



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/07370

Date and time of decision: 18 November 2019 14:52:00
R Mikhail, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Pakistan. On 27 January 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 18 October 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

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) (review material).
3. On 15 November 2019 the IAA received two submissions and other documents on behalf of the applicant including a new statutory declaration from the applicant.
4. One submission addresses new country information that has been provided to the IAA and new information in the applicant's new statutory declaration. It submits that the new information meets the requirements in s.473DD of the Act. It states there are exceptional circumstances to justify considering the new information because of the applicant's limited English Language; the new information may make a material difference in the outcome of the decision; the nature of the IAA's limited form of review and procedural disadvantages; that the applicant arrived in Australia in 2013 seeking protection and waited nearly four years to apply and the serious hardship he suffered in the meantime due to ongoing uncertainty, poverty and separation from his family. It further submits that the information could not have been provided before the delegate's decision because of the applicant's limited English and his former representative did not attend his protection visa interview and not make any legal submissions to the delegate. The delegate also did not raise any concerns in relation to his lack of detail during the protection visa interview about having spoken out to his community about militias using a local school. It submits the information may make a material difference and some of the new information addresses issues raised in the decision. It also states that the new information is credible personal information which may have affected the delegate's consideration of the applicant's claims.
5. I do not accept the submission that new information should be considered due to the nature of the IAA's limited form of review or because the applicant arrived in Australia in 2013 seeking protection and waited nearly four years to apply and the serious hardship he suffered in the meantime due to ongoing uncertainty, poverty and separation from his family. I do not consider any of these factors exceptional as they are common to nearly all cases that come before the IAA and are not particular to this case. I have, nonetheless, considered the other submissions noted above in relation to s.473DD in relation to my assessment of new information that I have identified below.
6. In one submission to the IAA, three articles have been cited which allegedly make reference to the lack of safety in Islamabad. I am satisfied these articles are new information. These articles have been provided in response to the delegate's finding that it would be safe for the applicant to relocate to other cities such as Islamabad. No extract or copy of the articles has been provided which is a requirement under the IAA Practice Direction (December 2018). Given this I do not accept this new information pursuant to ss.473DC(2) and 473FB(5) of the Act. In any event, I am not satisfied there are exceptional circumstances to justify considering this new

information. As I am unable to view the contents of the articles I am not satisfied they refer to credible personal information. Furthermore, they have been provided in respect of relocation which is of little relevance in my assessment as I have found that it safe for the applicant to return to Kurram District where he previously resided.

7. Also included in one submission were extracts from two decisions of the Administrative Appeals Tribunal (AAT) published in December 2018 and May 2019 which I find to be new information. In the extract for the 2018 AAT decision, the Tribunal member found it was not reasonable for the applicant from Kurram District to relocate to another area of Pakistan as he will be identifiable as a Bangash Shia Muslim from Parachinar and that his personal circumstances, including as a returnee from a western country, increases his risk. In the extract of the 2019 AAT decision, the Tribunal member found that there is evidence that anti-Shia extremists continue to have an active and hostile presence in communities throughout Pakistan and refers to signs of growing religious intolerance and extremism in Pakistan. I am satisfied that this information could not have been provided to the delegate given the applicant had previously limited legal assistance and English language skills. However, I am not satisfied there are exceptional circumstances to justify considering this new information. The 2018 AAT decision has been provided in respect of relocation which, as noted earlier, is of little relevance as I have found it safe for the applicant to return to Kurram District in my assessment of his claims. In the 2019 AAT decision, the AAT member is merely referring to general country information including a report by the Australian Department of Foreign Affairs and Trade (DFAT) which is before me. Further, I am not bound by findings of the AAT in similar matters and I am required to make an independent assessment of the country information and individual circumstances of the applicant and evidence before me.
8. Also cited was an extract from the “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan” dated January 2017. The extract states that, given the geographic reach of armed militant groups in Pakistan, a viable internal relocation alternative is not available to those at risk of being targeted by such groups. I am satisfied this is new information. I am satisfied that this document could not have been provided earlier to the delegate for the same reasons already noted above taking into account that the applicant had limited legal assistance and English language skills. However, as I have found it safe for the applicant to return to Kurram District, I find this information of little relevance. I am not satisfied there are exceptional circumstances to justify considering this new information.
9. I have identified the following information in the applicant’s new statutory declaration to be new information:
 - a. He is personally known to the Taliban and their sympathisers in Kurram and local Sunni:
 - i. Because of his family association with the site of a girls’ college and the Taliban being opposed to girls’ education and the use of the college as an army barracks which is thought to indicate family support for the army against the Taliban.
 - ii. Because he observed Taliban activity in his area and reported it to the elders in his community and was accused of being a spy by army personnel.
 - b. In response to the delegate’s finding that he could reasonably relocate to another area of Pakistan, he claims that a friend from his village was murdered in Rawalpindi

in April 2018 which was reported in [a] Newspaper. The applicant also claimed he has been unemployed in Australia for the last five months and provided information about the Pashtun Turi community in Islamabad.

10. I note that the applicant previously claimed before the delegate that his grandfather had purchased land for a girls' school in his area and that it had been used as an army barracks and that he had reported Taliban activity in that school to the elders and that the government authorities consequently asked about him. However, he did not claim that he was personally known to the Taliban and their sympathisers and local Sunni for these reasons or claimed any fear of harm for these reasons and I am not satisfied such claims arose on the material that was before the delegate. For these reasons I am satisfied these are new claims. It is submitted that this information could not have been provided to the delegate because the delegate did not raise any concerns in relation to the applicant's lack of detail during the protection visa interview (held in September 2019) about having spoken out to his community about the militias using the school. However, the delegate made it clear to the applicant that he did not understand this claim during the protection visa interview and asked the applicant a number of clarifying questions about this claim. The applicant was also asked a number of questions about possible relocation by the delegate and was asked about his previous and current work experience. At the end of the protection visa interview he was also asked if he had anything else to add to his claims for protection. In these circumstances, I am not satisfied the above new information could not have been provided to the delegate. I also have doubts as to the credibility of these new claims as the applicant has not provided any further detail or supporting evidence to support his new claim that he is known to the Taliban and the others for the reasons he has stated. He has also not provided supporting evidence in relation to the claim that his friend had been murdered in Rawalpindi despite claiming it was reported in a newspaper. The claim that he has been unemployed for the last five months is also inconsistent with his statement during the protection visa interview that he had been working in [Occupation 1] for the last eighteen months. Furthermore, the claims about his friend's murder, his current job status and the new information about the Turi community in Islamabad have been provided in respect of his ability to relocate which is of little relevance to my assessment as previously noted. Overall, I am not satisfied there are exceptional circumstances to justify considering the above new information.
11. There is also a request that the IAA consider exercising its discretionary power under s.473DC of the Act to invite the applicant to an interview in "compelling circumstances" in order to obtain evidence from the applicant to make its findings in respect of s.473DD of the Act and to put any relevant dispositive new issue to the applicant. It has also been requested, given the "complex circumstances" surrounding various pieces of information, that the applicant be given an opportunity to comment if the IAA is to conclude that it cannot consider any new information due to the operation of s.473DD as this holds a highly significant consequence for the applicant given its bearing on whether he faces a real risk of significant or serious harm in Pakistan.
12. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. This is subject to other provisions of Part 7AA. Pursuant to s.473DC the IAA is under no duty to get, request or accept any 'new information' whether requested to do so by a referred applicant, by any other person, or in any other circumstances. This discretionary power must be exercised reasonably having regard to the IAA's statutory framework and all the circumstances of each case. If the IAA decides to get or accept new

information, it can only consider that information in exceptional circumstances. Although I have come to a different conclusion to the delegate where I have found the applicant would not face real chance of serious harm should he return to Kurram District, I am not satisfied this is a dispositive “new issue” nor that it amounts to a “compelling circumstance” as the applicant clearly raised a fear of harm in Kurram District in his application for protection and that claim was central to his claims for protection which were considered by the delegate. Having considered the new information that has been provided in this matter and the accompanying comprehensive arguments in relation to s.473DD, I am not satisfied there are compelling, complex or other circumstances in this matter that warrant an interview with the applicant nor, for the same reasons, do I require further comment from the applicant in order to make my findings on s.473DD of the Act in this case.

Applicant’s claims for protection

13. The applicant’s claims can be summarised as follows:

- He is of Shia faith, from the Turi Tribe and was born and raised in [Village 1] in Kurram Agency, Parachinar, Upper Kurram and is a citizen of Pakistan.
- Shias have been systematically oppressed in Pakistan for centuries. In 2012, he went to the [named location] in Parachinar where he witnessed an explosion as a result of suicide attack. He lost his cousin in the explosion.
- His grandfather donated land for a girls’ school and in, 2013, he witnessed militias using the school and reported this to his community and faced problems as a consequence.
- He fears harm from the Taliban and Sunnis as a Shia.
- There is no protection extended by the Pakistani authorities to help and protect those who are being attacked. The authorities in Pakistan are predominantly Sunni Muslim, and therefore will not fight off the Taliban. They are also under-resourced. The only people that have stood up to the Taliban and attempted to fight them are the Shia Muslims.

Refugee assessment

14. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

15. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct

- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
16. The applicant provided a number of identity documents from Pakistan which confirm his former address in [Village 1], Parachinar, Upper Kurram. Some of the documents also indicate he is a member of the Turi tribe. The applicant was also able to describe his home area and Shia religious practice and beliefs in detail during the protection visa interview held in September 2019. I also note that he speaks Pashto and have taken into account country information before me which confirms that the Turi tribe is a Shia Pashtun tribe and Upper Kurram is inhabited largely by the Turi.¹ I accept the applicant's claimed identity and that he is a citizen of Pakistan. I am satisfied that Pakistan is the receiving country for the purpose of this assessment.
17. The applicant has claimed that he has not lived in any other area of Pakistan and that his family continue to reside in [Village 1] and I accept these claims. For these reasons, I am satisfied that if the applicant were to return to Pakistan he would return [Village 1].
18. The applicant provided a detailed oral account of the conflict that impacted Kurram between 2007 and 2010 during the protection visa interview. I accept the applicant's claim about the historical conflict that affected Kurram as this is corroborated by country information before me. Country information indicates that there has been a history of sectarian conflict in the area since the 1980s. After the 2001 terrorist attacks in New York and Washington, many foreign militants and al-Qaeda fighters crossed the border from Afghanistan to Pakistan, seeking a safe harbor in the former Federally Administered Tribal Areas (FATA) but in Kurram they were turned away. The Turi community also prevented the Taliban accessing Afghanistan through Kurram and sectarian clashes provided an excuse for the Taliban to attack Kurram. From 2007, further sectarian violence erupted. As the violence continued, the road from Parachinar to Peshawar was blocked, resulting in a shortage of food and medicines.² By mid-2008, the Shia Turis were able to push back against the Taliban and other jihadis and the Pakistan Army began clearing operations in the area. In 2011, Sunni and Shiite tribesmen from the Kurram came to an agreement and the Pakistan Army launched an offensive to open the Thal-Parachinar road. By the end of 2011, an estimated 1,500-3,000 people had been killed in the Kurram Agency war.³ Sporadic terrorist attacks against the Shia community in Kurram District continued until 2017.⁴

¹ Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

² Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; Mansur Khan Mahsud, "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543

³ Arif Rafiq, "Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Middle East Institute, 1 December 2014, CIS2F827D91993

⁴ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943

19. I also accept that the applicant witnessed a suicide attack in Parachinar City in 2012 as country information before me refers to a suicide attack in a [named location] in Parachinar in 2012.⁵ I accept as plausible that his cousin died in the attack.
20. In his application for protection the applicant claimed that, in Pakistan, he became a regular and frequent activist for the education of girls. There have been many instances where he has spoken out against the oppression of women, particularly in regards to girls attending schools, and he has been on the front-line of these protests and fears harm due to his activism. When the delegate asked the applicant about this claim, he did not appear to understand the question. After the delegate read out the claim as noted in the application for protection, the applicant said “no” and denied that he had any involvement in activism in relation to women’s education and said he had not taken part in any protests. Given this, I do not accept the above claim. After discussing the above claim, the applicant then claimed that his grandfather did give land for a girls’ school near [Village 2] but made no other claims at this point.
21. Towards the end of interview, when asked by the delegate if he could safely relocate to another area in Pakistan, the applicant claimed that before he left Pakistan in 2013 he saw militants dressed as the army using the above girls’ school (as it was empty at the time). He shared what he had seen with leaders of his community and his grandfather and word of this got out and he consequently faced problems. I have concerns with the credibility of this claim given the applicant did not raise it in his application for protection which I note was prepared by a lawyer and he only mentioned it towards the end of the protection visa interview. Also, when further pressed about this claim by the delegate he merely said that the only evidence he has is what he heard from his grandfather about what people were saying about the applicant. Although he said he faced problems he did not articulate what these problems were. I found the applicant’s evidence in relation to this claim to be overly vague even when pressed for further information from the delegate. In assessing his oral evidence I have taken into account that he indicated that the Pashto interpreter had a different dialect but at no time did he say he could not understand the interpreter and he often sought clarification from the delegate when he did not understand a question. Given these concerns I do not accept this claim and I do not accept he has a well-founded fear of persecution in Pakistan in relation to this claim.
22. I, nonetheless, accept as plausible that his grandfather purchased land for a girls’ school which the applicant has now claimed is open and operating. However, I note that he has not claimed any fear of harm as a result of being associated with a girls’ school or that he has been harmed in the past for this reason.
23. Country information before me indicates that the Pakistani Army has carried out several military operations targeting militant groups in the former FATA which have continued since 2014. After witnessing relative calm since the launch of military operation code-named “Zarb-e-Azb” in June 2014, the former FATA witnessed an upscale of violence in 2017. In the first six months of 2017, militants such as the Lashkar-e-Jhangvi (LeJ) and Tehrik-i-Taliban Pakistan (TTP) carried out several attacks against the Shia community in Parachinar which killed over 120 people.⁶
24. In response to terrorist attacks that occurred in early 2017, the government of Pakistan announced a countrywide military operation called “Radd-UI-Fasaad” aimed at eliminating the

⁵ Ibid.

⁶ DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409; European Asylum Support Office (EASO), “EASO Country of Origin Information report Pakistan Security Situation”, 7 August 2017, CISED50AD5088

threat of terrorist attacks.⁷ In July 2017, the military also launched operation Khyber-IV in the Rajgal Valley, targeting a number of militant groups. Khyber-IV also targeted Islamic State of Iraq and the Levant (ISIL) connections across the border with Afghanistan's Nangarhar province.⁸ Security and law enforcement agencies continued anti-militant operations, including as part of Raddul Fasaad, across the country in 2018. That year security forces foiled at least 10 major terror bids or plots and as many as 105 militants were killed, including LeJ leaders. It has also been reported that military operations eliminated the strongholds of the TTP in the former FATA.⁹ The United States Institute of Peace noted in March 2018 that, due to one particular military named Operation "Zarb-e-Azb", the situation in the FATA improved and many areas were cleared of militants.¹⁰ In 2018, the former FATA became a part of Khyber Pakhtunkhwa province, which included Kurram District.¹¹

25. During the protection visa interview the applicant claimed that the government authorities tell his community fifteen days in advance that an attack will occur so they do not understand why they are not taking precautions and actually preventing the attacks.
26. However, in February 2019, the Australian Department of Foreign Affairs and Trade (2019 DFAT report) commented that these government operations and associated counter-terrorism activities significantly decreased the number and severity of attacks on Turis.¹² The FATA Research Centre also observed a decrease in terrorism and counter-terrorism incidents in all agencies of the FATA in its quarterly analysis of the first three months of 2018.¹³ The Pakistan government has also started fencing the border with Afghanistan and by February 2018, the Turi community estimated 40% of military fencing in Kurram was complete, decreasing border permeability. Turis also advise the military implements a 20 to 30 square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located.¹⁴
27. According to the 2019 DFAT report, in the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device that targeted women and children.¹⁵ No further details about these incidents have been included in the DFAT report. However other reports before me refer to an incident where seven members of a family were hit by a landmine in Upper Kurram in January 2018 but these reports do not indicate these people were deliberately attacked by a Sunni militant group because they were Shia Turi.¹⁶ A report by the South Asia Terrorism Portal which lists Shias killed in Pakistan from 2001 until 17 June 2018 does not refer to any attacks in Kurram in 2018 and notes the last attack that occurred in Kurram was in June 2017.¹⁷ There are no other credible reports before me of targeted sectarian militant attacks against Shia Turis in Kurram District in 2018 or 2019.

⁷ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

⁸ Ibid.

⁹ Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; European Asylum Support Office (EASO), "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁰ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹¹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹² Ibid.

¹³ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁵ Ibid.

¹⁶ "Six of a family martyred in Kurram roadside blast", The News International (Pakistan), 31 January 2018, CBB8A1DA25475; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹⁷ South Asia Terrorism Portal, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943

28. The 2019 DFAT report acknowledges a trend of decreased reports of attacks against Turis in 2018 due to the improved security situation in Parachinar and Kurram and the overall declining trend in sectarian violence since 2014 in Pakistan. It further states that, while this trend is likely to continue in 2019, attacks and violence against Turis can, and may still occur and Shias in Pakistan continue to face a threat from anti-Shia militant groups. It also noted that societal intolerance and religious extremism appear to have increased. DFAT ultimately assessed that Turis in Kurram still face a moderate risk of sectarian violence from militant groups because of their Shia faith and the risk of sectarian violence for civilians in Kurram, particularly in Parachinar, is higher than in other parts of the former FATA.¹⁸
29. During the protection visa interview the applicant also noted that terrorist incidents may not have happened in the last few months but such incidents do not happen for a while and then it starts again.
30. Having considered all the information before me, I accept that Turi Shias in Upper Kurram have been subject to violent attacks by terrorist groups in the past for various reasons including their religion and historical conflict with the Taliban and sources before me refer to the continuing threat of armed militant groups in Pakistan. However, I find the improvements in security in the applicant's area of Upper Kurram have been significant as a result of the ongoing security measures that have been adopted by the Pakistani government and particularly the measures they have undertaken since 2017 to secure Kurram. I have also taken into account that there have been no further confirmed militant attacks targeting Shia Turi in Kurram Agency in 2018 and 2019 which I am satisfied is as a result of these measures. In February 2019, DFAT provided an assessment of moderate risk of sectarian violence from militant groups to Turis in Kurram. However, I further note that there is no credible evidence before me that there have been further targeted sectarian or other attacks by a militant group against the Turi Shia community in Kurram since that report was published over nine months ago.
31. During the protection visa interview the applicant noted that his parents and a number of siblings still live in his village which is [a distance] from Parachinar City and there is no evidence that they have come to any harm from any group since the applicant left Pakistan in 2013.
32. The applicant provided evidence that he practises his Shia faith and I accept he will continue to do so if he were to return to Kurram. DFAT has stated that Shias are most vulnerable during large gatherings, such as Ashura processions but recent reports indicate that Shias in Kurram have been able to commemorate these occasions without incident since October 2017.
33. In its 2019 report, DFAT states that, according to the media, discrimination and violence towards Shia tribes, particularly Turis, remains significant in Kurram due to state concerns regarding Iranian influence and greater presence of Taliban and Al Qaeda. The DFAT report does not provide any further detail about the source of this information nor the form of the alleged discrimination and violence.
34. DFAT also assessed that Pashtuns face a medium risk of official discrimination in the form of terrorism-related and racial profiling by security forces in areas where they are a minority, particularly in Punjab. I have, however, also taken into account its assessment that Pashtuns in Pashtun majority areas, such as Parachinar, or locations where individuals have family or social connections face a low risk of official discrimination and I find the applicant fits this profile.

¹⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

35. I have also considered the applicant's journey back to Parachinar in assessing whether he has a well-founded fear of persecution. Country information before me indicates that residents from Upper Kurram can only access Peshawar (the closest major Pakistan city) via the Thal-Parachinar road which passes through Sunni-dominated Lower Kurram. In 2016, DFAT indicated that the Thal-Parachinar Road remained open and there had been no major security incidents on the road in 2015. Federal security forces maintained armed checkpoints along the road, which is used by both civilian and military vehicles.¹⁹ In its 2019 report, DFAT stated that Khyber Pakhtunkhwa and districts in the former FATA are at great risk of criminal or militant violence due to their isolation and the limited presence of security forces. Many roads fit this profile. However, in the same report DFAT also stated Turis reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. I accept that the applicant will likely return to Parachinar via the Thal-Parachinar Road but there are no recent reports of targeted attacks against Shia Turis/from Parachinar on this road. I have also taken into account the applicant did not claim to come to any harm when he departed from Upper Kurram in 2013 on route to Australia.
36. The delegate also considered whether the applicant would be harmed in Pakistan as a failed asylum seeker from a western country. Other the evidence before me I am not satisfied the applicant has a profile of adverse interest to militant groups or the government authorities or any other group in Pakistan and have rejected his claim in relation to having reported witnessing militias using a girls' school in his area and he has not maintained his claim to have been an activist for women's education. In its 2019 report, DFAT stated that the Pakistani authorities will interview failed returnees and release them if their exit was deemed to be legal DFAT states that those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. I note the applicant has claimed to have departed Pakistan legally and he has kept his passport which will not expire until 2023. DFAT further notes that returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt. It assessed that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country.²⁰ Other sources before me also note that the act of returning to Pakistan from a western country is common.²¹
37. In the delegate's decision there is a reference to a post-interview submission but I note the footnote reference for the submission refers to another applicant and the submission refers to the applicant being in his early [age] whilst this applicant is [younger]. Given this I am satisfied the delegate's reference to this submission is a typographical error and does not relate to this applicant and I have not had regard to it.
38. I have considered the evidence before me with regard to the applicant's profile and experiences in Pakistan and the general improved security situation in Pakistan and in Kurram specifically, and the declining levels of sectarian and militant violence. On the evidence before me I am not satisfied the applicant would face a real chance of any harm if he were to return to Kurram District in Pakistan in the reasonably foreseeable future.

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

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

²¹ Tavakol, M, "Brain Drain: Problems and Solutions, Islamic Perspective", 2012, CIS961F9402123; Australian Trade Commission, "Australia – Pakistan Online Alumni Business Forum launched in Pakistan", 8 April 2014, CIS2F827D92297; Maqbool, A, "Chasing the UK vote in Pakistan's 'Little Britain'", BBC News, 1 May 2010, CX744258516843

Refugee: conclusion

39. 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

40. 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

41. 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.

42. I have not accepted the applicant's claim that he was an activist for women's education in Pakistan or his claim that he disclosed to his community that militias had been using an empty school in his area and faced problems as a result. I am not satisfied he will face a real risk of significant harm in Pakistan in relation to these claims.

43. Having considered the country information before me and the applicant's profile and experiences, I have found the applicant will not face a real chance of harm in Pakistan. Consequently he will also not face a real risk of any harm in Pakistan.²² I am not satisfied the applicant will face a real risk of significant harm in Pakistan.

Complementary protection: conclusion

44. 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.

²² *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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