



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA19/07445

Date and time of decision: 6 December 2019 14:35:00
M Brereton, 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 Shi'a, a Turi and a Pashtun from Parachinar in Pakistan. He departed Pakistan legally [in] June 2012 and arrived on Christmas Island [in] September 2012. In 2013 he lodged an invalid application for a protection visa. On 5 August 2016, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 29 October 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa.
2. The applicant claimed to fear harm from the Taliban and other extremists because of his religion and ethnicity, and because he had been threatened and targeted for operating a [products] shop in Parachinar.
3. The delegate accepted the applicant's claims as to identity and origin. The delegate found that the applicant faced a real chance of harm in his home area but that he could relocate to Islamabad or Lahore where he would not face a real chance or real risk of relevant harm, and that it was reasonable for him to do so.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
5. On 22 November 2019, the applicant (through his agent) provided a submission to the IAA. Parts of this submission refer to and make argument in relation to information and issues that were before the delegate and the delegate's decision and to that extent are not new information.
6. The submission contains a request for the IAA to interview the applicant if the IAA has any concerns as to his credibility. I have no such concerns. The applicant also requests that in the event the IAA does not concur with the delegate's finding as to a real chance of harm in his home area, the IAA affords the applicant an opportunity to comment on any information that the IAA may rely upon. For the reasons given below I have reached the same view on this issue as the delegate. I have decided not to obtain further information or comment from the applicant, whether by interview or otherwise.
7. The submission refers to, but does not attach, a report by the United States Commission on International Religious Freedom dated April 2019. It also refers to and provides a hyperlink to what is described as a list of Taliban rules imposed against women. This information is not in the review material and is new information. It appears to be general and not personal information, and the applicant has not explained why it could not have been provided to the Minister before the delegate made the decision. The Practice Direction¹ states that new information must be attached or extracted, and accompanied by an explanation. It states that hyperlinks to publicly available documents are not acceptable. The new information does not comply with the Practice Direction and I have decided not to accept it.

¹ Immigration Assessment Authority Practice Direction for Applicants, Representatives and Authorised Recipients, 1 December 2018.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
- He is a Shi'a, a Pashtun and a Turi from Parachinar district in the Khyber Pakhtunkhwa (KP) province in Pakistan. His family operates a farm in this area.
 - KP has seen tension and violence between Sunnis and Shi'as, as well as from extremist groups.
 - In 2007 the applicant had to take his sister to the hospital. He saw people who had been injured in bombings and it was horrible.
 - Rockets and mortars were fired at his village. No one was killed but two people were injured and some houses were destroyed.
 - His family was affected by road blockades and could not get enough food or medicine or other necessities.
 - In October 2011, a car stopped on the main road near the family farm. The Taliban in the car started shooting at the applicant and his brother but it was getting dark and they were able to run away.
 - In December 2011, the applicant started a [products] shop in Parachinar. It was successful and popular. In February or March 2012, he received a threat letter from the Taliban because he was encouraging women to come out and do shopping. He did not take this letter seriously.
 - About two weeks later he received another letter. He discussed this letter with his family and reported it to the authorities but they could not help. His family told him to leave but he kept hoping that things would change.
 - One night in April 2012, he was driving home from work. He came to a road block near his village and armed men stood up. He reversed and the men shot at him but he escaped and went back to Parachinar city to stay with a friend. He believes the men were Taliban and were targeting him.
 - After this incident he had to close his shop and leave. He travelled in a convoy to Islamabad and this convoy was attacked by the Taliban. A police convoy coming the other way engaged the Taliban and the applicant's convoy was able to get to Islamabad.
 - He will be targeted because of his shop and for ignoring the threat letters.

Refugee assessment

9. 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

10. 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.
11. The applicant attended an interview with the delegate on 21 March 2019 (the interview). applicant has made consistent claims in relation to his ethnicity, religion and origin. He has provided documentary evidence in the form of copies and translations, including his National Identity Card (NIC), a Pakistani birth certificate and a domicile certificate. He was able to answer questions and provide information about his claimed place of origin and its geography, Turi identity and culture and Shi'a practices. I accept that the applicant is a Shi'a, Turi and Pashtun from this part of Pakistan and I find that Pakistan is the receiving country for the purposes of this review.
 12. The applicant claims to be from a village in the Parachinar district in the Upper Kurram Agency, in KP. Parachinar is the largest town in Upper Kurram within what was formerly the Federally Administered Tribal Areas (FATA), but is now part of KP. Shi'as make up around 80% of the Kurram Agency's population. Shi'as living in the Kurram Agency are predominantly Pashtun Turi or Bangash tribespeople. The Kurram Agency (which is located alongside Pakistan's north-western border with Afghanistan) has been the site of decades of sectarian tension between Sunnis and Shi'as and these tensions have periodically erupted into intense fighting. The arrival of the pro-Taliban Pakistani militias in 2007 triggered a particularly violent period, featuring significant fighting between Sunni and Shi'a militia groups.²
 13. Having regard to the information about tensions between Shi'as and Sunnis and violence in KP, including Parachinar, I accept the applicant's claims in relation to being shot at while working on the family farm, and seeing the aftermath of violent incidents while attending the Parachinar hospital. He has not claimed that the shooting incident was targeted at him or his family and although he claims that it was perpetrated by the Taliban, I am not satisfied on the evidence before me as to the identity of the shooter. In any event, he has not claimed that his family has suffered any further incidents and I am satisfied that this was an opportunistic act of random violence.
 14. Similarly, I accept that when the applicant left Parachinar in 2012, the convoy he was travelling in was caught up in a violent incident. There is nothing before me to indicate that the applicant was targeted or that his presence in the convoy was known to those who attacked it. I consider that this was also an opportunistic act and I am not satisfied that it was

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan", Marian Abou Zahab, 1 January 2013, CIS29402; "Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007", Arif Rafiq, 1 December 2014, CIS2F827D91993; "The Battle for Pakistan: Militancy and Conflict in Kurram", Mansur Khan Mahsud, 1 April 2010, CIS18543.

targeted at the applicant, that it indicates he had, or will now have, any particular adverse profile, or that he will be of any adverse interest to any person or group arising from this incident.

15. Turning to his specific claims, the applicant claims that in 2011 he began operating a [products] shop in Parachinar city. He said that the shop was popular and that many women came there. This brought him to the attention of the Taliban and in February or March 2012, he found a letter on the shop's front door. The letter said that he had to shut the shop because he was encouraging women to be independent. The letter was purportedly signed by the Taliban. The applicant was not sure what to do at this time and continued operating the shop but received a second letter a week or so later. He reported this letter to the local authorities but they were not able to help. He told his family about this letter and his family was scared and said he should leave but he hoped the situation would calm down and stayed.
16. He said that on a Thursday night in April 2012, he was returning home from work. He said that he always worked late on Thursday nights because he had to close early for prayers on Friday. There was no public transport at night so he would borrow a friend's car to travel to and from his shop. He said that this night he was driving alone on the [specified] road and when he got to the turnoff for his village, he saw that the road had been blocked. He stopped and turned to go back to Parachinar and armed people stood up and started shooting at him. A bullet hit the car but he was able to escape. He said that he knew he was being targeted because he always travelled late on Thursdays after closing his shop. He said that he went back to Parachinar city and stayed with a friend and the next day began organising his travel to Australia.
17. The applicant gave a detailed and plausible account of his claimed experiences. The applicant has not provided a copy of the threat letters and apart from his assertion that these were purportedly signed by the Taliban, I am unable to determine where the letters came from. I note that the Australian Department of Foreign Affairs and Trade (DFAT)³ reports that women and girls in Pakistan are subject to rights-based violations that can include cruel, inhumane and degrading treatment by traditional justice systems, as well as honour killings. The reasons for such violations can include dress or behaviour deemed insufficiently modest. Militant groups such as the Taliban have also attacked women and girls, particularly female teachers and girls attending school, due to ideological opposition to female education. It is plausible that religious extremists may target women who use [his products] as well as shops that sell such products and in that sense, encourage women to be independent or act outside the stricter interpretations of religious laws. While I cannot determine which group authored the threat letters, I accept that the applicant received these threat letters at his shop.
18. In relation to the road block incident, it is at first glance unremarkable that a person travelling on the [specified] road at night would, when confronted by a roadblock, try to escape. It is also unremarkable that seeing a car reversing away from the road block may have led the armed persons to fire at that car, whether or not it was their target. However, I give weight to the applicant's claim that he regularly travelled home by car late on Thursday nights and that this routine was known. I also give weight to the location of the roadblock, which was at the exit to the applicant's home village, and the applicant's explanation that at that time of night there was little traffic along the road. I consider that these factors are more than coincidental when taken together with the threat letters, particularly as the applicant had continued to operate his business. I consider that the claim that the applicant was being targeted by those who sent the threat letters (which the applicant did not comply with) is at

³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

least plausible. I accept that the applicant was targeted at the road block because of his [products] shop.

19. Although I accept that the applicant was targeted, this incident occurred seven years ago. The applicant has not claimed that any person has asked about him, visited his family or sent any threats to his family home since this incident. The applicant has not claimed to have any particular adverse profile apart from the shop, which has now been closed for seven years. Although I accept that the applicant was targeted and shot at as he has claimed, I find that the reason for this was that the applicant had not closed his shop. He did close the shop after the attack and there is no evidence before me that he or his family has been of any ongoing adverse interest to any group or person after that time, that anyone has been looking for the applicant or that he would continue to be of adverse interest to the attackers now. I note in this regard that the applicant's brother, who lives in the applicant's home village, works as a teacher in Parachinar city and commutes regularly to and from there. The applicant has not claimed that his brother has ever been stopped, harassed, questioned, threatened or otherwise approached in relation to the applicant, or for any other reason. I consider it is implausible that if the applicant was of continuing interest to the Taliban or other extremists, such groups have not taken any further steps to locate him and have shown no interest in his family.
20. On the other hand, I am prepared to accept that if the applicant was to return to Parachinar and this should come to the attention of the group that threatened him, this may reawaken the group's interest in him. The passage of time and the lack of further interest in the applicant or his family indicate that this is not likely but nevertheless, I cannot discount the possibility and having regard to all of the above, I consider that there is a small, but none the less real, chance that the applicant may come to the adverse attention of this particular group should he return to his home area. I am satisfied that this adverse attention arises from his operation of a [shop] in imputed opposition to the demands of the group and therefore arises from a real or imputed political opinion. I am satisfied that the type of harm the applicant may face may include death or serious injury and would be serious harm as contemplated by s.5J(5) of the Act. I am satisfied that it would be inflicted for the essential and significant reason of his imputed political opinion and am therefore satisfied that the applicant has a well-founded fear of persecution in Parachinar.
21. Section 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 the applicant has a well-founded fear of persecution in Islamabad.
22. The applicant submits that his cumulative profile, including his adverse profile with the Taliban, his education and having a brother who is a teacher increases his risk of harm. I take into account the applicant's submission to the delegate that the Taliban is a large group that is able to find him anywhere. However, the applicant came to the attention of a group in his local area because of his involvement with a local shop. Even if this group was part of the Taliban, I am not satisfied that the applicant's profile was, or would now be, so significant that he would be of interest to any extremists outside his home area for that reason. I am not satisfied that there is any more than a remote chance that he would be sought or identified by the Taliban or any other extremist group in another area of Pakistan because of his involvement with the shop.
23. As noted above, his brother regularly commutes between Parachinar city and the family home and the applicant has not claimed that his brother has been threatened, harassed, attacked or subjected to any adverse interest whatsoever arising from his profession. In any

event, while it is possible that the applicant may be identified as the brother of a teacher in his home area, I am not satisfied that there is any more than a remote chance that this relationship would become known in Islamabad.

24. Turning to his profile as a Shi'a, Turi and Pashtun, DFAT advises that Islamabad, the capital of Pakistan, has a population of two million people and is a special Federal Capital Territory that is surrounded by the Punjab Province. Both Islamabad and its neighbouring city of Rawalpindi (in Punjab province) are home to large Shi'a Muslim communities which are reported to be generally well integrated with the Sunni Muslim population, although some Shi'a Muslims in these cities do live in enclaves. Islamabad is home to mixed ethnic as well as mixed religious communities and has historically had a relatively high population of internal migrants.⁴
25. DFAT's 2016 Thematic Report on Shi'as in Pakistan⁵ confirms the existence of Shi'a communities in Islamabad and advises that there is a small but significant community of Turi Shi'a Muslims from Upper Kurram living in Islamabad and in small towns close to Islamabad. I consider that, if the applicant were to relocate to Islamabad, he may take up residence in one of the areas populated by Turi Shi'as and participate in communal Shi'a Muslim religious and social events. The applicant's Pakistani identity documents identify him as coming from the former Kurram Agency. I accept that the Turi accent may be distinguishable from the accents of other Pashtun groups, and that the applicant's family name may be recognised as a Shi'a Muslim name. Given all of these considerations I accept that, were he to reside in Islamabad, the applicant would very likely be identifiable as a Pashtun, a Turi and a Shi'a Muslim from Upper Kurram.
26. In January 2016 DFAT⁶ reported that the Turi community in Islamabad had informed it that there had been only one attack on Turi migrants in Islamabad in the past four years (that occurred in January 2013). In that incident a suicide bomber was killed by guards while the other four perpetrators (who originated from Kurram Agency) were arrested and later prosecuted in an anti-terrorism court. The most significant large scale sectarian attack to have occurred in Islamabad in recent memory occurred in May 2005 when a Shi'a shrine was bombed, resulting in 25 deaths and injuring 100 others. Credible sources also told DFAT that there had been a decline in the incidences of kidnapping for ransom in the Islamabad area.
27. The 2019 DFAT report⁷ notes that the frequency of sectarian attacks across Pakistan has reduced annually since 2014. The South Asia Terrorism Portal reports 16 incidents of sectarian violence killed 231 people and injured 691 in 2017, compared with 131 incidents killing 558 and injuring 987 in 2013. This trend continued in 2018, with a 40 per cent reduction in sectarian violence (12 incidents) compared to 2017. DFAT also notes that security forces have sought to tackle violent and organised crime across the country, particularly in large urban centres such as Karachi. Lahore, Karachi and other major cities generally have higher levels of violent crime than Islamabad, due to the large number of security personnel deployed in Islamabad relative to its population. DFAT did not report any kidnappings of Shi'as in Islamabad in its 2019 report.
28. DFAT reports that Shi'as in Pakistan are most prominent during Shi'a religious events and pilgrimages to Iraq and Iran. Shi'as commemorate the Day of Ashura with re-enactments of the martyrdom and processions, during which Shi'a men and women dressed in black parade

⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

⁵ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁶ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

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

through the streets slapping their chests and chanting. DFAT assesses that Shi'as are most vulnerable during large gatherings, such as Ashura processions. However, I also note media reporting in the review material⁸ which indicates that Ashura in Pakistan passed by without incident in 2017 and 2018.

29. Overall, DFAT has assessed that most Shi'as in Pakistan face a low risk of sectarian violence. This risk can vary depending on geographic location and for members of specific groups (including Turis), and high-profile Shi'as face a moderate risk of violence, as they are more likely to be targeted. Generally, while violence can occur in any part of Punjab, DFAT assesses that Shi'as in Islamabad face a low risk of sectarian violence. It also notes that Islamabad has lower levels of crime than other major cities, due to the large number of security personnel deployed there.
30. The 2016 and 2019 DFAT reports refer to the relatively safe circumstances for Turi Shi'a Muslims in Islamabad and there does not appear to be any ongoing trend of threats, attacks or kidnappings in Islamabad targeting members of the Turi Shi'a Muslim community who have migrated from Upper Kurram, or Shi'as more broadly. There have been very few instances of generalised violence reported in Islamabad in recent years and the information before me does not suggest that this is likely to change in the reasonably foreseeable future, particularly given the large number of security personnel deployed in the city. The situation appears similar for criminal violence, which is said to be lower in Islamabad than other cities in Pakistan.
31. I have given considerable weight to the DFAT analysis of the security and general situation in Islamabad as it has relied on a wide range of primary sources, including Shi'a community leaders and Pakistani and international news reports. I take into account that the applicant is not a high-profile member of the Shi'a community and although he is Turi, the information before me does not suggest that this on its own would increase his profile. Having regard to all of the information and the applicant's personal circumstances, I am not satisfied that the applicant faces any more than a remote chance of harm from sectarian, general or criminal violence in Islamabad.
32. DFAT reports that Turis relocating from Parachinar and Kurram Agency to other cities face difficulties finding employment outside of Parachinar due to ethnic and religious profiling and are generally discriminated against in employment selection processes. However, Turis leaving Kurram Agency tend to relocate to other known Shi'a areas, irrespective of language barriers, notably Wah Kant, Islamabad, Rawalpindi, Lahore and Karachi. Turis tend to live in enclaves with other Turis, mitigating societal discrimination, and global Turi Shi'a networks and donation systems can assist Turis who relocate.
33. The applicant submits that the DFAT report in respect of Turi networks is vague and that there is also country information that suggests that Turi support networks do not actually exist. Apart from this assertion, the applicant has not further identified what this information is or its source. The applicant also asserts that he cannot change his domicile and permanent address and therefore, does not have a right to settle in another part of Pakistan

⁸ "Muslims mark Ashura across Pakistan", News International (Pakistan), 22 September 2018, CXBB8A1DA35779; "Ashura observed peacefully amid tight security in KP", Dawn (Pakistan), 23 September 2018, CXBB8A1DA35781; "Ashura processions culminate peacefully in different districts", Express Tribune (Pakistan), 3 October 2017, CXC90406614861; "Ashura processions culminate peacefully across country", Dawn (Pakistan), 1 October 2017, CXC90406615826; "Ashura being observed across Pakistan amid tight security", Dawn, 21 September 2018, CXBB8A1DA35775; "Mobile services suspended in parts of Karachi ahead of Ashura", Dawn, 19 September 2018, CXBB8A1DA35716; "Ashura processions culminate countrywide, majalis under way", Geo TV, 21 September 2018, CXBB8A1DA35780.

permanently. He has not provided or referred to any evidence or information in support of this assertion and the DFAT information does not refer to any such impediments to Shi'as, Turis or Pashtuns relocating to other areas in Pakistan.

34. I find that if the applicant was to relocate to Islamabad, he would live within the Turi community. I am satisfied that he will be able to access government services. Although he may not have family in Islamabad, I am not satisfied that he will be unable to seek communal support in Islamabad if he needs to do so. He told the delegate that his family is able to support itself through farming, including selling surplus, and that his [brother] is university educated and working as a teacher. He has not been supporting his family while he has been in Australia and I am not satisfied that he will need to support his family should he return to Pakistan. He submitted to the IAA that his family is in a precarious position in Parachinar and he cannot rely on them for support, although there is no other evidence of this. Although his family provided financial assistance for him in the past, when he was establishing his shop and then later, when he decided to travel to Australia, it is plausible that his family may not be able to offer ongoing financial assistance should he return to Pakistan but in any event, even if he is not able to rely on his family for support, I am not satisfied that the absence of family support would significantly affect his ability to subsist.
35. Having regard to all of the above, I accept that the applicant may face some difficulties, including difficulties accessing support and some low-level societal discrimination, as a Turi, or as a Turi Shi'a from the Kurram Agency, in Islamabad. The information before me does not indicate that any such difficulties would include a threat to his life or liberty, significant physical harassment or significant physical ill-treatment. Nor would it include significant economic hardship, denial of access to basic services or denial of a capacity to earn a livelihood of any kind, such as would threaten his capacity to subsist. I am not satisfied that it is, or would include any other, conduct that may rise to the level of serious harm as contemplated by s.5J(5).
36. The applicant has not claimed to fear harm as a Pashtun but the delegate considered this and the applicant has made submissions on this issue to the IAA. I have therefore considered it. DFAT reports that the Pakistani Taliban's support base is primarily Pashtun and some local sources claim that this has led to official discrimination and racial profiling in terrorism arrests. However, the applicant is a Shi'a and a member of the Turi tribe which DFAT notes has been a particular target of the Taliban in the past. There is no other information before me which indicates that Pashtuns are subjected to harm or discrimination only the basis of ethnicity. I am not satisfied that the applicant, as a Pashtun who is also a Shi'a and a Turi, would be imputed with supporting the Taliban and face a real chance of harm from the Pakistani authorities or any other group or person arising from this ethnicity.
37. The applicant has not claimed to fear harm for being a returned asylum-seeker who has been in the West, although the delegate considered this profile and found that the applicant did not face a real chance of harm for that reason. The applicant has not challenged this finding in his IAA submission, nor has he sought to provide any submission or information relating to this profile. I am satisfied that the applicant has not made a claim on this basis. In any event the information before me does not indicate that returnees from the West have been targeted or harmed in Islamabad because of that profile and I am not satisfied that he will face a real chance of harm for this reason.
38. I am not satisfied that the applicant would, in Islamabad, face a real chance of harm as a consequence of sectarian or generalised violence or criminal activity. I am not satisfied that he would face a real chance of serious harm because of his religion, ethnicity or origin. I am

therefore not satisfied that the applicant has a well-founded fear of persecution for these or any other reasons.

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 found above that the applicant faces a real chance of serious harm in Parachinar. As “real chance” and “real risk” equate to the same threshold⁹, and for the same reasons as given above, I am satisfied that there are substantial grounds for believing that, as a necessary consequence of the applicant’s removal to Pakistan, he will face a real risk of significant harm in Parachinar.

Qualifications to the real risk threshold

43. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.

⁹ *MIAC v SZQRB* (2013) 210 FCR 505.

44. I have found above that the applicant does not face a real chance of harm in Islamabad as a consequence of sectarian or generalised violence or criminal activity. For the same reasons as noted already, I am not satisfied that he faces a real risk of significant harm in Islamabad as a consequence of sectarian or generalised violence or criminal activity. For the following reasons, I am not satisfied that the applicant faces a real risk of significant harm arising from his religion, ethnicity and origin should he relocate to Islamabad.
45. Islamabad is a functioning city which will provide the applicant with access to infrastructure and services necessary for subsistence. DFAT¹⁰ has observed that cities like Islamabad provide greater access to employment, education and health care services, than elsewhere in Pakistan. Turi migrants in Islamabad have told DFAT that these factors were central to their decision to relocate from the Kurram Agency. The 2016 DFAT Thematic Report¹¹ observed that Shi'as relocate with relative ease and frequency because of family and communal networks throughout the country. In Islamabad, there are Shi'a communities, including Turi Shi'as, in Koh-i-Noor and Golra Sharif, and in small towns close to Islamabad such as Taxila, Bahra Kahu, Bani Gala and Bari Imam. DFAT¹² understands that in Islamabad's working class areas that have significant Turi Shi'a populations, accommodation costs range from AUD135-270 per month (for 1-2 rooms) to AUD685 per month (for a house). DFAT also notes that members of the Turi community often share accommodation to alleviate such costs, which are further offset by the higher wages paid in large urban centres. I have referred above to discrimination in employment and accept that Turis may be discriminated against in employment selection processes, but I also note that many Turi Shi'as in Islamabad often own or work for small businesses. Turis in Islamabad may also be able to access communal support networks and donation systems if they need to do so.
46. Turning to his personal circumstances, the applicant lived in Pakistan until the age of about [age]. He is not married and does not have any children. He told the delegate that his family (parents and siblings) is able to support itself and he has not been sending money to the family while he has been in Australia. He has completed high school education and a [further qualification] in Pakistan. He established and operated his own business in Pakistan and since he has been in Australia he has trained and worked [in two occupations]. He has not claimed to have any physical or psychological vulnerability that would impact on his ability to return and re-establish himself in Pakistan. While I accept that networks of family favouritism, patronage and nepotism play a significant role in finding employment in Pakistan, the applicant has lived most of his life in Pakistan within a Shi'a and Turi community, has significant education and work experience. Although the applicant may have no family connection in Islamabad, the credible country information regarding the existence of Turi communal networks in Islamabad indicates that, were he to relocate to Islamabad, the applicant would be able to find employment and earn a livelihood sufficient to pay for his accommodation and subsistence.
47. I have found that the applicant may face some difficulties, including low-level societal discrimination, as a Turi, a Shi'a and Turi Shi'a from Kurram Agency in Islamabad. I am not satisfied on the evidence before me that any such difficulties and low-level discrimination would, singly or together, include or amount to deprivation of life, the imposition of the death penalty or torture. I am not satisfied that it would amount to severe pain or suffering, pain or suffering that is cruel or inhuman in nature, or to extreme humiliation, intentionally inflicted.

¹⁰ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

¹¹ DFAT, "DFAT Thematic Report-Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

¹² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409.

48. Although the applicant may continue to be separated from his family should he return to Islamabad, he has not claimed that his family will be unable to remain in contact with him or visit him there. As I have noted above, he has not claimed to have any supporting obligations to his family and while a continued separation may be distressing for him, I am not satisfied that it would involve or lead to significant harm as contemplated by the Act.
49. I have referred above to the applicant's personal and family circumstances. He has not claimed to suffer from any health condition or other vulnerability which may impact on his ability to relocate. I accept that separation from his family may be distressing but as noted above, he has not claimed that they will be unable to remain in contact with him or visit him in Islamabad. I do not consider that the possible separation from his family in the short to medium term would make relocation to Islamabad unreasonable in the applicant's circumstances and I am otherwise satisfied that relocation is reasonable in the applicant's circumstances.
50. Having regard to all of his personal circumstances and the information above, I am satisfied that it would be reasonable for the applicant to relocate to Islamabad, an area of the country where he does not face a real risk of significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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