



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/07974

Date and time of decision: 15 April 2020 10:29:00
J Jennings, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be Shia, Turi Pashtun from the Kurram District, Pakistan. On 15 May 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790.
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 28 February 2020. The delegate was not satisfied that the applicant had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Pakistan.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received a statement from the applicant on 27 March 2020. In part the applicant's statement addressed the delegate's decision and findings. I have had regard to those parts of the statement.
5. The statement referred to the protection visa interview where the applicant was "not allowed more than a couple of hours to discuss [his] case" and that he had "so much to talk about" regarding his activities but that he not allowed to do so, nor was his brother able to attend that interview to discuss his activities. I have listened to the interview recording and note at the conclusion of the interview the applicant and his then representative expressed their disappointment at the limited time allocated for the interview. The delegate advised the applicant that he could provide further information after the interview and post-interview submissions were made. On 13 December 2019 the delegate also sent an email requesting comment on matters raised in post-interview submissions. Overall the applicant provided substantial submissions to the delegate which included his response to the delegate's questions, information about his brother's activities and supporting evidence. Although it has not been requested I have considered whether it would be appropriate in the circumstances to invite the applicant to give new information either in writing or at an interview. However the applicant has already been offered and taken the opportunity to provide further information in support of his claims, including a statement from his brother and photographs and videos evidencing his brother's political activity. I am not satisfied the circumstances warrant the IAA inviting the applicant to provide further information in this regard.
6. The statement noted that the delegate could not locate a speech the applicant's brother made in 2009 and the applicant included a link to a [video] showing his brother's 2009 speech. This is new information. I am satisfied that this is credible personal information and that as it rectifies information before the delegate I am satisfied that exceptional circumstances exist that justify the IAA having regard to this information.
7. In the submission the applicant stated that he had been working alongside his brother in Australia assisting him in protests and processions and that he was an active member of the [Organisation] along with his brother. The applicant did not advance claims regarding any activity in Australia in his SHEV application; the claims advanced in the application referred to activity in Pakistan. At the protection interview the applicant referred to his desire to be active

and to do something for the people and whilst this may indicate some ongoing activity the information that he assisted his brother and is a member of [Organisation] is new information. I am surprised that the applicant did not put forward this information in his SHEV application or in post-interview submissions considering the level of detail he provided about his brother's activities in Australia and his own activities in Pakistan. However I accept that this is credible personal information, in that it is capable of being believed, which had it been known may have affected consideration of the applicant's claims. The applicant has provided the information to support his concern that he will lose his life if he were to return to Pakistan and continue his activism and I am satisfied that exceptional circumstances exist that justify the IAA having regard to this information.

8. The statement otherwise refers to a number of media articles by citing extracts or providing links. These articles report a number of attacks in Pakistan. These articles, with the exception of one, all date from 2019 or earlier and predate the delegate's decision. In addition to these articles the submission referred to "smarttraveller.gov.au" advice that it was not safe for Australians to visit many parts of Pakistan. No extract of this information was provided and it is not clear when that advice was published, nor is it apparent to me why this information is relevant to the applicant's claims, particularly noting that such advice has been written for a specific audience, being Australians travelling to Pakistan. I note a number of submissions were made by the applicant's then representative both before and after his protection visa interview which referenced and cited from a range of articles and reports relevant to the general security situation in Pakistan, particularly for Shia Turis. The applicant has not explained why the information cited in the IAA submission could not have been provided to the Minister or why it may be considered credible personal information. Furthermore I am not satisfied that any exceptional circumstances exist that justify the IAA considering the new information.
9. The article cited from Al Jazeera is dated 17 February 2020, and while this predates the delegate's decision this is by only a few days. However even if this information were to meet s.473DD(b) I am not satisfied that there are any exceptional circumstances that justify considering the information. It is not apparent to me how the information in this article is relevant to or supportive of the applicant's claims. In the paragraph pertinent to this article the applicant refers to a bomb blast in a Shia mosque in Quetta "that happened at the start of this year" and the applicant refers to hundreds of Shias being attacked, but contrariwise this article in fact refers to an attack in February 2020 at a far right Sunni Muslim political party (Ahle Sunnat Wal Jamat) event, and not to a Shia mosque or attacks on Shias.

Applicant's claims for protection

10. The applicant's claims can be summarised as follows:
 - The applicant is a Shia Turi Pashtun from a village in the Parachinar area of Kurram District, Khyber Pakhtunkhwa (KP), Pakistan.
 - The applicant's father was an elder in the village and involved in Jirgas, the Imambargh and other village matters. His family are religious and politically active. His father was also involved in negotiations to resolve conflict between Shias and the Taliban. Through this role his father is well-known in the community. His brother has also been active both in Pakistan and in Australia where he currently resides.
 - The applicant's uncle owned [a Subject] school which taught male and female students and due to this he was also well-known in the area.

- From 2007 conflict between Shia and Sunni Muslims broke out in Parachinar. Because of their influence and education his family's details were passed to the militants. The Taliban dropped letters in Parachinar threatening his uncle and father. Around this time his father's [shop] in Parachinar was attacked and destroyed.
- Family members have been attacked and killed by the Taliban/Sunni extremists. Around 2010 his uncle and cousin were kidnapped when travelling in a convoy with other Shias. They were released when an exchange for kidnapped Sunnis was negotiated.
- One of the applicant's brothers has been given asylum in [Country].
- In 2007 the applicant was travelling on the road from Peshawar to Parachinar and his convoy was attacked by the Taliban. One of the group was shot in the hand and the applicant escaped with others by running from the scene.
- As a student the applicant joined the Imamia Students Organisation (ISO) and was an active member while studying in Peshawar, Islamabad and Lahore. He was involved in organising demonstrations and protests, writing and giving speeches, speaking out against Sunni extremism and participating in religious events. His activity was well known. The applicant was involved with [a service] and helped collect and deliver [a product].
- The applicant was harassed and threatened by Sunnis at the colleges where he studied. When he spoke to a lecturer about this he was advised to keep a low profile and that the police would not be of assistance. On one occasion he and an associate were invited to a social event but they decided not to attend as they had heard of incidents where Shia students had been invited to such events and killed. Sunni preachers visited the college hostel in attempts to convince students to attend the Sunni mosques and the applicant engaged in an argument with Sunni preachers about the circumstances of the Shia massacre in Kohistan in 2012.
- In May 2011 the applicant was involved in organising a large protest. He and other organisers were bullied by Sunni students who supported the Taliban and Muslim extremism and viewed Shias as infidels. These students took photographs and videos of the applicant and said they were aware of his [Social media] details and that they would provide the information to others who would harm him. After the 2011 protest the applicant was approached by Sunni students who accused him of working against Islam and threatened his safety.
- At his protection interview the applicant spoke of his wish to be active and to be doing something for the Shia people and in the IAA submission he referred to his support of his brother's activities in Australia and membership of [Organisation].
- The applicant's brother was an active member of ISO in Pakistan and since coming to Australia has continued to be active in community groups and has been an open advocate for Shia rights and the Shia people. This has included giving a number of speeches and being involved in activities that have been publicised on social media. His brother was also involved in organising a rally in 2009 at [a Venue]. His brother spoke at this rally and his speech has been published on [the internet]. The applicant has provided a statement from his brother about his activities, and photographs and links to various published materials demonstrating his brother's activities.
- The applicant's family in Pakistan have received threats from the Taliban as a result of the roles of his brother and father. The applicant fears that as a result of the activities of his brother, his family profile and his own activities he would be harmed by Sunni militant groups should he return to Pakistan.

- In his submission the applicant's then representative advanced that the applicant would be harmed in Pakistan on the basis of;
 - his Shia religion,
 - his Turi ethnicity,
 - his membership of a particular group, being: a member of the Turi Shia tribe from Parachinar in Pakistan; and a member of a high profile family from Parachinar,
 - being active in armed opposition to Sunni extremists and militant groups,
 - being perceived as pro-US, pro-Iran, anti-Taliban,
 - political option, as an imputed opponent of the Taliban and other Sunni militants/an imputed opponent of the Pakistani government due to the high profile public criticisms of the Pakistani government by his brother in Australia.

Refugee assessment

11. 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

12. 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.
13. The applicant has consistently claimed to be a citizen of Pakistan and has provided identity documents in support of his claimed identity. I accept the applicant's identity as stated and that Pakistan is the receiving country for the purpose of this review.
14. The applicant has also consistently claimed to be a Shia Turi Pashtun from the Parachinar area of Kurram District, KP, formerly part of the Federally Administered Tribal Areas (FATA). The applicant claimed that due to conflict from 2007 Shias and Turis have been attacked and killed in his area. Country information confirms that from 2007 conflict between Shia and Sunni

Muslims broke out in Parachinar and the FATA areas in general and that many Shias and Turis were attacked and killed by the Taliban and other Sunni extremists.¹

15. The applicant also claimed that as a result of their activities and profile his family is well known as being against the Taliban and Sunni extremist groups and that as a result his family details were passed to militants and they were threatened by the Taliban. The applicant was able to describe his father's role and activities in some detail and I accept the applicant's family is religious and politically active and that his father was an elder in the village and involved in Jirgas and the Imambargh and negotiations to resolve conflict between Shias and the Taliban. I accept that the applicant's brother was a member of the ISO and involved in Shia activism. I also accept that his uncle owned [a Subject] school which taught male and female students.
16. The applicant has recounted a number of incidents of harm to himself and other family members and has indicated that his family was threatened by militants because they are educated, teachers, village elders and active politically. Noting the context of the sectarian violence in the FATA from 2007 I accept that the applicant and family members have been harmed as claimed but as discussed below I am not satisfied that the family details were passed to militants or that the applicant or his family members were targeted for harm as claimed by the applicant, but rather that this was indicative of the widespread harm experienced by Shia Turis at this time.
17. The applicant claimed that militants were given the details of village elders after which the Taliban 'dropped' letters threatening his father and uncle. Country information indicates that militants have used letter drops as a means of communicating their message; in 2012 militant group Lashkar-e-Jhangvi issued an open letter declaring its intention to abolish the "impure" sect of Shias and more recently in 2017 Daesh dropped leaflets into Kurram District from planes.² However these letter campaigns have been generalised threats in their nature rather than specific threats to specific persons. When asked at the protection interview if other village elders had been threatened like his father the applicant referred to atrocities committed to the bodies of others, indicating that village elders harmed by the Taliban were physically attacked or tortured, as indicated in reports of attacks on tribal leaders.³ Considering the country information reporting the generalised nature of letter drop campaigns and that the applicant's father was not physically assaulted in the manner the applicant described other village elders were assaulted or as indicated in the country information I am not persuaded that his father was targeted by the Taliban or others because of his village elder/Jirga/Imambargh role or for a profile other than being Shia Turi.
18. In this regard I have also considered the applicant's account of the attack on his father's shop. From the applicant's account his father's shop was burned in 2007 during the sectarian violence in Parachinar in which a number of Shia businesses were attacked. The outbreak of the violence in 2007 saw mortar and shelling attacks in Parachinar destroying many properties. Shia/Sunni militia groups were largely indiscriminate in their attacks on the villages and

¹ Middle East Institute (United States), "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007", December 2014, IS2F827D91993; Marian Abou Zahab, "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; Pakistan Security Research Unit, Brief Number 40, "Sectarian Violence in Pakistan's Kurram Agency", 22 September 2008, CIS16789

² News International, "Daesh leaflets in Kurram Agency threaten a 'specific sect'", 8 February 2017, CXC9040661620; Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report – Shi'as in Pakistan", 15 January 2016, CIS38A801265

³ BBC Pakistan, "Anti-Taliban tribal elder killed in Pakistan", 27 November 2009, CX236985; The News (Pakistan), "Tribal elder shot dead in Kurram", 18 October 2012, CX297376; South Asia Terrorism Portal, "Tribal elder shot dead in Khyber Pakhtunkhwa", 21 November 2012, CX299565

markets of the opposing groups.⁴ Noting the large scale attack on Shia villages and properties in 2007 I am not satisfied that the attack on his father's shop indicates the applicant's father was targeted by the Taliban/Sunni militias. Rather I find his father's shop was attacked in an episode of sectarian violence against Shia properties and Shias in general.

19. A further incident of harm to the applicant's family was the incident in which his uncle and a cousin were kidnapped with a group of students. The applicant's account is that the two were travelling with the group in a convoy from Parachinar to Peshawar when apprehended by militants. Shias travelling on the roads were vulnerable to attack and kidnap.⁵ That his uncle was released following negotiations of a hostage swap indicates that this was an opportunistic kidnap rather than one in which his uncle was specifically targeted. If his uncle had been targeted because of a profile of concern to the militants I do not accept that he would have been released. Considered together with the country information indicating the prevalence of attacks on Shias travelling on the roads I am not satisfied that the applicant's uncle was targeted by militants for kidnap but that rather he was the victim of a generalised road attack. Similarly I find the incident where the applicant was attacked on the road when returning to Peshawar in 2007 to be a generalised road attack on a convoy of travelling Shias.
20. I have already noted the incidents of violence and attack on Shias resulting from the outbreak of hostilities in 2007. In the context of this violence I accept the applicant's claim that a cousin was killed in an ambulance which was attacked and two other relatives were killed on the same day. But I am not persuaded that these attacks support the applicant's contention his family was targeted. His father, who it is claimed as a village elder was well known, was able to continue living in the family home after the 2007 outbreak of violence and the attack on his shop (which I have found to be the result of indiscriminate attack), without being harmed, indicating that neither he, nor his relatives, were of specific concern to the Sunni militants beyond being Shia Turi.
21. I have accepted the above discussed claims of harm and that overall the applicant's family were educated, teachers, village elders, involved in Shia activism and negotiations on behalf of Shias. I accept that his father/family may have been well known and that his father was involved in village activities and negotiations as claimed, but I note that this was as one of a number of other village elders/leaders. But considering the circumstances of the incidents of harm and the country information indicating militants killed those Shia leaders and activists they considered to be of concern for their anti-Sunni stance and opposition to extremists I am not satisfied that the applicant or his relatives were targeted for harm as claimed. I accept the incidents of harm claimed by the applicant, and while I accept that these would have been alarming for him and his family, I am not satisfied that they were harmed for reasons other than for being Shia Turi.
22. I accept that Kurram District has been subject to sectarian dispute and conflict. The Kurram District, formally part of the Federally Administered Tribal Areas (FATA), is now part of KP. The area comprises both Shias and Sunnis. Shias/Turis have been opposed the actions of the Taliban and Sunni militant groups who were seeking to use the area to gain entry to Afghanistan, which the area borders. I note the comments from the representative in his 15

⁴ Middle East Institute (United States), "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007", December 2014, IS2F827D91993; Marian Abou Zahab, "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; Pakistan Security Research Unit, Brief Number 40, "Sectarian Violence in Pakistan's Kurram Agency", 22 September 2008, CIS16789

⁵ Dawn, "Militants kidnap 37 passengers in Hangu", 16 May 2010, CX243668

September 2019 statement that Shia Turis have a unique profile and along with Hazaras and Bangash, Shia Turis have been the main targets of sectarian attacks.

23. The conflict between the Turis and the various Sunni militant groups dating from 2007 was the result of the Taliban, Al Qaeda, Islamic State and similar groups becoming active in the area. Shias in the area, particularly the Turi tribe, opposed the actions and influence of such groups and fiercely guarded their tribal lands resulting in significant outbreak of violence with Sunni tribes in April 2007. The violence escalated with the involvement of the Taliban which had established a stronghold in lower Kurram and stepped into the dispute to support the Sunnis.⁶
24. The threat of rising Islamist militancy, particularly Al Qaeda, and ongoing violent attacks by militants caused the Pakistani government to respond with counter-terrorism measures designed to disrupt the militants' activities and influence. In 2014 the authorities launched Operation Zarb-e-Azb in parts of the FATA. This operation spread more widely into KP targeting terrorist, separatist and criminal groups. Operation Zarb-e-Azb and similar initiatives are credited with achieving a significant reduction in violent and terrorism related attacks. Throughout 2015/2016 military operations continued under a National Action Plan to target militant groups operating in the FATA. Initially these counter-terrorism actions resulted in a significant reduction in the number of casualties from terrorist attacks.⁷
25. However in response militant groups launched a number of major attacks in 2017. Militants carried out a number of attacks in Parachinar in Kurram District including three bombings, one of which killed 72 people in a market leading up to the Eid festival. Further reports are of roadside bomb attacks in which a number of Shias and government officials were killed in 2017 and early 2018 and a number of sectarian incidents and reports of attacks on Shias between March and April 2018 although these were shooting attacks and occurred outside the Kurram District.⁸ Deaths and casualties from these incidents were high and in response the Pakistani government ramped up its counter-terrorism efforts. In 2018 national security operations resulted in a significant reduction in terrorism related attacks and in 2019 the Department of Foreign Affairs and Trade (DFAT) reported that military operations have forced militants into the mountains.
26. Despite the reduction in terrorist attacks and the decline of effectiveness of militant groups who have become restricted to the mountains the 2019 DFAT report commented that "the Taliban and Al Qaeda have gained significant ground in the former FATA, killing many Shi'a — especially in Parachinar, rendering Turis and other Shi'a tribes of the former FATA amongst the most vulnerable across Pakistan". However the same paragraph goes on to refer to "significant violence" between 2008 and 2014 indicating the references to Shia deaths relates to that period. This report details the significant number of attacks by militant groups throughout Pakistan in 2018 and noted that in 2018 KP reported the highest number of terrorist attacks in Pakistan but does not specify any particular incidents in the Kurram District since the first half

⁶ Middle East Institute (United States), "Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007", December 2014, IS2F827D91993; Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; Pakistan Security Research Unit, Brief Number 40, "Sectarian Violence in Pakistan's Kurram Agency", 22 September 2008, CIS16789

⁷ DFAT, "Country Information Report – Pakistan", 20 February 2019, 20190220093409; DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515

⁸ DFAT, "Pakistan Country Information Report 1 September 2017", 1 September 2017, CISED50AD5515; Eurasia Review, "Pakistan: Sectarian Savagery – Analysis", 29 November 2018, CXBB8A1DA40015; Fata Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188

of 2017 and the information before me does not indicate large-scale attacks or high levels of casualties since that period.⁹

27. As noted by the applicant in his submission to the IAA, DFAT noted an overall reduction in the level of violence but assessed that sporadic large-scale terrorist attacks may still occur against a background of ongoing small-scale attacks (albeit at a reduced rate) and the risk of sectarian violence for civilians in the Kurram District remains higher than for civilians in other parts of the FATA. Despite the reduction in terrorist attacks and the effectiveness of militant groups, DFAT reported that Shia tribes in the former FATA are among the most vulnerable groups in Pakistan. DFAT noted the Turi community reported two attacks in early 2018 (which DFAT is unable to verify), in comparison to estimates from the community that in the previous year 200 Turis were killed and 1000 injured. The IAA submission draws attention to DFAT assessment that the Turi tribe face a moderate risk of sectarian violence; however DFAT also noted that counter-terrorism measures have significantly decreased the number and severity of attacks on Turis and the community reported significantly fewer road attacks in 2018, restoring some confidence within the community travelling on the road.¹⁰
28. I have had regard to the country information cited in the submissions, the comments regarding reliance on DFAT reporting, and the caution that incidents of attack and violence are under-reported, and that there are numerous reports of the Pakistani government pressure on journalists not to report on militant attacks against religious minorities. In this regard I have taken into account that reports from agencies such as the FATA Research Centre based their reporting on a range of sources including field researches working in the region and reliable secondary sources.¹¹
29. It is submitted that the applicant would be perceived as pro-US, pro-Iran, anti-Taliban and imputed as an opponent of the Pakistani government. In the Country Information Annexure submitted to the delegate it was stated that reports indicate that Turis have been increasingly viewed as being strongly supporting of the Iranian regime and working with the Iranian government in Pakistan and other sensitive contexts such as Syria, resulting in attention from Pakistani security services and further motivation for Sunni militants to target the community. The BBC article cited reports the questioning of a number of men, and the disappearance of some of those detained, suspected of links to a secretive militia in Syria, the Zainabiyoun Brigade, thought to be made up of around 1,000 Pakistani Shias fighting on behalf of the regime of President Bashar al-Assad.¹² Further country information supports that Shias have been vulnerable to attack, in part for supporting Shia/Iranian militias in the conflict in Syria.¹³ However the indications are that those of interest and identified by intelligence agencies and those who have returned from Syria, particularly fighters, and pilgrims returning from the Iraq

⁹ Express Tribune (Pakistan), "Terror incidents continued to decline in 2018", 1 January 2019, 20190121150833; FATA Research Centre, "FATA Annual Security Report 2016", 24 January 2017, CISED50AD120; Fata Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; Center for Research and Security Studies (Pakistan), "Center for Research and Security Studies Annual Security Report 2017", 1 March 2018, CIS7B83941392; Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; US Department of State, "Country Report on Human Rights Practices 2018 – Pakistan", 13 March 2019, 20190326095100; International Crisis Group (ICG), "Shaping a New Peace in Pakistan's Tribal Areas", 20 August 2018, 2019060515525

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

¹¹ FATA Research Centre, "FATA Annual Security Report 2016", 24 January 2017, CISED50AD120; FATA Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188

¹² Submission, Country Information Annexure – Turi Shias in Pakistan; BBC NEWS, "The story of Pakistan's 'disappeared' Shias", 31 May 2018

¹³ Mehr News Agency (Iran), "Shi'as of Parachinar; victims of Takfiri terrorism, govt. apathy", 22 April 2018, 20190110132325; Daily Times (Pakistan), "Coming home to roost", 21 March 2018, 20190110135034;

or other areas in the Middle East.¹⁴ There is no indication the applicant has a travel history that would be of concern or that he would otherwise be viewed as of concern by the authorities or others.

30. The Country Information Annexure cautions that the cyclical nature of violence in Pakistan must be taken into account and that the Pakistani Taliban has been able to regroup and regain its capacity to carry out major attacks both inside KP and in other parts of the country. The submission also UNHRC Eligibility guidelines of 2017 specifically noting Shias from Pakistan may be in need of international protection. The 15 September 2019 submission goes on to graph the cyclical nature of the reported sectarian violence and recount a number of incidents of violence. The Country Information Annexure stated that anti-Shia extremist groups are growing transnational non-state actors in Pakistan and provided a detailed account of the activities of the major militant groups in Pakistan.
31. The applicant provided a range of letters and reports and transcripts in support of his claims and fears of ongoing militant activity in Pakistan. In general the letters and transcripts recounted the history of sectarian violence and expressed concerns about the chance of ongoing attacks, make references to reference to militant activity in the area, and in part proffer personal unsubstantiated opinions. In his letter a retired police officer comments that the government of Pakistan has done “nothing to protect Shias of Kurram from ... attacks” and “has not taken any significant measures to provide security” to Shias. Other letters refer to the Turi tribe being a “target for terrorism for many decades” and that “hardly any examples in the world can parallel the type of challenges [facing] the Turi tribe”.
32. Where these letters do refer to more current incidents the information of the incidents is very basic and largely unsubstantiated. In the letter from the Anjuman-e-Hussainia three members of the Turi community are named as having been attacked but there is little in the way of detail to substantiate the comments. Similarly the letter from the President of Tehrik-e-Hussaini refers to hundreds of incidents and cites some examples but with the exception of two incidents stated to have occurred in 2018 and one incident at Moharram this year (2019) and some described as having occurred in the “near past” no dates are provided to substantiate the claim of ongoing large scale attacks against Shias. The transcript of the speech from the Secretary of the Anjuman-e-Hussainia comments that he has informed the army about the activities of people who concern him and although at one point he stated he does not know if the army followed them or not he also stated that four people of concern were arrested and he spoke to government officials of his concerns. The letter from the social activist refers to the difficulty and dangers living in the area and noted recent incidents. The social activist writes that a former brigadier has warned him not to leave Parachinar for the last two months due to threats of targeted killing by Islamic State yet, despite his letter putting forward information that it is too dangerous to travel outside the security zone in Parachinar, this activist visited Peshawar to meet with students after the death of a student and threats to other students there.
33. I have considered the media articles submitted and while these report more recent incidents these do not point to any harm to Shias as a result of these incidents. The media article from the Daily Jhang newspaper outlines the presence and apprehension of militants near a college in the Kurram District, and it is submitted their presence there is an ongoing risk to the applicant. The second article from the Dawn reports a murder in Kurram and noted that while

¹⁴ Submission, Country Information Annexure – Turi Shias in Pakistan; BBC NEWS, “The story of Pakistan’s ‘disappeared’ Shias”, 31 May 2018; The Diplomat, “US Pakistan Counter-terrorism needs a new focus”, April 2017; Deutsche Welle, “Shias in Pakistan’s Parachinar caught in the middle of proxy wars”, 26 June 2017

it initiated from a personal dispute it triggered protests of a sectarian nature. That the militants identified were apprehended and that the protest ended without violence indicates that the authorities acted in both cases to quell any potential uprising and ensure security.

34. In support of submissions made by the applicant's representative further country information was provided on 3 October 2019 in the form of a list of hyperlinks to media reports. Two of these articles were in Urdu and no English language translation was provided. Information at a third link was no longer accessible as the YouTube account had been terminated. Some of the information in the media articles dated from 2014 and earlier and pre-dated the counter-terrorism measures launched in 2014. Other information included support for Shias expressed by a US politician and others expressing their concerns about safety in Pakistan and a YouTube video produced in 2019 which gave an account of the history and background of sectarian violence and interviewed Shias who expressed concern for their safety. Of the more recent information reporting attacks these incidents occurred in other areas of Pakistan, such as Quetta, Islamabad, Karachi, Rawalpindi and many of the reports were of attacks on high profile persons including a Superintendent of Police and journalists. I accept that this reporting may be of concern to the applicant but where reports of attacks are more recent they are reported to have occurred in other parts of Pakistan and not Kurram District.
35. I have considered the country information before me reporting history of attacks in Pakistan, and in the Kurram District specifically and I note the indications of a downward trend in such attacks as a result of increased security measures taken by the authorities.¹⁵ I acknowledge the situation in Pakistan is fluid but the government continues to maintain its security program and counter-terrorism activities to repress the influence of Sunni militant groups. The indications are that the Pakistani authorities have no plans to discontinue the security operations and counter-terrorism measures that have been successful in achieving a decline in militant attacks or that the greater stability now present in KP will diminish in the foreseeable future. Rather authorities are promoting Kurram District as a potential tourism area.¹⁶ I acknowledge the past history of sectarian attacks resulting in high levels of deaths and casualties in the FATA, and the upswing in attacks in early 2017, but considered overall I am not satisfied that the high level of violence has continued or may increase in the reasonably foreseeable future.
36. Overall the country information indicates a decline in the activities of militants in Kurram District. I accept that the applicant may be readily identified as a Shia and Turi from the Kurram District but I am not satisfied that the chance he would be harmed in the Kurram District as such is more than remote. Nor am I satisfied that the chance he may be harmed or killed as a bystander in an attack is more than remote. I accept that the applicant would need to travel within Pakistan to return to his home in the Kurram District. But the country information before me indicates that the road to Parachinar is now open and Pakistanis are travelling on this road to safely access Parachinar and Upper Kurram.¹⁷
37. The applicant has also claimed to have been threatened while a student at college where he became involved as a Shia activist. I accept the applicant was involved in the protest and student activities claimed, including the [service], was a member of the ISO and prayed with other Shias. I accept that he was abused and threatened by Sunni students and that Sunni

¹⁵ FATA Research Centre, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹⁶ Dawn (Pakistan), "Govt plans to explore tourism potential in Kurram, Orakzai", 7 January 2019, 20190110141300; Associated Press of Pakistan, "Minister directs for developing potential tourists sites in Kurram districts", 19 June 2019, 20190620104837

¹⁷ DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409

preachers tried to get students to attend Sunni mosques. I also accept as plausible that he become involved in a disagreement with the Sunni preachers. I accept that he was involved in organising a large protest in 2011 at which he spoke and I accept as plausible that Sunni students objected to the protest, bullied and abused the applicant and other organisers, took photographs and videos of the applicant and threatened him. I also accept that he was abused when praying. I accept that when he complained to a college official he was told to keep a low profile. I accept that the applicant became concerned for his welfare and decided to discontinue his studies and return home.

38. I accept the applicant encountered abuse and threats as a student as a Shia Turi and because of his activities but I note that he was not harmed at this time or before leaving Pakistan. While he was confronted by Sunni students from his account he did not encounter any harm from Sunni or extremist groups, despite his claimed activities including praying with other Shias and involvement with the [service]. At his protection interview the applicant was asked if he encountered any difficulties departing Pakistan and he stated he was questioned at the airport, kept for half an hour and then allowed to depart. From his account the applicant was asked a number of questions about his identity (religion and residence) and the purpose of his travel; there is no indication he was questioned about his activities and I am not satisfied that the questioning at the airport indicates any specific concern about the applicant or his activities. The indications are that the applicant was not of concern to the Pakistani authorities at the time of his departure. While I accept he was photographed and videoed, that he did not come to further attention and was able to depart Pakistan indicates that he was not of concern for reason of his activities in Pakistan.
39. I accept that the applicant has assisted his brother in Australia with protests and processions and is a member of [Organisation]. I have considered if the applicant's activities, and those of his brother, or should he continue to be active in a similar manner as he expressed a desire to be at the protection interview would give rise to a finding that he would be harmed in Pakistan. I have already noted the decline of extremist activity and Sunni militants in Kurram District and I do not accept he would be harmed by such should he return to Pakistan and for the following reasons nor am I satisfied that this would give rise to a real chance of harm from the authorities or others. The applicant claims he was so involved in the past in Pakistan and there is no indication that he was of interest to the authorities for being so.
40. The information provided by the applicant shows that his brother was an active member of ISO in Pakistan and has been active in groups in Australia and letters attesting to his community involvement have been provided from a number of agencies. I accept that the applicant's brother has been active as claimed and that his involvement has been published on social media. I accept that this has attracted negative comments on social media. In his statement the applicant's brother advised his 2017 speech in [City] has been viewed over 30,000 times on [Social media] and shared 372 times. The applicant's brother recounted his reception from Pakistani High Commission officials at the time of this protest. From his account he was invited to meet officials but he described a hostile reception. Despite his description of his protest and discussion with officials as 'upsetting' these officials I note he was able to meet directly with senior officials and put his concerns and he was invited to put his concerns in writing to present to the officials, although he declined to do so. The applicant's brother further recounted that an Australian citizen friend also from Parachinar was questioned by officials at the airport on return to Pakistan about his [Social media] page which included a video of the 2017 speech; this friend was asked about the applicant's brother and others active in the Shia community in Australia. The applicant's brother contends that the applicant would be dealt with even more harshly than his friend because of their familial relationship and that the authorities will use the applicant to pressure his brother to return to Pakistan because he has been critical of the

Pakistani state and because they will view the applicant as being a threat of publically criticising the Pakistani government.

41. I accept as plausible that the friend of the applicant's brother was questioned on his return to Pakistan, but the indications are that this person has a substantial social media profile. In his statement the applicant's brother described his friend as being an active member of the community and having a [Social media] page with 14,000 followers. From the description given by the applicant's brother his friend was questioned on arrival at the airport, but there is no indication that beyond this questioning he was of any further interest to the authorities for the duration of his visit and he has since returned to Australia. This person has been active in Australia and has a substantial following on social media, and I am not satisfied that this incident gives rise to a finding that the applicant would be harmed or of interest to the authorities in Pakistan. I am not satisfied that the authorities would use the applicant to pressure his brother to return to Pakistan; there is no indication that they have acted in such a way with their father or relatives remaining in Pakistan in attempts to make his brother return. Nor is there any indication that relatives remaining in Pakistan have been harmed for reason of having familial links to the brother or that such links have caused them to be viewed as being a threat of publically criticising the Pakistani government, including the applicant's father who was involved as a village elder in negotiations with Sunnis. While I accept the applicant's brother has been active in Shia community and political activities and that these may be known to the Pakistani authorities I do not accept that the applicant would be harmed for reason of his familial links to his brother, or imputed with a profile of concern to the authorities, even considered together with his own activities or should he continue to be active in a similar manner in Pakistan.
42. I note the applicant's concern that he may be harmed for having lived in a western country as Sunni extremists think that you are not allowed to live or visit a western country. But noting the decline in the activities of militants in Kurram District I am not satisfied that there is a real chance the applicant would be harmed for reason of his residence in a western country.
43. I note the delegate questioned the applicant at the protection visa interview about relatives or connections in Islamabad or other parts of Pakistan and asked about social media contacts and money transfers. But as I have found that there is not a real chance the applicant would be harmed in Kurram District I do not consider this information to be material to my assessment.
44. Considered overall I am not satisfied that there is a real chance the applicant would be harmed in Kurram District. The continued decline in attacks indicates the effectiveness of the government's counter-terrorism operations, which remain ongoing although the government has scaled these back, and point to a meaningful and sustained change in the Kurram District. I am satisfied that there are effective and durable security measures in place and I am not satisfied that there is a real chance the applicant would be harmed in the reasonably foreseeable future.

Refugee: conclusion

45. 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

46. 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

47. 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.
48. 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.
49. I have found there is not a real chance that the applicant faces harm on any of the bases claimed. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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