continues to have) a significant impact on Pakistan’s security environment. DFAT states that in December 2014, following an attack on army school in Peshawar that killed over 140 children, the Government introduced the NAP⁷. The NAP and associated military

² DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

³ Ibid

⁴ Ibid

⁵ PIPS, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758

⁶ The Nation, “Spectre of Sectarianism still chasing Kurram Residents”, Inamullah Khattak, 28 September 2014

⁷ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

operations are credited with significantly reducing violent incidents and terrorist attacks in Pakistan⁸. The articles supplied by the applicant may provide relevant background. However, given the marked improvement to and significant changes in the security situation from the beginning of 2015 onwards, I consider that these articles are of limited value in assessing the current security situation in Pakistan.

16. The applicant's agent did also make reference to a more recent 2017 report about an attack on a Shia mosque in Islamabad that killed one person. Notwithstanding this specific incident, however, country information indicates that overall both Rawalpindi and Islamabad are regarded as safe. DFAT notes that large cities like Islamabad and Lahore offer a degree of anonymity and host ethnically and religiously diverse populations⁹. The Government maintains a strong security presence in Islamabad, making violent crime less common there than other major urban centres¹⁰. EASO quotes figures from the Pakistan Institute for Peace Studies (PIPS) that indicate there were just three terrorist attacks in 2017 in the entire Islamabad Capital Territory, with the same number recorded in 2016¹¹. PIPS did not record a single terrorist attack in Islamabad in 2018¹². These figures must also be placed against the sizeable population of Islamabad. DFAT notes an approximate population of two million people (including migrants from all over the country) for Islamabad city alone.¹³ In Rawalpindi, situated close to Islamabad, PIPS noted just one terrorist attack in 2018 that killed two people. This was a decline from the previous year¹⁴. DFAT notes that for 2018, there were just four terrorist attacks (resulting in 18 deaths) for the whole of Punjab¹⁵. Violent civilian fatalities of any kind were also relatively rare in Punjab as a whole with just 32 such civilian deaths in total there in 2017¹⁶. Any loss of life from violence, sectarian or otherwise, is regrettable. However, at 110 million people, Punjab accounts for more than half of Pakistan's population. Against that context, I consider the risk to the applicant in Islamabad or Rawalpindi from any sort of harm to be remote.
17. The applicant has quoted a number of sources, including the United Nations High Commissioner for Refugees and the United States Commission on International Religious Freedom, that indicate ongoing sectarian-motivated attacks on Shias in Pakistan. It is not disputed that sectarian violence against Shias continues to occur in Pakistan. The agent also quoted a recent CRSS report that indicated there were rises in sectarian casualties in some areas of Pakistan¹⁷. I accept that the overall improvement in the security situation has not been uniformly felt across Pakistan. However, the available evidence indicates that the security situation in Islamabad and Rawalpindi has been stable (and improving) for some time. I note that even CRSS confirms zero sectarian fatalities in Islamabad for 2018 and just 11 sectarian fatalities in total for whole of Punjab. The agent has made the point on a number of occasions that the risk to the applicant as a Turi Shia Pashtun from [Town] must be viewed cumulatively, with each of those factors contributing to a real chance the applicant would face serious harm even if he were to relocate elsewhere in Pakistan. However, on the information cited above, the risk to the applicant of serious harm in Islamabad or Rawalpindi as a Turi Shia Pashtun from [Town] and KP province or on any other account is remote.

⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

⁹ Ibid

¹⁰ Ibid

¹¹ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹² PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹³ DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515

¹⁴ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁵ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁶ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁷ Center for Research and Security Studies, "CRSS Annual Security Report Special Edition 2013-2018", 1 March 2019, 20190405163832

18. The applicant claimed that his identity card would show he was from [Town] and that this would identify him as a Turi Shia. DFAT confirms that there is evidence that Turis specifically can be identified by their tribal names, accents and the areas in which they reside¹⁸. The applicant also stressed the importance of family networks in securing employment. When the delegate put to him his ability to find work in [Country] and Australia without his family network, the applicant indicated that both those countries are different to Pakistan and that he would face discrimination in Pakistan due to his ethnicity and religion. I accept that the applicant is a Turi Shia and might be identified as such if he moved to Islamabad or Rawalpindi. DFAT has reported that Turis face difficulties finding employment and “are generally discriminated against in employment selection processes”¹⁹. However, DFAT also notes that Turis generally prefer moving to known Shia areas, and that Islamabad, Rawalpindi and Karachi are among the preferred migration destinations²⁰. Turis often live in enclaves that mitigate societal discrimination²¹. DFAT has previously noted that large urban centres (such as Rawalpindi or Islamabad) generally offer better economic opportunities²². The applicant is also an adaptable individual with a tertiary education who speaks Pashto and has a good deal of fluency in English. Virtually his entire protection interview was conducted in English with his consent and no communication issues were evident. He is currently employed here in Australia as a [occupation 3], and also has an extensive work history in [Country] as a [occupation 2]. Pakistan’s official unemployment rate is relatively low at 5.8%²³ and the growth rate relatively high (5.7% in 2017 and projected to be 5.8% in 2018)²⁴. I do not consider that the applicant would require familial support in Islamabad or Rawalpindi given his work history, language skills, general adaptability, and demonstrated capacity to accumulate savings and support himself away from his family.
19. I note that the applicant and his agent made repeated references to the applicant’s Turi Shia community standing up to extremists during a past conflict and therefore earning the animosity of extremists there. It is not clear what exactly is being referred to but it may be a reference to the Kurram Agency conflict, a sectarian dispute that ran from 2007 - 2011 and claimed some 1,500 lives²⁵. It is possible that this conflict exacerbated existing tensions between Shias and Sunni extremists in that area. However, the agent put forward the argument that Turis who live safely outside Parachinar do so because they moved prior to the conflict in Kurram and are “therefore not treated with the same level of animosity” as those who remained during the conflict. This appears to be speculation on the part of the agent and no country information has been put forward to support this contention. I do not consider plausible the idea that every Turi living safely outside Kurram moved away years before and there have been no more recent arrivals to cities such as Islamabad and Rawalpindi that have known Turi populations. DFAT noted in its 2016 report that “Shias relocate with relative ease and frequency because of family and communal networks throughout Pakistan” and specifically noted input from Turi immigrants in Islamabad who had moved there for greater access to employment and health and education services²⁶. I note that the same report also states that although some Turi families move to Islamabad as family groups, other Turis live independently there²⁷. DFAT notes in its 2019 report the continued prevalence of internal

¹⁸ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² DFAT, Pakistan Country Information Report 1 September 2017, 1 September 2017, CISED50AD5515

²³ Dawn, “Unemployment rate slips to 5.8pc in FY18”, 12 January 2019

²⁴ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

²⁵ Arif Rafiq, “Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007”, Middle East Institute, 1 December 2014, CIS2F827D91993

²⁶ DFAT, “DFAT Thematic Report - Shias in Pakistan”, January 2016, 15 January 2016, CIS38A801265

²⁷ Ibid

migration and the appeal of large urban centres that offer anonymity to those fleeing extremist violence²⁸. Nor do I consider it plausible that extremists are somehow able to readily identify those Turi Shias who were resident in Kurram at a particular time from those who moved earlier, or that they target their sectarian attacks on that basis.

20. The agent included in their submission to the delegate excerpts from two Administrative Appeals Tribunal (AAT) decisions that previously found Turi Shias would be at risk of harm in Kurram Agency. Both these decisions concern individual applicants and are not written (or intended) as general guidance in regard to Turi Shias. The agent has not given any background on the individuals to whom those decisions relate and it is not evident that they have any personal links to the applicant. I note the finding in one of the quoted AAT decisions that the applicant in that case could not safely relocate anywhere in Pakistan. However, considering the country information set out above, particularly in regard to the security situation in Islamabad and Rawalpindi, and taking into account his personal circumstances, I have reached a different conclusion in regard to the referred applicant.
21. In the submission to the delegate the applicant's agent put forward the applicant's "Pashtun race" as one of the bases for his claims. Pashtuns are Pakistan's second largest ethnic group, comprising just over 15 per cent of the population²⁹. Pashtuns are heavily involved in the transport sector, but also well-represented in the security forces³⁰. As many Pashtuns are Sunni, and the TTP's support base is Sunni, there are reports that some Pashtuns have been subject to racial profiling and harassment by security forces and even forced to pay bribes to avoid being listed as terrorists³¹. However, the report gives no indication of the frequency of such incidents and notes that the issue is most prevalent in Karachi and Lahore. The applicant would be returning to Islamabad or Rawalpindi. I note that the applicant is a Shia, not a Sunni, Pashtun and to that extent unlikely to be seen as affiliated with Sunni extremist organisations. The applicant did not provide any instances where he had been discriminated against as a Pashtun and the issue is not developed further in the submission from the agent. DFAT notes Islamabad as one of the cities that has a known Pashtun population³².
22. The applicant also claimed that he fears being targeted due to his former profession as a [occupation]. I do not accept that the applicant would be identified as a [occupation]. By his own admission, the applicant only [worked] for [number] months at a [workplace] in [Town] in 2009. He then departed the country for [Country] where he was employed as a [occupation 2] for four years. He only returned to Pakistan once during that time, a brief visit in 2010 to see his ill mother. He then left [Country] to come to Australia in 2013, where he has worked as a [occupation 3]. I do not accept that the applicant would be identified as a [occupation] on the basis of a briefing [working] stint a decade ago, nor does his work history since then indicate any particular inclination to re-enter the [work].
23. Even in the event that the applicant did wish to resume [occupation], the available country information does not support the view that [those] workers are targeted in Islamabad or Rawalpindi. I note the applicant reference to an article in the Tehran Times that list [occupation] as one of the groups who have suffered attacks in recent years. However, no examples of attacks on [occupation] are provided nor any sources quoted in the article to support this contention. PIPS noted just one death of a [occupation] in 2018, in an attack on a

²⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Ibid

convoy in troubled Balochistan province³³. Even that attack appeared to target the group in their capacity as election workers³⁴. A Human Rights Watch report specifically dealing with extremist threats against the [work] sector in Pakistan, noted no attacks on [occupation] at all in Rawalpindi or Islamabad, and none in Kurram Agency since 2015³⁵. That report and the 2019 DFAT report make some sobering observations about the effects of extremist attacks on [one group in the community] and its impact on [work sector], especially for [one gender], but direct attacks on [occupation] (or former[occupation]) appear to be relatively rare in general and all but unknown in Rawalpindi and Islamabad.

Former asylum seeker returning from a western country / Perceived westernisation

24. The applicant claims to fear harm from extremist groups and potentially his own community because he spent time in a western country and sought asylum abroad. He claims that his values and lifestyle have changed. He stated in his written claims that the Taliban have a hatred of western culture and will subject him to serious harm because of his “westernised” behaviour.
25. DFAT notes that ‘genuine returnees’ are issued temporary documents on arrival in Pakistan and specifically notes that “a genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered their destination country”³⁶. The applicant left Islamabad airport on a valid passport in his own name. DFAT notes that even those who return to Pakistan involuntarily, while usually questioned on arrival regarding the circumstances of their departure and whether they committed crimes in Pakistan or abroad, “are typically released within a couple of hours”³⁷. There is no suggestion from DFAT, or in the other country information before me, to suggest that returnees suffer any sort of mistreatment during this process or that the situation for Turi Shia Pashtuns or former asylum seekers returning from abroad is any different to the situation for returnees generally. The applicant has not indicated that he was ever charged with any offence, either in Pakistan or Australia, nor is there anything to suggest that he would be of any particular interest to the Pakistani authorities for any other reason. DFAT has also noted a particular issue in relation to returnees being detained at Karachi airport, sometimes for several hours. As Islamabad has its own airport³⁸, there is no reason why the applicant would not fly directly there. There is nothing in the information before me to indicate that returnees are mistreated at Karachi airport, and I do not consider that the questioning or processing on arrival there would otherwise constitute serious harm.
26. The applicant claimed that the Taliban will subject him to serious harm due to changes in his values and lifestyle and because of his “westernised” behaviour. He also stated that his own community would treat him differently and seemed to infer that they might also harm him on this account. In regard to the applicant’s community, there is no information before me to suggest that Shias target other Shias on account of their having spent time abroad or due to perceptions they are westernised. This issue is not clearly articulated in the applicant’s written claims, and this point was not developed further at interview or taken up in the agent’s submission to the delegate. The applicant confirmed that he remains an observant Shia Muslim.

³³ PIPS, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758

³⁴ Ibid

³⁵ [Source deleted]

³⁶ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

³⁷ Ibid

³⁸ Ibid

27. DFAT has previously indicated that “western influence is pervasive in many parts of Pakistan, particularly in large urban centres”³⁹. DFAT assesses that returnees are typically able to reintegrate “without repercussions from their migration attempt”⁴⁰. As set out above, I do not accept that the applicant ever came to the personal attention of any militant or extremist groups while in Pakistan. There is nothing in the information before me to suggest that returnees, including Turi Shia Pashtuns or former asylum seekers, are targeted by such groups on return to Pakistan due to their having spent time or sought asylum abroad. The applicant did not specify what his claimed “westernisation” entailed. However, the fact of returning to Pakistan from overseas is not at all uncommon – one estimate dealing solely with those studying abroad indicated that some 30,000 students alone return to Pakistan every year⁴¹. Nor, given the prevalence of western cultural influences in Pakistan, do I consider that some residual “westernisation” would be particularly unusual or draw any undue attention to the applicant. As noted above, the applicant clearly indicated that he remains an observant Muslim. There is nothing in the information before me to suggest that militant elements target those returning to Pakistan on the basis that they have spent time in a western country or sought asylum there. Although the applicant’s SHEV application indicated he only spoke to his family every two to three months, at interview he confirmed that he phoned his family once a week on average. His frequent contact with his family would very likely help him retain some familiarity with his native Pashto as it is spoken in Pakistan.
28. DFAT also notes that the constitution guarantees freedom of movement throughout Pakistan and states that “internal migration is widespread and common”⁴². Islamabad, the capital, is serviced by its own airport⁴³ and Rawalpindi is close by⁴⁴. I have considered the applicant’s arguments regarding the importance of family networks in securing employment. As set out above I consider that the applicant is well-placed to secure employment in Islamabad or Rawalpindi without the assistance of his family given his language abilities, tertiary education, extensive work history, relative youth and apparent good health.
29. The applicant may face challenges re-establishing himself on return to Pakistan. However, the applicant has previously lived in [Country] for many years away from his family, and has supported himself here in Australia. He was an adult when he left Pakistan and remains in touch with his family there. He has lived apart from his family for many years in Australia and his application for a SHEV indicates his continued preparedness to do so. Given the applicant’s relative youth, facility in both Pashto and English, ability to find and maintain stable employment in Australia, and the fact that he has been able to live independently in a country whose culture must initially have been at least somewhat unfamiliar to him, I am not satisfied that the applicant would be unable to find, or be prevented from finding, employment or otherwise subsisting in Islamabad or Rawalpindi.
30. Given his general profile and religious affiliation, I am not satisfied that there is a real chance the applicant would be imputed with any extremist associations or attract adverse attention from law enforcement or security forces, the Taliban, or other militant elements, whether on account of Pashtun ethnicity or for any other reason. I am also not satisfied that there is a real chance the applicant would face any harm as a returnee from a western country, whether from

³⁹ DFAT, “Pakistan Country Information Report 1 September 2017”, 1 September 2017, CISED50AD5515

⁴⁰ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

⁴¹ London Academy of Iranian Studies, “Islamic Perspective Journal of the Islamic Studies and Humanities”, 01 January 2012, CIS961F9402123

⁴² DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

⁴³ Ibid

⁴⁴ PIPS, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758

the Pakistani authorities, extremist elements such as the Taliban, or on any other account in Rawalpindi or Islamabad.

31. I am also not satisfied that there is a real chance, even when considered cumulatively, that the applicant would face serious harm as a Turi Shia Pashtun from Kurram Agency or KP province, as a former [occupation], or for any other reason in Islamabad or Rawalpindi.
32. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

33. 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

34. 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

35. 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.

36. In accordance with s.36(2B) of the Act, there is taken not to be a real risk of significant harm if it would be reasonable for the person to relocate to another area of the country where there would not be a real risk of significant harm. I have found that while the applicant may face a real chance of persecution in Khyber Pakhtunkhwa province, that risk does not extend to the entire country and the applicant would not face a real chance of serious harm in Islamabad or Rawalpindi. As set out above, there is a possibility that the applicant maybe detained for several hours if he re-enters through Karachi airport. However, there is nothing in the country information before me to suggest that those detained are mistreated in any way during this process and I do not consider that being detained for this relatively brief period would amount to significant harm as defined. I have also concluded that the applicant does not face a real chance of harm for any other reason. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm in Islamabad or Rawalpindi.

37. The applicant has stated that it would be impossible for him to relocate within Pakistan because he would be identified (and targeted) as a Turi Shia wherever he went. He also indicated that he would be especially vulnerable without family support. However, for the

following reasons, I am also satisfied it is reasonable, in the sense of practicable, for the applicant to relocate to Islamabad or Rawalpindi.

38. The applicant has a tertiary education and speaks Pashto, as well as having acquired a good degree of fluency in English. He is currently employed here in Australia. I consider that the applicant is a resilient and adaptable individual who would cope adequately without the support of his family. Country information cited earlier confirms that Rawalpindi and Islamabad have Turi populations, both cities being among the favoured destinations for Turi Shias. The applicant is young, tertiary educated, in apparent good health, with an extensive work history, and a demonstrated ability and preparedness to live apart from his family for many years.
39. The applicant maintained at interview that he had only been able to support himself in Australia because there were no militant groups threatening his life and that he could not relocate to Rawalpindi or Islamabad because these cities were also subject to violent attacks. I have taken account of the applicant's concerns about his safety in Islamabad and Rawalpindi. However, country information indicates that these cities are now generally considered safe. As cited above, country information indicates that Islamabad, having suffered very few attacks in the past few years, recorded none at all in 2018 and Rawalpindi suffered just a single terrorist attack. Country information noted earlier indicates that the security situation in these cities is stable and contained, especially relative to their size.
40. Information set out above also confirms the constitutional right to freedom of movement for Pakistani citizens and that internal relocation is widespread in Pakistan. Islamabad is serviced by its own airport and Rawalpindi is close by. There is nothing in the country information before me to suggest that there are any barriers to the applicant accessing Islamabad or nearby Rawalpindi.
41. Taking into account all the applicant's circumstances and the country information before me, I am satisfied that in the circumstances it is reasonable for the applicant to relocate to Islamabad or Rawalpindi, an area of the country where there is not a real risk that he will suffer significant harm.

Complementary protection: conclusion

42. 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.

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.