



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA19/07665

Date and time of decision: 29 January 2020 14:20:00  
M Brereton, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Shi'a, Bangash and Pashtun from Parachinar in Pakistan. He departed Pakistan legally [in] April 2012 and arrived on Christmas Island [in] November 2012. On 26 September 2016, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 13 December 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the SHEV.
2. The applicant claimed to fear harm: from the Taliban because he and his father sold educational material to girls, as well as other Shi'a teaching material; because he cannot relocate to anywhere else in Pakistan because he will be recognised as a Shi'a, Bangash Pashtun from Parachinar; and because his personal information was released by the Department of Immigration (the Department).
3. The delegate accepted the applicant's claims as to identity and origin. The delegate did not accept that the applicant and his father were specifically targeted for harm or that his father continues to receive threats. The delegate was satisfied that the applicant faced a real chance of harm in Parachinar because of his race and religion but found that he could relocate to Lahore or Islamabad, where he would not face a real chance or real risk of relevant harm for any of the claimed reasons, 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 13 January 2020, the applicant provided the IAA with a submission and attachment. Parts of the submission refer to claims, evidence and information that were before the delegate and make argument in respect of the delegate's decision and to that extent are not new information.
6. The submission contains what appears to be a new claim that the applicant suffers psychological trauma from the violence he has suffered. This is put on the basis that it would make it unreasonable for him to relocate to other areas of Pakistan. To the extent that this may be a new claim and new information, the applicant has not claimed to fear harm for any other reason arising from this claimed trauma, apart from in the context of relocation. For the reasons given below I have not found it necessary to consider relocation and I am not satisfied that there are exceptional circumstances to justify considering this new information.
7. The IAA submission also contains a reference to the recent killing of the Iranian General Soleimani by the United States, in January 2020, but the applicant is not raising a separate claim in respect of that event; rather, the applicant is referring to the event in the context of demonstrating the ongoing risks to Shi'as posed by the changing security environment in Pakistan. To the extent that this event is new information, I am satisfied that it could not have been provided to the Minister before the delegate made the decision. To the extent that it is referring to a recent potential change in the security situation in Pakistan, I am satisfied that there are exceptional circumstances to justify considering it.
8. The submission contains an attachment identified as an "Expert Report on persecution faced by the Shia Turi Tribe of the Kurram Tribal District, Khyber Pakhtonkhwa province of

Pakistan”, dated 9 January 2020. This report, which contains general and not personal information, post-dates the delegate’s decision. The applicant submits that it could not have been given to the Minister before the delegate made the decision because it is “specifically about the findings of the delegate”, directly relevant to assessing whether he satisfies the requirements for the visa, and that he would suffer severe detriment if it was not properly considered. The author of the report states that he is a Shi’a Hazara from Kurram and sets out his biographical details and claimed specialised knowledge. The report then provides an analysis of the situation facing Shi’a Turis in Pakistan generally and Kurram District in particular, up to January 2020.

9. Although much of the report refers to information and events that pre-date the decision of the delegate, it does provide a more current analysis. As I am considering the chance of harm that the applicant may face now or in the reasonably foreseeable future, the most recent information is directly relevant. I am satisfied that there are exceptional circumstances to justify considering this new information.
10. The applicant submits that the delegate found there to be a real chance of serious harm in Kurram District and requests that in the event that the IAA does not concur with that finding, he be afforded the opportunity to comment on any information that the IAA may rely upon. For the reasons given below I have reached a different view to that of the delegate in relation to the risk of harm in Kurram. I have done so largely on the information that was before the delegate and on which the applicant has had the opportunity to comment, as well as information provided by the applicant.
11. It is well established that an IAA reviewer is not bound by earlier findings of a delegate and is able to make findings adverse to an applicant even where the delegate made a favourable finding in relation to the same issue.<sup>1</sup> Section 473DB(1) of the Act provides that 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, including those under Division 3 which provide for the getting of new information. However, if the IAA decides to get or accept new information, it can only consider that information in exceptional circumstances.
12. In the present matter the applicant has presented his claims and information in his application, orally at the interview and in substantial post-interview submissions. He has also provided submissions to the IAA. I am satisfied that he has been squarely on notice as to the issues relating to his application, including establishing a real chance of harm in all areas of his receiving country including Parachinar/Kurram, and I consider that he has had a real and meaningful opportunity to make claims and provide information on that issue. While I have considered one new report (discussed further below), this report does not contain any information that is different to, or contradicts, the information that the applicant has commented on or provided, other than being more recent. I am not satisfied that an interview is necessary or required in the circumstances and I have decided not to obtain further information or comment from the applicant, whether by interview or otherwise.
13. The information in the review material refers to the fluid security situation facing Shi’as and Turis in Parachinar. I have considered the most recent (February 2019) report published by the Australian Department of Foreign Affairs and Trade (DFAT)<sup>2</sup> which is in the review

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<sup>1</sup> *DYG18 & Ors v MHA & Anor* [2019] FCCA 1142; *DBE16 v MIBP* [2017] FCA 942.

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409.

material. I also note that the European Asylum Support Office (EASO) has published an updated country information report on Pakistan, on 30 October 2019.<sup>3</sup> I consider EASO to be an authoritative source of information and analyses. I also consider that the more recent information provides a longer frame of reference when considering the situation that may face Shi'as and Turis in Parachinar now or in the reasonably foreseeable future. I have obtained this report and I am satisfied that there are exceptional circumstances to justify considering it.

### **Applicant's claims for protection**

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14. The applicant's claims as made in his SHEV application can be summarised as follows:

- He is a Pashtun, Bangash and a Shi'a Muslim from Parachinar in Pakistan.
- His father was a shop owner who sold religious and educational materials. The applicant began assisting his father in the shop.
- In around 2007, the Taliban produced [material] that was blasphemous and offensive to Shi'as. The applicant's father sold the [material] but was not aware of its contents. The father was threatened to stop selling the [material].
- The shop also sold educational materials to girls. The applicant and his father were threatened to stop doing so.
- In 2008, a convoy of goods for the shop was blown up by the Taliban. Shortly afterwards there was fighting in Parachinar and the shop was targeted and burned down by looters. The applicant's father continued to obtain and distribute materials relating to Shi'a teaching and education for girls.
- The applicant had anonymous threats made against his life for several years on a regular basis. He did not go to the police as they did not know who was making the threats, and making unfounded allegations would make the situation worse.
- He was unable to continue his education due to the security situation and the danger from the Taliban. His father arranged for him to leave Pakistan in early 2012.
- In July 2013, his father was attacked by the Taliban while travelling and was hospitalised. His father is now unable to work. His father continues to receive threats, including threats against the applicant's life if he returns to Pakistan.
- If he returns he will continue to distribute religious and educational materials because the business has been in the family for generations and they believe it is important to allow access to this material.
- It would not be possible to relocate anywhere in Pakistan because he would be easily identified as a Shi'a from Parachinar who is personally known to the Taliban. He would be unable to find work because of his background.
- His personal information was released by the Department of Immigration (the Department) so he will be in greater danger as the Taliban will know he fled to Australia and sought protection.

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<sup>3</sup> European Asylum Support Office (EASO), "Pakistan Security Situation", 30 October 2019, 20191031160110

## Refugee assessment

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

### Well-founded fear of persecution

16. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
17. The applicant has consistently claimed to be a Bangash, Shi’a and a Pashtun from Parachinar. At the interview with the delegate on 21 June 2016 (the interview), he was able to respond to questions on his religion, ethnicity and claimed home location. His evidence on these issues appears credible and is consistent with information in the review material. I accept his claims as to identity and origin and I find that he is a Bangash, Shi’a and a Pashtun from Parachinar and that Pakistan is the receiving country for the purposes of this review.
18. At the interview the applicant said that his father had a shop in [a location] in Parachinar which had been left to the father by the grandfather. The main business was selling [educational goods]. The applicant used to help his father and would run the shop at lunchtimes when his father went home. The Taliban did not like that they were selling items for girls’ education and used to telephone from unknown numbers and tell them to stop doing this. The shop was closed during the fighting in 2007 (when the applicant was aged about [age] years old) and the Taliban took everything and then burnt it down. The delegate asked the applicant about his claim in the SHEV application relating to the [material] that the Taliban produced. The applicant said that he thought the interpreter had made a mistake in the statement. He said that the [material] he referred to contained some swear words and the Taliban thought the insults were directed at them and told the applicant and his father not to sell the [material].
19. The applicant confirmed that it was not just their shop that was destroyed in 2007 and that he saw a lot of shops and homes burnt down. He said that after the situation got better, his father opened the shop again. The delegate asked why the father would do so if it was dangerous and he was being threatened. The applicant said that there were many girls going

to school and they had to sell these things, and his father had skills in that sort of business. He said that the shop did not do so well and they closed it in 2010 or 2011 (when the applicant was aged about [age range]).

20. According to the country information before me, Parachinar is the largest town in the Upper Kurram Agency within what was formerly the Federally Administered Tribal Areas (FATA), but is now part of Khyber Pakhtunkhwa (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 tribes people. 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. Sunni militants barricaded themselves in a mosque in Parachinar and fought with Shi'a militia. A Shi'a procession was attacked many houses were burnt. Between 2008 and 2014, Turis were targeted by Sunni groups. Turis were stopped and killed while travelling on road, particularly on the Thall-Parachinar road between Parachinar and Peshawar.<sup>4</sup> Having regard to the historical information above, I accept that the applicant's family shop was burnt down during the violence in 2007 and that a convoy containing goods for the shop was attacked and destroyed in around 2008. However, this was in the context of the widespread and ongoing violence in and around Parachinar at this time and does not of itself indicate that the shop, or the family, was individually targeted.
21. It is implausible that having faced what has been claimed as regular and ongoing threats, the applicant's father would reopen the shop and continue selling material that it is claimed had led to the threats. Although I accept that a convoy was attacked in 2008, this is not said to have been a convoy organised or used solely by the applicant's father and I am not satisfied that it was a personal or directed attack on the father or the business. It is implausible that the Taliban, or other extremist groups, would continue to make regular and ongoing threats but take no other direct action to stop or punish the applicant's father when he continued operating the shop. I do not accept that the applicant, as a young boy working in his father's shop, was personally threatened as he has claimed. I also note that the applicant initially claimed (in his SHEV application) that his father stopped operating the shop after being attacked in 2013, but at the interview he said the shop closed in 2010 or 2011 because it was not doing well. The applicant claimed that his father was seriously injured in 2013 but he has not provided any evidence to corroborate the attack, its motives or the injuries. He also told the delegate that his father now works in another shop (owned by another person) selling [different products].
22. The applicant claims that his father has continued to receive threats against both himself (the father) and the applicant relating to the former shop. However, that shop has not operated since 2011 and I am satisfied that it was closed because of financial concerns and not because of threats or extremist violence. While it is possible that the applicant's father was injured in 2013, I do not accept that this was linked to the shop, which had already closed. There have been no other attacks on the father, including since he has been working at another shop in Parachinar, and I am not satisfied that the father has any adverse personal profile with the

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<sup>4</sup> 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; Dr Farhat Taj, "Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011", 1 May 2011, CISD9559B12437.

Taliban or any other extremists arising from the former family shop. I do not accept that the former shop, the father or the applicant were of any adverse interest to the Taliban or other extremists. I find that the applicant has exaggerated the claimed personal profile of his family. I am not satisfied that the applicant's father has continued receiving threats or that the applicant now has, or will have in the reasonably foreseeable future, any personal profile with the Taliban or any other extremist group arising from the family shop.

23. The applicant claims that if he returns to Pakistan he will continue operating the shop because it is a family business and the family believes that it should distribute the material. He told the delegate that the shop ceased operating in 2011, for what appears to be mainly financial reasons. He also said that his father sold the shop to provide money for the applicant's travel to Australia. He said that his father is now working for other people in [another] shop and has not provided any evidence to support the claim that the family believes it should distribute educational material, or that any other members of his family have attempted to do so. Given that nearly nine years have passed since the shop was closed and then sold, I do not accept the applicant's claim that he will continue to operate it should he return. I find that he will not do so.
24. The delegate accepted that Parachinar Bangash share certain common characteristics with the Turi tribe such as religion, residence in the Parachinar area and belonging to the Pashtun race<sup>5</sup> and considered the applicant's imputed profile as a Turi. I have also considered information relating to Turis as well as Bangash. Turning to the current security situation in KP, DFAT notes that KP, including the former FATA, reported the highest number of terrorist attacks in Pakistan in 2018 and assesses that despite an overall reduction in levels of violence, sporadic large-scale terrorist attacks are likely to occur, against a background of ongoing smaller-scale attacks (albeit at a reduced rate). DFAT also reports that the Taliban and Al-Qaeda have gained significant ground in the former FATA, killing many Shi'as, especially in Parachinar and that Shi'a tribes in the former FATA are among the most vulnerable groups in Pakistan. Its current assessment is that the risk of sectarian violence for civilians in the Kurram Agency, particularly Parachinar, is higher than for civilians in other parts of the former FATA.
25. DFAT has also reported that there have been significant attacks on Turis in the past and that deaths from terrorist attacks in Kurram Agency significantly increased in 2017. DFAT is aware of three attacks targeting Turis in Parachinar during the first six months of 2017 (on the grounds of their Shi'a faith), which killed more than 120 people:
  - on 21 January 2017, militants detonated a remote-controlled improvised explosive device in a marketplace in Parachinar;
  - on 31 March 2017 a suicide bomber attacked an *imambargah*<sup>6</sup> in Parachinar; and
  - on 24 June 2017 two devices detonated in a market in Parachinar.
26. However, DFAT also notes that military and security operations, together with associated counter-terrorism activities, significantly decreased the number and severity of such attacks. In the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device (IED) that targeted women and children. This compares to community estimates that 200 Turis were killed and 1000 injured in 2017, although DFAT states that it is unable to verify these claims. DFAT also notes that Turis reported significantly

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<sup>5</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265; Program for Culture and Conflict Studies, Naval Postgraduate School, "Tribe: Turi", 1 January 2011, CIS20497.

<sup>6</sup> Shi'a mosque.

fewer road attacks in 2018, as military operations have forced militants into the mountains. This has restored confidence within the community for individuals (although not large groups) to travel on the Thall-Parachinar road, although only between dawn and dusk. Furthermore, the Turi community in Parachinar has advised that 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. Security forces have issued cards to access the red zones, which can be obtained by residents on presentation of identity documents. Since the implementation of these measures there have been no further attacks reported in Parachinar city.

27. While DFAT notes a trend of decreased reports of attacks against Turis in 2018 due to the improved security situation in Parachinar and Kurram Agency, and opines that this trend is likely to continue in 2019, it also notes that attacks and violence against Turis can, and may still occur. As such, DFAT assesses Turis in Kurram Agency still face a moderate risk of sectarian violence from militant groups, because of their Shi'a faith. DFAT defines a moderate risk as one where DFAT is aware of sufficient incidents to suggest a pattern of behaviour. DFAT also reports that military operations have improved the security situation for Shi'as in the Kurram Agency and Parachinar. The civilian casualties that are reported as having occurred during 2018 are not further explained or attributed to direct attacks, generalised violence or random incidents.
28. According to DFAT, Pashtuns are the second largest ethnic group in Pakistan and are present in all levels of society. Pashtuns are said to dominate the transport sector and states that some Pashtuns continue to report racial profiling and harassment by security officials in areas where Pashtuns are in a minority, such as the Punjab. DFAT assesses that Pashtuns in such areas face a medium risk of official discrimination but Pashtuns in Pashtun majority areas who are not Turi tribes men, or linked to the Awami National Party (ANP), face a low risk of official discrimination. The applicant is not linked to the ANP, has not claimed that his area is a Pashtun minority area or that he has suffered any previous discrimination on the basis of his ethnicity. The information above indicates that while Pashtuns may be profiled by the authorities on ethnic grounds, this is because of perceived support for the Taliban. DFAT does not indicate that Bangash or Turi tribes people face any additional adverse interest from the authorities because of their ethnicity. Having regard to the applicant's religion, origin and personal history, I am not satisfied that he faces a real chance of being profiled by the authorities, or being imputed with any adverse profile as a Pashtun, Bangash and/or Turi in Parachinar.
29. In relation to general discrimination, DFAT indicates that no laws or government policies discriminate against Shi'as on the basis of religion. Broadly speaking, there is also little community prejudice against Shi'as and societal discrimination is largely confined to local nepotism, favouritism or patronage. Shi'as are represented in the professional community and there is no credible evidence of systematic discrimination against Shi'as in gaining admission to the public or private employment sectors. In this regard I note the applicant's evidence that his father obtained employment in Parachinar. DFAT does not indicate that Shi'as, Shi'a Pashtuns, Bangash or Turis in the Kurram Agency are denied, or are otherwise unable to obtain employment, access to medical or other services, or access to accommodation. The applicant has not claimed to have suffered harm arising from nepotism, favouritism or patronage in his community in the past.
30. DFAT assesses that there is a moderate level of criminal violence across the former FATA. However, there is nothing in the information before me which indicates that Pashtun Shi'as, including Bangash tribes men, have been, or are now being, specifically targeted by criminal



groups, nor is there any claim that the applicant or his family has suffered any incidents that may be attributed to criminality.

31. The most recent EASO report on Pakistan also refers to a “significant” decrease in violent incidents in the Kurram district, noting three incidents in 2018 compared to 52 in 2017. The Pakistan Institute for Peace Studies (PIPS) counted one ‘terrorist attack’ in 2018 in Kurram killing seven and injuring one person but it is not known if this is the same incident as the one reported in January 2018, when an improvised explosive device (IED) exploded and hit a vehicle of a family of eight persons in Upper Kurram. From 1 January until 31 July 2019, PIPS counted no ‘terrorist attacks’ in Kurram tribal district. On 12 June 2019, two Frontier Corps and police personnel were injured in a clash with militants in the Marghan Ali Sherzai area of Kurram. Apart from these incidents, EASO does not refer to any attacks on Shi’as or Turis in the Kurram district, or Parachinar city itself.<sup>7</sup>
32. I also note media reports in the review material that indicate that the Shi’a Ashura Day ceremonies in 2017 and 2018 passed without incident across Pakistan, partly due to a strong security presence and security planning to protect Shi’as, including the closure of borders, restrictions on pillion riding and the suspension of mobile telephone services.<sup>8</sup>
33. The applicant’s post-interview submissions contain references to and extracts from a range of country and media reports referring to attacks throughout Pakistan, including cross-border and related violence in Afghanistan. These include a 2019 assessment for the period 2013-2018 published by the Center for Research and Security Studies (CRSS)<sup>9</sup> and a report by the Asylum Research Consultancy.<sup>10</sup> Some of these reports refer to the mass casualty attacks carried out in Parachinar in early 2017 and ongoing violence in other areas of Pakistan such as Peshawar, but there are no reports of any post-2017 significant attacks on Shi’as or Turi/Bangash Shi’as in or around Parachinar.
34. On 22 October 2019 the applicant’s agent provided the delegate with further information, including a number of “opinions” from various persons and groups:
  - Letter from [Person A], Parachinar, dated 10 October 2019;
  - Letter from Parachinar political leader [named];
  - Letter from social activist and teacher [named] dated 27 September 2019;
  - Letter from [Person B], dated 18 September 2019;
  - Letter from [an official] of the Tehrik-e-Hussaini, Parachinar;
  - Letter from a retired [official] of the Pakistani Police, dated [in] September 2019;
  - Letter from the Secretary-General of [a local religious group] dated [in] September 2019;

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<sup>7</sup> EASO, “Pakistan Security Situation”, 30 October 2019, 20191031160110.

<sup>8</sup> “Muslims mark Ashura across Pakistan”, International News, The, 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 being observed across Pakistan amid tight security”, Dawn (Pakistan), 21 September 2018, CXBB8A1DA35775; “Ashura processions culminate peacefully across country”, Dawn (Pakistan), 1 October 2017, CXC90406615826; “Mobile services suspended in parts of Karachi ahead of Ashura”, Dawn (Pakistan), 19 September 2018, CXBB8A1DA35716; “Ashura processions culminate countrywide, majalis under way”, Geo TV (News), 21 September 2018, CXBB8A1DA35780

<sup>9</sup> Center for Research and Security Studies, “CRSS Annual Security Report Special Edition 2013-2018”, 1 March 2019, 20190405163832.

<sup>10</sup> Asylum Research Consultancy, “Pakistan: Country Report”, 18 June 2018, CIS7B839411561.

- Three media reports referring to the Kurram District; and
  - A video transcript referring to the Kurram District.
35. The letters, which come from academics, social activists, political leaders and government officials, refer to the history of violence against Shi'as and Turis. There are some references to recent incidents in Peshawar and other parts of Pakistan but there are no reports of ethnic or religious attacks on Shi'as, Bangash and/or Turis in or around Parachinar since the 2017 bombings. The media reports and video transcript refer to the presence of militants in Kurram (who were captured and handed to the authorities) and an attack on the Thall-Parachinar road that, although being a personal dispute, triggered a sectarian divide. None of the letters refer to any Ashura Day attacks or other incidents in 2019.
  36. The post-interview submissions refer to claims that journalists in Pakistan practice self-censorship and may not provide accurate reporting of security incidents and dangers throughout Pakistan. While this submission is plausible, the country information before me is drawn from a range of sources including community sources. Even if the media reports were not providing an accurate reflection of those communities' experiences and fears, the other information available to DFAT (as well as PIPS, CRSS and other reporting bodies referred to above and in the DFAT report) would indicate if the situation was dramatically different from that being reported.
  37. The post-interview submissions contain references to a decision of the Administrative Appeals Tribunal pertaining to the risks faced by Shi'a Pashtuns in Pakistan. While this decision is informative and I have considered the submission, I note I am not bound by such decisions and I have assessed the present case on the specific and individual circumstances of this applicant currently before me.
  38. The attachment to the IAA submission sets out a historical analysis of Pakistan and the situation facing Shi'as and Turis. It makes one reference to the DFAT report and the remainder of the references come from the Wikipedia website and media reports. The report itself does not point to any particular parts of the delegate's decision that it says is incorrect or seeks to expand or explain. Although it is more recent than the other information before me, it does not contain any reports or information referring to recent (post-2017) incidents of ethnic or religious violence targeting Shi'as in Parachinar. I do not consider that the author's personal experiences and the general references contained in the report are more persuasive or credible than the large amount of material already provided by the applicant, or the additional reports considered by the delegate.
  39. The IAA submission refers to the recent killing of General Solemani. The applicant asserts that this has brought "great sensitivity" to the region and notes that pro-Iranian Shi'a factions have started demonstrations against the United States and Saudi Arabia. The applicant asserts that the Pakistan government and Sunni people "negatively perceive it and the overall environment for Shi'a people is not conducive. ... Further, I may be perceived to be pro-Iranian given the willingness of many Shi'as to fight in the Syrian conflict."
  40. The submission is supported by the attached report which refers to media analyses that Iran has vowed retaliation but experts say the hard-line Shi'a regime in Tehran is not in a position to directly confront Washington. Instead, it could attempt to harm United States' interests in the Middle East, as well as Afghanistan and Pakistan. The Iranian regime has also expanded its influence in Afghanistan over the past decade, and more recently by directly engaging with the Taliban and the complicated situation in Afghanistan is likely to draw in Pakistan. The report also comments that ties between Iran and Pakistan have been tense for many years

due to a deep mutual mistrust. The report asserts that in general, Pakistani Shi'as are considered pro-Iranian as the Iran government use them to their favour. It notes that on 5 January 2020, thousands of people (mostly Shi'as) rallied in Karachi and clashed with police while trying to force their way toward the tightly guarded American consulate to denounce the killing of Soleimani. Pakistani television aired footage of the protests. The rally dispersed later in the evening and there were no reports of casualties. Scores of protesters also gathered in Islamabad to condemn General Soleimani's killing before dispersing peacefully.

41. Having considered all of the information above, while I accept that the situation in Pakistan is fluid, the analyses do not indicate that the government is drawing down or removing its security operations, nor do they assess that the more stable situation currently seen in the former FATA will deteriorate in the reasonably foreseeable future. I have considered the evidence in relation to reactions to the killing of General Soleimani but I note that there is no information referring to an increase in violence targeting Shi'as, nor any reference to protests, incidents or any changed security situation in Parachinar or the Kurram district. While I accept that the recent killing may have ongoing effects in the general region, I am not satisfied that the information indicates more than a remote chance that this will lead to a deterioration in the situation in Parachinar or Kurram more broadly in the foreseeable future. Ultimately, I am not satisfied on the evidence before me that the high level of sectarian violence experienced in Parachinar or Kurram in the past, including the first half of 2017, has continued. I am not satisfied that the level of such violence will increase in the reasonably foreseeable future. Having regard to all of these factors, and even if the applicant was readily identified as a Shi'a Bangash, a Pashtun, and imputed to be a Turi and or pro-Iranian, I am not satisfied that there is more than a remote chance of the applicant being harmed in sectarian or generalised violence in Parachinar, or Kurram more broadly.
42. The applicant has not claimed that he or his family has suffered any discrimination in the past, or that his family has suffered any discrimination since he left Pakistan. The information before me does not indicate that Shi'as, Shi'a Pashtuns, Bangash or Turis in Kurram are denied, or are otherwise unable to obtain employment, access to medical or other services, or access to accommodation. The applicant has not claimed to have suffered harm arising from nepotism, favouritism or patronage in his community in the past. While I note the DFAT assessment that there are moderate levels of criminal violence across the FATA, the applicant has not claimed that he or his family has suffered any harm arising from criminal violence or criminal activities (other than the claimed sectarian incidents targeting the shop and his father), or that he fears any such harm from criminal violence.
43. The applicant will need to travel by road to access Parachinar. He has not claimed that he will need to undertake travel outside the Parachinar area for any reason but I cannot discount that he may need to do so. The information before me reports that roadside bomb incidents have occurred, as well as more random events such as landmines. However, I am not satisfied that the level and frequency of such incidents in recent years indicates that the applicant faces more than a remote chance of being harmed during the journey he will need to undertake to access Parachinar, or should he need to travel outside Parachinar on occasion.
44. I accept that some of the applicant's personal details were inadvertently available on the internet for a short period of time in 2014. According to the delegate's decision, this information included the applicant's name, date of birth, nationality, the fact that he was an irregular maritime arrival and his immigration detention status. The applicant claims that he will be in greater danger because the Taliban will know he fled to Australia and sought protection. There is no information before me to indicate that the nature of the applicant's

claims, his evidence or the outcome of his application has been disclosed. I am not satisfied that the applicant or his father have any adverse profile with the Taliban or that the applicant will be considered differently to any other returnee with no particular profile. The information before me does not refer to any other persons who were subject to the data breach facing harm from the Taliban, any other extremist groups, or the Pakistani authorities because of that breach. I am not satisfied that the applicant faces any more than a remote chance of being harmed for any reason arising from the data breach.

45. The applicant did not otherwise claim to fear harm for any reason arising from his being a returned asylum seeker who has been in the West. The delegate considered that this claim arose and found that the applicant does not face a real chance or real risk of relevant harm for this 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.
46. In any event the information before me<sup>11</sup> does not indicate that returned asylum-seekers or returnees from the West have been targeted or harmed in Parachinar because of that profile. The applicant departed Pakistan on a lawfully issued passport. DFAT understands that people returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation and who have not committed any other crimes are typically released within a couple of hours. Those found to have contravened Pakistani immigration laws are typically arrested and detained. Those wanted for a crime in Pakistan or who have committed a serious offence while abroad may be arrested and held on remand, or required to report regularly to police as a form of parole. The applicant has not claimed to have committed any offences in Pakistan or since he left and as he departed on a valid passport and while I accept that he may be briefly detained and questioned, I am not satisfied that he will be subjected to any other interest. The information before me does not indicate that the authorities inflict any harm on persons with no other adverse profiles who are being questioned in this situation and I am not satisfied that the applicant faces a real chance of harm from the Pakistani authorities should he be briefly detained and questioned on his return.
47. DFAT reports that returnees are typically able to reintegrate into Pakistani society without repercussions stemming from their migration attempt, although those who took on debt tend to face a higher risk of financial hardship. Western influence is pervasive in many parts of Pakistan, particularly in large urban centres. Western films and music are widely available (although in many cases subject to censorship), and western-branded retail chains operate throughout the country. Both Urdu and English are official languages, and English is taught in many schools and is widely spoken among Pakistan's elite. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return frequently to Pakistan to visit relatives. DFAT assesses that individuals in Pakistan are not subject to any additional risk of discrimination or violence on the basis of having spent time in western countries or because of perceived western associations (such as clothing), despite a generally increasing conservatism and religiosity across the country. DFAT does not indicate that this risk is different in the former FATA than in other parts of Pakistan.
48. The applicant has not claimed to be in debt or to fear financial hardship because of his migration attempt. In any event, any fear of harm as a returnee from the West assumes that he will be identified or imputed as having been in a western country. Although he claims that

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<sup>11</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409.

he is readily identifiable as a Shi'a, Bangash/Turi and Pashtun from Parachinar, he has not claimed or provided any evidence that he displays any characteristics, speech, appearance or anything else that would identify him as having been in the West. He has not claimed that he will need, want or intends to carry or display any documentation or other evidence that he has been in the West and I find that he will not do so. He has not claimed to have any need or intention to disclose, or interest in disclosing, this fact to other persons, and I find that he will not do so. I consider the chance that he will be identified in Parachinar (or while accessing Parachinar) as a returned asylum-seeker from the West and face harm for that reason is remote, and not a real chance. I am not satisfied that he faces a real chance of harm as a returned asylum-seeker, or a returned asylum-seeker from the West, now or in the reasonably foreseeable future.

49. Having regard to all of the above and in particular the applicant's personal profile as a Shi'a, Bangash and Pashtun from Parachinar and the information about the current situation in Pakistan and Parachinar, I am not satisfied that the applicant faces any more than a remote chance of being harmed for any reason, including in sectarian or generalised violence, criminal violence or suffering discrimination, should he return to Pakistan, including during any travel to, from or around Parachinar that he may need to undertake. I am not satisfied that the applicant faces a real chance of any harm in Pakistan, now or in the reasonably foreseeable future, as a returned asylum-seeker who has been in the West, should he return to Pakistan.
50. The applicant does not have a well-founded fear of persecution in Pakistan.

#### **Refugee: conclusion**

51. 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**

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52. 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**

53. 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.

54. I have found above that the applicant does not face a real chance of harm for any reason should he return to Parachinar. As “real chance” and “real risk” equate to the same threshold,<sup>12</sup> and for the same reasons as given above, I am not satisfied that the applicant faces a real risk of significant harm for any reason or reasons should he return to Parachinar.

**Complementary protection: conclusion**

55. 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**

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

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<sup>12</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***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.