



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN

IAA reference: IAA20/07886

Date and time of decision: 23 March 2020 15:59:00

J McLeod, 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 Pashtun and Pakistani national from [Village 1], close to Parachinar in Pakistan's Kurram District. He arrived in Australia [in] September 2012 and lodged an application for a Safe Haven Enterprise Visa (SHEV) on 8 June 2017. On 12 February 2020 a delegate of the Minister for Immigration refused the grant of visa, finding that the applicant would not face a real chance of persecution or real risk of significant harm in Kurram District owing to his tribal/ethnic and religious profile.

### Information before the IAA

2. I have had regard to the material ('the review material') given by the Secretary under s.473CB of the *Migration Act 1958* ('the Act').
3. On 9 March 2020 the IAA received a submission from the applicant's representative. For the most part, the submission reiterates information that was already before the delegate, and raises arguments in response to the delegate's interpretation of country information and findings and to that extent is not 'new information'.
4. The submission references a BBC article from 2012 to support the assertion that the Taliban have singled out the Turi population of Parachinar as targets because they denied them and other Sunni militias access to the main arterial between Afghanistan and Pakistan and displaced local Sunnis. There has been no engagement with the criteria of s.473DD(b) of the Act. The report was published in 2012 and has been referenced to support an assertion raised by other sources in the review material which is non-controversial and which I already accept. I am not satisfied that s.473DD(b)(i) or (ii) is met, and nor am I satisfied there are exceptional circumstances to justify considering the information in this particular report from 2012.
5. Included in the review material were copies of the written record of the applicant's transferee interview and the audio record of his protection [interview]. It is unclear whether these materials were before the delegate when he made his decision. To the extent that it may be new information, I am satisfied that it is credible personal information which, if known, may have affected the consideration of the applicant's claims. I also consider the information relevant, highly corroborative of the applicant's claims and pertinent to this review; I am satisfied that there are exceptional circumstances to justify considering the information in these records. Given these records only support the applicant's claims, and that he has had an opportunity to raise claims and provide evidence through the SHEV process and the submission now provided to the IAA, I do not consider that the circumstances warrant inviting the applicant to provide comments or new information either orally or in writing, in relation to these records, or any other information.

### Applicant's claims for protection

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

- He is a Pakistan citizen, Shi'a Muslim and ethnic Pashtun of the Bangash tribe who was born and lived his whole life in [Village 1]<sup>1</sup>, [not far] from Parachinar city in Pakistan's Kurram Agency (now 'Kurram District').<sup>2</sup>
- In around 2007 fighting broke out in his area as the Taliban fought the local Shi'a Turi and Bangash tribes for access and control of the Parachinar area for its strategic location and passage to Afghanistan. Shi'as were indiscriminately attacked and killed. Parachinar was virtually blockaded and travellers in and out of the area needed to travel under convoy protection which was fraught with the risk of ambush. The applicant made this dangerous journey around twice per month from 2007 to obtain supplies for his cosmetic and accessories shop in Parachinar City.
- In November 2007, one of his cousins was killed by the Taliban while returning home. In August 2008 another cousin was shot and killed in a Taliban ambush on his convoy. His uncle was also shot and severely wounded in this [attack]. These family members were targeted due to their Shi'a faith.
- At the end of 2011 he was threatened by an unknown telephone caller. The caller asked the location of his house and who it belonged to. They said his cousins had already been killed and he would be next. The caller spoke with a Waziristan accent which indicated that he was a member of the Taliban.
- [In] April 2012 his convoy to Peshawar was ambushed by the [Taliban]. The driver of the lead vehicle was killed and [some] other people were injured in a bomb blast. The casualties were transferred to [Hospital].
- All these events led him to conclude that he had to flee Pakistan to save his life as there was nowhere safe for a Shi'a from Parachinar anywhere in Pakistan.
- [In] February 2016 another cousin was taken and killed by the Taliban while travelling from Parachinar to Peshawar to obtain goods for his shop in Parachinar. His body was found dismembered two days after he went missing. He was targeted for his Shi'a faith. As a Shi'a shop owner the applicant shares many similarities with this cousin.
- He fears for his family who are still residing in Parachinar. There were two significant bomb blasts in Parachinar in 2017 and as a result his children stopped attending school. His family stay home as much as possible. They get their food from farming and have survived largely on the proceeds from the sale of land he owned in Pakistan. When necessary, his uncle (usually) obtains provisions from the shops, risking his life each time.
- He fears that if returned to Pakistan, he would not be able to worship freely and would be targeted and killed by the Taliban or other Sunni extremists (including local Sunnis) in Parachinar, or while taking necessary trips to places like Peshawar.
- There is nowhere safe he can reside and the authorities cannot protect him.

## Refugee assessment

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7. 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

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<sup>1</sup> Alternative transliteration: [deleted].

<sup>2</sup> 'Kurram District' was formerly known as 'Kurram Agency' and was one of the seven administrative tribal districts of the Federally Administered Tribal Area (FATA) before it was merged into the Khyber Pakhtunkhwa province (KPP) in May 2018.

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**

8. 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.
9. The applicant claims to be a Shi'a, Bangash/Turi-Bangash Pashtun who born and lived his whole life in [Village 1] in the Parachinar area in Pakistan, where his family still reside.
10. The information before me indicates that around 40% of the approximately 500,000 people in Kurram District are Shi'a Muslims and that Shi'a Pashtun (Turi and Bangash) tribes comprise 80% of the applicant's Upper Kurram tehsil. A significant number of Shi'a Bangash reside in the applicant's own area of [Village 1].<sup>3</sup> As there are few differences, Shi'a and Turi Bangash may collectively be referred to as Turi-Bangash, as reflected in the applicant's varied references to himself in his protection interviews as 'Bangash' or 'Turi-Bangash'.<sup>4</sup> Given this information and taking into account that throughout the immigration process the applicant has given an adequately consistent, plausible and convincing narrative relevant to his identity, background and claimed local area, has utilised the services of Pashto interpreters, and provided documentary evidence of his nationality, identity and domicile in Parachinar I accept the applicant's nationality, identity and ethno-religious profile is as claimed. I find that Pakistan is the applicant's receiving country for the purpose of this review, and that [Village 1] in the Parachinar area is the place to which he would return.
11. I accept the Turi and Shi'a Bangash tribes share common characteristics, particularly religion, race, area of origin and a shared general opposition to the Taliban giving them a similar risk profile. As such, the country information relevant to Turis and also Shi'as is applicable to the applicant who identifies as a Bangash/Turi-Bangash Shi'a.
12. Country information from a range of sources considered by the delegate and included in the review material - including the South Asia Terrorism Portal, the Pak Institute for Peace Studies, The Friday Times, Dawn and various other media reports - supports the applicant's claims about there being longstanding sectarian conflict and a presence of extremist groups in his area, which has been of strategic importance for its access to Afghanistan. From 2007 until after the

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3 [Details deleted]

4 Khyber.org, "Tribes of the Kurram", 16 June 2010, 20190829121124

applicant's departure large scale violence was directed against Shi'as over their faith and resistance to the Taliban and other Sunni militants' presence and strategic intentions. There was a high incidence of active ground fighting and bombings, attacks on places of worship, targeted abductions and killings including beheadings, particularly of Turis and other Shi'as travelling on roads in the area, particularly the Tall-Parachinar road linking Parachinar to Peshawar.

13. Since his arrival in Australia the applicant has consistently spoken about this sectarian violence and his fear of the Taliban and allied Sunnis. I accept two of his cousins were killed and an uncle severely injured in two incidents involving sectarian fighting in Parachinar in November 2007 and an ambush on a convoy travelling to Peshawar in 2008. The applicant has consistently stated his cousins/uncle were targeted for being Shi'a and having regard to the applicant's evidence and the country information before me, I accept this is the case.
14. I accept the applicant received a threatening phone call at the end of 2011 from a caller he suspected to be Taliban who referred to his cousins' death and stated there would be a third killing. In the SHEV interview the applicant mentioned that everyone in Parachinar was receiving such calls. He believes the Taliban knew him because they gathered information and knew everyone in Parachinar in their effort to gain control, and that they may have also targeted him because he was a business owner. While there is some country information indicating that businesses received phone threats around that time, there is no indication the caller made any reference to the applicant's or anyone's business and I consider it mere speculation on the applicant's part that the threat was connected to his business or his profile as a business owner. Rather, I find it was due to his Shi'a profile.
15. I accept the applicant often travelled to Peshawar to obtain supplies for his shop and that his convoy was attacked en route [in] April 2012 (though I note in the SHEV interview it was referenced as 2011). The applicant's evidence about this incident does not indicate that the attack was carried out with the intent to individually target him, or by the same person or even persons connected with, the person who called him months earlier. Given this, noting that everyone in the applicant's area received a phone call of that type and the evidence does not suggest such threats were acted on against the other receivers, and that several months passed in the intervening period between the threat and the convoy attack, I am not persuaded that this convoy attack was directed at carrying out the phone threat, or was otherwise directed against the applicant personally. I do however consider that like other incidents of its kind around this time, this attack was sectarian in nature, targeting Shi'as and government forces protecting Shi'as on this road journey.
16. I am not satisfied on the evidence that there were any attempts to specifically carry out the phone threat or to make further threats against the applicant from late 2011, or to otherwise target him personally before he left Pakistan. I am not satisfied he was of any personal interest to the Taliban, any other militant groups or any local Sunnis allied to such.
17. The applicant claims another of his cousins was kidnapped, targeted, killed and dismembered in February 2016 because he was a Shi'a from Parachinar. He has provided a death certificate purportedly issued by a medical officer from the [hospital] certifying that someone sharing the applicant's surname died [in] February 2016 due to a fire arm injury. However, as the delegate noted, the death certificate makes no mention of the body being dismembered. It also does not contain a date of issue. The applicant has not explained how his family have come to know that this cousin was kidnapped before being killed, the perpetrator's motivations, or in fact anything about the circumstances. There is no reference to an incident of this type in the country information before me. The delegate noted in his decision that he had been unable to locate any reports supporting its occurrence and the applicant has not proffered any other reports or

information in support. Nor in fact, does the submission to the IAA dispute the delegate's finding that the claim is not credible. Having regard to all these considerations, I am not satisfied that this claim of the applicant's cousin being targeted and kidnapped/killed in 2016 is credible and I do not accept it.

18. Given the incidents I have accepted regarding the cousins' deaths and uncle's wounding in 2007/8 and the convoy attack in 2012 and the volatility of the situation in Kurram and broader Pakistan when he left, it is understandable that the applicant fears for his safety on return. However the country information before me indicates that the security situation has markedly improved over the last several years and there is not a real chance of his being harmed now or in the reasonably foreseeable future.
19. Over the past five years the Pakistan government has implemented a range of counter-terrorism measures which are credited with changing the security situation for the better. In 2014 the government introduced a multifarious civil-military strategy targeting terrorist, separatist and criminal networks and enhancing border security. Military operations were carried out in the former FATA (now KPP) and other parts of Pakistan under Operation Zarb-e-Azb which targeted terrorist, separatist and criminal networks while government's 20-point National Action Plan (NAP) tackled administrative and development reform, establishing military courts to try suspected militants, reviving the option of capital punishment, targeting sources of finance for militant organisations, taking measures to restrict hate speech, and committing to policy reforms. These activities continued throughout 2015 and 2016, with Pakistani security forces particularly targeting a wide array of militant groups in the tribal areas. In 2017 Operation Raad-ul-Fasaad succeeded Operation Zarb-e-Azb and Operation Khyber-IV was also launched, targeting terrorist groups in the Rajgal Valley and Islamic State connections in Afghanistan<sup>5</sup>
20. According to the Australian Department of Foreign Affairs and Trade (DFAT) and the Pak Institute for Peace Studies (PIPS) the number of violent and terrorism related attacks have significantly declined and the security situation markedly improved since 2013, with the implementation of the government's measures.<sup>6</sup> There have been few sectarian attacks in Kurram since 2014. The notable exceptions are some small scale incidents and a marketplace bombing in Parachinar which killed 26 and injured more than 70 in 2015 and a spike in incidents in 2017. In the first half of 2017 there were three mass-casualty terrorist attacks on Shi'a Turis in Parachinar which killed more than 150 people and injured hundreds more. There was also a roadside bombing killing 14 Shi'as and census workers travelling in Kurram and a targeted shooting of a Kurram political administrator and his guard.<sup>7</sup> Responsibility for the verified attacks was variously claimed by Sunni militant groups including Tehrik-e Taliban Pakistan (TTP), Lashkar Jhangvi (LeJ), Jamaat-ul-Ahrar, LeJ-Alami, Islamic State's local affiliates and others.<sup>8</sup>

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

6 DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; PIPS, "Pakistan Security Report: 2019", 5 January 2020, 20200114102703

7 DFAT, "DFAT Country Information Report Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Express Tribune, "Bomb wrecks crowded market in Parachinar", 22 January 2017, CXC904066518; Dunya News, "Blast kills 21, injures 50 in Parachinar's Noor Market", 31 March 2017, CXC9040665131; Dawn, "Parachinar twin blasts toll rises to 67", 25 June 2017, CXC9040669490; Dawn, "Several areas of Parachinar declared 'red zone'", 11 April 2017, 20191022114538.

8 DFAT, "DFAT Country Information Report Pakistan", 1 September 2017, CISED50AD5515; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 16 October 2018, CIS7B8394110560

21. DFAT's most recent report notes that KPP, 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 tempo). DFAT also reports that the Taliban and Al-Qaeda have gained significant ground in the former FATA, killing many Shi'as, especially in Parachinar. DFAT notes that Shi'a tribes in the former FATA are among the most vulnerable groups in Pakistan and remarked on Turis' vulnerability due to their concentrating in identifiable groups. DFAT assesses that the risk of sectarian violence for civilians in the Kurram, particularly Parachinar, is higher than for civilians in other parts of the former FATA and that Turis in Kurram face a moderate risk of sectarian violence from militant groups, because of their Shi'a faith. It assesses that attacks and violence against Turis can, and may still occur.
22. However, DFAT's analysis of these issues is problematic. The reference to Shi'a killings is dated and while its glossary indicates that 'moderate risk' is intended to reflect DFAT's awareness of "*sufficient incidents to suggest a pattern of behaviour*"<sup>9</sup>, it provides no clear examples of such incidents or how it reached its risk rating, nor its conclusions around the vulnerability of Shi'a Turis in Kurram. In the two and a half years since mid-2017, there have been no further sectarian attacks recorded in Parachinar and little evidence of such in broader Kurram district. There have been drone strikes and clashes between militants and security forces but the possible sectarian incidents (eg. a family killed when their vehicle hit a landmine in Upper Kurram and a Turi child fatality at a checkpoint crossing to North Waziristan) involved unclear circumstances and motivations and unknown perpetrators.<sup>10</sup> The information before me does not report significant attacks or large-scale actions targeting Shias, Bangash or Turis, or other civilians in the Kurram District. Notably, DFAT<sup>11</sup> itself assessed an improved security situation in Kurram, a significant decrease in the frequency and severity of attacks in 2018, and foreshadowed the improved situation to continue - which it did. Other sources before me including the FATA Research Centre (FRC) and PIPs have recorded a notable trending decline of violence targeting (Turi and Bangash/Bangash-Turi) Shi'as in Kurram since 2017.<sup>12</sup> There is no reliable evidence of recent targeting against Shi'as in Kurram.
23. Concerns were raised by the applicant in his SHEV interview and in his representative's submission to the IAA, about government censorship, the repression of the media and underreporting of sectarian violence. DFAT does report that there have been restrictions on media reporting in the former FATA and KPP which may mean some incidents have not been reported. DFAT also reports that the Pakistani government has engaged in direct censorship and that members of the media face intimidation and violence and pressure to avoid sensitive topics. However, I note that some of DFAT's own reporting regarding incidents and risks facing Shi'a Turis in Kurram has come from media reports. Significantly too, I have drawn my information and analysis from a range of credible sources, including independent bodies which explain their methodology for gathering information from the area, and provide reliable reporting of trends.

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9 DFAT's risk ratings do not correlate to a real chance or real risk of harm for the purposes of the Act.

10 PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; FATA Research Centre (FRC), "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2018", 15 January 2019, 20190117094912; FCR, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", 13 January 2020, 20200122123739.

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

12 FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2018", 15 January 2019, 20190117094912; FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", 13 January 2020, 20200122123739; PIPS, "Pakistan Security Report: 2018", 6 January 2019, 20190121110758; PIPS, "Pakistan Security Report: 2019", 5 January 2020, 20200114102703

Even accounting for restrictions, in this particular case, I am satisfied that there is sufficient reporting before me credibly reflecting the situation in Kurram.

24. The representative's submission argues the applicant is particularly at risk due to the perception that Pashtun Turi/Bangash are pro-United States (US), pro-Iran (and pro-Syria) and anti-Taliban. I note that DFAT's 2019 report suggests discrimination and violence towards Shi'a tribes, particularly Turis remains significant in Kurram Agency due to state concerns regarding Iranian influence and greater presence of the Taliban and Al Qaeda and that following the January 2017 bombing in Parachinar LeJ claimed responsibility attributing it in part to Shi'a support for Syrian President Bashir Al-Assad. However DFAT's report provides no examples of such discrimination arising from these issues and given its reference to Kurram 'Agency', rather the 'district', one might speculate as to whether the information is dated. In any event, the applicant has not provided any examples of issues he faced on account of any pro-Iran or pro-Syria perception while he was in Pakistan, nor that his family have faced more recently. I note the applicant claims his family rarely venture out due to risks for their safety, but apart from the 2016 killing of his cousin which I have not accepted, the applicant's evidence does not indicate they have experienced any specific incidents in at least the past two and half years and the independent information before also does not indicate that ordinary civilians in [Village 1] or Parachinar are being targeted. I do not accept that the applicant is of any personal adverse interest to the Taliban or other militant groups. His family have remained living in [Village 1] and there is no evidence to suggest the applicant has any links with militia groups, or with the US or Iran or fighting in Syria, or any specific anti-Taliba/Sunni militant movements. Nor is there any evidence to suggest he has any desire to speak out on such issues. The information before me does not support that there is now (or a real chance in the reasonably foreseeable future that there would be) systematic targeting of Shi'as, Turis or Bangash for their religion, ethnic and tribal identities, nor for any imputation of opposition to the Taliban/Sunni militants, support for Iran, the US, the Assad regime, or otherwise.
25. The applicant's representative argues it cannot be assumed the improved situation in Parachinar will continue into the foreseeable future, particularly given the shortfalls of NAP, limits on the effectiveness of policing and the general inadequacy of state protection. He emphasises the fluidity of the security situation, cyclical nature of violence in Pakistan, the history of persecution against Shi'a's, the continuing motivation of anti-Shi'a militias and their capability to carry out recent attacks notwithstanding the enhanced military presence in Kurram. I note in his [protection] interview the applicant mentioned a fatwa, and an open letter on the internet advising that there was no place for Shia's and that it was obligatory to kill them. More recently, in his SHEV interview the applicant also mentioned a planned Taliban attack on a school in Parachinar in 2019 but noted it was foiled when those involved were captured.
26. I have considered these matters but overall, the information before me indicates the situation has settled down and the area is now secure. Credible sources considered by the delegate including DFAT, EASO, the FRC and PIPs have recently assessed that the security situation in Kurram has been significantly improving since 2014, with the Pakistan government's response effectively weakening the operational capacity of militant groups in the region. These sources report reduced terrorist activities and anti-Shi'a sectarian violence across the former FATA over the past five years.
27. Significantly, there have been no further sectarian attacks recorded in Parachinar in the two and half years since mid-2017 as the Pakistani government has been taking active steps to provide immediate protection to Shi'a and other civilians in Kurram, and continuing with its implementation of longer term counter-terrorism measures. Recent military operations to erect fencing (40% of which had been reportedly completed in Kurram by February 2018) and other



border control measures aimed at tightening the permeability of the Afghan-Pakistan border have, according to DFAT, made minorities feel more protected with local observers, including officials, in KPP reporting *“a trend of increased security, a reduction in reported killings and reduced fear within the community in 2018.”* DFAT also reports restored confidence in the Turi community for individuals to travel on the formerly highly insecure Tall-Parachinar road (albeit only in daylight hours) and in fact the evidence before me does not indicate any recent attacks on Shi’a travellers. The military also controls a 20-30 square kilometre ‘red zone’ area for Parachinar, with a second smaller red zone therein, restricting access to protect places such as markets and schools.<sup>13</sup>

28. I do not downplay the history of insecurity in the applicant’s immediate and wider area. However given the security measures which have been put in place across Pakistan, in Kurram and within Parachinar, that there has been a sustained decline in sectarian attacks overall and taking into account the absence of attacks carried out in Parachinar in more than two and a half years, even with the applicant’s participation in Shi’a communal worship and community events and that as a shop owner he has always worked in market/bazaar areas (events/places previously targeted in mass attacks) I consider there is no more than a remote possibility (and not a real chance) the applicant would be harmed. I do not accept he would be unable to freely practise his Shi’a faith, or that the government protection would be withheld or ineffectual.
29. In the SHEV interview the applicant spoke about the difficulties his family face with the whole of Parachinar included in the red zone. He expressed frustration at the high military presence and frequent need to show ID and said it has been difficult for his family to move around, and get basic supplies. He said too that while his family has not been targeted since he left because they remain at home most of the time, if he returned, he would have to do business to support his family and in doing so, he would have to travel between Parachinar, Peshawar and other cities and would be targeted. In his [protection] interview he also stated he may need to take sick family members to Peshawar for treatment as he has done [before]. While I note DFAT has mentioned that the security situation in Parachinar and Kurram Agency has restricted freedom of movement and limited the community’s access to essential services and trade opportunities, it also notes the Pakistan Constitution guarantees the right to freedom of movement in Pakistan, that internal migration is widespread and common and that Turis are now using the Thall-Parachinar road with restored confidence.<sup>14</sup> I note the applicant has the relevant identity documentation he would require to obtain an access pass to move in and out of the red zone and I consider the information before me does not support that there have been any recent attacks in or around Parachinar, Peshawar, or other major cities in the region targeting persons of the applicant’s profile.
30. I note there have been some recent drone strikes targeting militants and clashes between militants and security forces in Kurram district but the evidence indicates that there has been a significant improvement in security in Kurram and Parachinar, and that violent incidents are not occurring with any frequency or severity or with a rate of civilian involvement so as to indicate a real chance of harm of this nature to the applicant in the reasonably foreseeable future. Nor does it indicate a real chance of sectarian/ethnic/tribal harm, or a real chance of harm arising from imputed political opinions arising out of these factors. Given these factors and the significant improvement in security in the applicant’s area and more generally in security across Pakistan including on previously highly insecure roads, I consider the chance that the applicant would be harmed in or in reaching Kurram district, Upper Kurram, Parachinar and the [Village 1]

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

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

area, or in the course of travelling for business or a family members' health in the region, is remote and therefore not real.

31. I am not satisfied the applicant will face a real chance of harm for any one, or any combination of reasons given. I am not satisfied the applicant has a well-founded fear of persecution.

#### **Refugee: conclusion**

32. 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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33. 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**

34. 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.

35. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

36. I have found the applicant would not face a real chance of harm for any reason on return. For the same reasons set out above, and noting that 'real chance' equates to 'real risk', I am not satisfied the applicant would face a real risk of harm, including significant harm – from anyone in Pakistan.

#### **Complementary protection: conclusion**

37. 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.



## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

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**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.