



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08014

Date and time of decision: 8 April 2020 12:30:00
R Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Pakistan. On 15 February 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 11 March 2020 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act)(review material).
3. On 6 April 2020 the IAA received a submission in relation to this matter.
4. In part, the submission includes legal argument and claims and evidence that were already before the delegate. I do not consider these aspects of the submission to be new information.
5. The remainder of the submission refers to country information, the sources of which are cited in a bibliography of hyperlinks at the end of the submission and these include articles and a number of YouTube videos. Having considered the details in the titles of the sources reflected in the hyperlinks, I am satisfied these reports and YouTube videos are new information. It is difficult to determine which sources in the hyperlinks relate to which aspect of the country information referred to in the body of submission. Nevertheless, having considered the country information that has been outlined in this submission I have found the information to be of a general nature and appears to repeat a lot of what is reflected in other country information sources that were before the delegate and does not appear to add anything further in that respect. Further, I have observed from some of the hyperlinks that the dates of two of the articles indicate they were published in October and April 2019 which is before the delegate's decision. The dates of the other videos and articles have not been provided. I have also take into account that the applicant was represented in his application for protection before the delegate and that his former representative provided a comprehensive written submission to the delegate which included a significant number of country information reports. Given these concerns, I am also not satisfied the new country information in the submission to the IAA could not have been provided to the delegate. In the circumstances I am not satisfied there are exceptional circumstances to justify considering this new country information.

Applicant's claims for protection

6. The applicant's claims, as outlined in his application for protection, can be summarised as follows:
 - He is a Turi Pashtun Shia Muslim from [Village 1], Kurram Agency, Parachinar, Pakistan.
 - The Taliban were attacking Kurram Agency because there are Shia Turi people there. He fled because of the actions of the Taliban.
 - The situation became worse in 2007. From 2008 people from Kurram Agency started travelling in convoys. In 2008 or 2009 his father's cousin was driving from Parachinar to Peshawar and he was attacked by the Taliban. He was kidnapped and killed. The applicant will never forget the sight of his dismembered body.

- He withdrew from studies [because] of the fighting.
- [In] February 2012 there was a blast [near] his College and his school had to be evacuated.
- In the middle of 2012 he attended a demonstration with other students from his college on the road outside his College protesting against the Taliban and the government's inability to stop the attacks. After the protest there were leaflets around his school from the Taliban threatening action against those who had participated in the protest. He feared attending school after this so he stopped going to school.
- He started organising his travel to Australia and left Pakistan in May 2013.
- The Pakistan government is unable or unwilling to protect him because attacks are continuing. The Taliban are still active and Shias are still targeted throughout Pakistan.
- He has mental health issues that would impact upon his ability to return to Pakistan or relocate.

Refugee assessment

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 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 provided certified copies of his Pakistani passport and national identity card which confirms his identity and citizenship and indicates his place of birth to be Kurram Agency. The applicant also demonstrated fluency in the Pashto language during his protection visa interview which was held on 20 August 2019. He also described in detail his Shia faith and was able to explain the differences between the Shia and Sunni sects of Islam.
10. Country information before me indicates that the majority of the Shia population in the former Federally Administered Tribal Areas (FATA) is concentrated in Kurram and Orakzai. Shias account

for 40 per cent of the population in Kurram, which is estimated to number approximately 935,000 people and Upper Kurram (where Parachinar is located) is predominantly Shia (approximately 80 per cent) and most of these Shias are from the Turi tribe, an exclusively Shia Pashtun tribe.¹

11. On the evidence before me I accept the applicant's claimed identity and that he is a citizen of Pakistan. I am satisfied that Pakistan is the receiving country for the purpose of this assessment.
12. The applicant has claimed that he lived in [Village 1] the whole time he resided in Pakistan and that his parents and brothers and cousins still live in his home in his village and he does not have family in other areas of Pakistan. Given this, I am satisfied that if the applicant were to return to Pakistan, he will return to [Village 1].

Civil conflict in Kurram

13. The applicant claims that the area around Parachinar was blocked because of the war. There were also frequent bomb blasts and fighting. He had to miss school often and could hardly leave their house. The situation became worse in 2007. At that time there were a group of Taliban that killed a number of people and the roads were blocked in his area. From 2008, people within Kurram started to travel in convoys but they came under frequent attack by the Taliban. They also had problems with the Sunni villagers in the area and claims the Sunnis would also stop, kill and kidnap them. The applicant also claims that in one incident in about 2008 or 2009, his father's cousin was driving from Parachinar to Peshawar and he was attacked and killed by the Taliban. His father and brothers were also fearful on the roads as they worked as [drivers]. On one occasion around [February] 2012, there was a blast [near] his school in Parachinar.
14. I accept the above claims as they are corroborated by country information before me about the war that took place in Kurram during that period. Country information confirms that sectarian violence is not a new phenomenon in Kurram and there are longstanding disputes over ownership of forests, hills, land and water resources between Sunnite and Shiite tribes and sporadic incidents of communal violence have taken place since the 1930s. The nature and the dimension of the sectarian conflict changed when the conflict was instigated by the Taliban who wanted access to Afghanistan. The Shiites, staunchly opposed to the Sunnite Taliban and Arabs, did not offer shelter to al-Qaida and the Afghan Taliban fleeing Tora Bora in December 2001. The conflict erupted again in 2007 in Kurram after Sunnis chanted anti-Shiite slogans during a procession in Parachinar. Local Sunnis were joined by al-Qaida fighters and Taliban from Waziristan who targeted the paramilitary forces. Villages were destroyed and over a thousand people killed and thousands of families displaced. As the violence continued, the road from Parachinar to Peshawar was blocked, resulting in a shortage of food and medicines. Shiite truck drivers were abducted and beheaded while passing through Dara Adam Khel on their way to Kurram. Shiite communities were also besieged as Sunnis controlled the road from Parachinar to Thal.²

Mental Health

15. The applicant claims to be suffering from post-traumatic stress disorder (PTSD). This diagnosis has been confirmed in a report dated 13 September 2019 by Dr [A], Clinical Psychologist, which was provided to the delegate. In his report, Dr [A] writes the applicant's worst memories are

¹ Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265

² Marian Abou Zahab, "'It's Just a Sunni-Shiite Thing': Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402

when his cousin was killed and his [body parts] were cut off. He has continuing memories of his cousin's dismembered body. He writes that the applicant has serious and disabling mental health issues that are not transient and require ongoing and intensive clinical help. He states that the potential for him to receive appropriate psychotherapeutic treatment in Pakistan is unlikely in the extreme and it is clinically unsound that he should return to the country that triggered his mental health malaise and the appropriate pathway is a safe environment with appropriate therapeutic assistance. He claims the provision of no professional support in an unsafe environment would lead to the worsening of his mental health.

16. The post-interview submission cites a number of sources which indicate a lack of mental health support services in Pakistan. It submits that, should the applicant be forced to return to Pakistan, it would be reasonable to expect that his mental health symptoms would deteriorate due to the heightened levels of stress caused by his subjective fears. He would be unable to carry out employment because he would be unable to access sufficient medical treatment and this would constitute a practical barrier to relocation outside of Kurram.
17. I accept the above evidence about the applicant's mental health but I note that the applicant has not claimed that he would be harmed by any group or person as a result of his mental health or that it adds to his risk profile. I note that his mental health was only raised in respect of the reasonableness of relocation.
18. Further, having considered the country information before me about the inadequacy of mental health treatment in Pakistan, I am not satisfied the applicant will be unable to access mental health services due to one of the grounds stipulated in s.5J(1)(a) of the Act and I am not satisfied it involves systematic and discriminatory conduct. It is clear that the lack of adequate health care in Pakistan is as a result of a lack of resources and political will.
19. I accept that the applicant's potential return to Pakistan may exacerbate his mental health condition but I am not satisfied this amounts to persecution as it does not involve an act perpetrated by a third party, nor does it involve systematic or discriminatory conduct.
20. I am not satisfied the applicant has a well-founded fear of persecution in Pakistan on the basis of his mental health issues.

Student Protest

21. In his statement of claims attached to the application for protection (the statement), the applicant also claims that around the middle of 2012 students from his college held a protest against the Taliban. He attended this demonstration on the road outside his school. All of the college attended which would have been about 300 to 400 people. They walked to the main road in Parachinar protesting the actions of the Taliban and the government's inability to stop the attacks. Sometime after the protests there were leaflets left around his school from the Taliban threatening action against the students who participated in the protest. As a result, the applicant was in fear and stopped attending school in 2012.
22. During the protection visa interview there were a number of discrepancies in the applicant's account of the above events which causes me concern about the credibility of these claims.
23. Although in his statement the applicant claimed that the protest was held around the "middle of 2012", during the protection visa interview he initially said it was held at the end of 2012. When the delegate pointed out this discrepancy to him, he said that it was held "after the sixth

month of 2012” and that he tends to forget things. Given the centrality of this event to his claims for protection, I have concerns that he could not remember when this protest was held.

24. In the delegate’s decision she cited an article [which] reported that hundreds of youth held a protest rally outside the Parliament against the recent suicide attack in Parachinar market. Protestors reportedly chanted slogans against the government for their failure to protect the Turi Bangash tribes of Parachinar. They also demanded that the mastermind of the suicide attack, Taliban Commander Fazal Saeed Haqqani should be punished and hanged. The delegate noted that this may have been the protest the applicant was referring to but his descriptions, especially in regards to a timeframe were very vague. I share this concern and also note that the article states that this protest was held “outside the parliament” and does not state that it was held in Parachinar. Country information before me notes that the Parliament House is in Islamabad.³ I am not satisfied this article is the protest the applicant was referring to. I have also given weight to the lack of supporting evidence from the applicant in relation to this alleged protest.
25. Further, in his statement, the applicant stated that all of the college students attended the protest accounting for about 300 to 400 people, but during the protection visa interview he said that he did not remember the exact number of people who participated but there were “a few people” and his friends did not participate in the protest and that he did not know the people who participated in it very well which is quite distinct from his statement.
26. At the protection visa interview, the applicant also claimed that he was one of the leaders of the protest and was holding a sign demanding the government stop the explosions and “Death to the Taliban”. I note that he did not refer to being one of the leaders of the protests and holding up a sign in his statement. Although it is noted at the beginning of his statement that he will provide further detail about his claims that his interview, I also have concerns that something of this significance would be absent from his statement. It appears the applicant has enhanced his role in the protest at the protection visa interview.
27. During the protection visa interview he also claimed that the Principal of his school told them that the lives of the people who participated in the protest were in danger and particularly those who held up the sign and said there is a possibility that the Taliban took photos of the people holding the sign and those photos might be shared everywhere in Pakistan. The Principal advised them they had to leave the country. Although in his statement the applicant claimed that the Taliban left leaflets in the school threatening action against the protesters, I note he did not make any of the above claims about what the Principal told them in his statement. When the delegate pointed this out to the applicant, he said there were notices around the school and the Principal told them about the notices. I, nonetheless, also give weight to the absence of these major details in his statement.
28. Although the applicant has provided evidence that he is suffering from PTSD, no submissions have been made in respect of this having an impact on his oral evidence and his ability to participate effectively in an interview in relation to his claims for protection. The report by Dr [A] also provides little detail about the symptoms the applicant has been suffering from and also makes no reference to whether he was able to participate in an interview such as this. On the evidence before me, I am not satisfied that the above discrepancies in the applicant’s evidence are attributable to his mental health condition.

³ Ibid.

29. The applicant has also not provided any evidence that anyone who attended these protests have been subsequently harmed by the Taliban. During the protection visa interview, when the delegate asked the applicant if he knew if anyone who attended the protest had been harmed since then, the applicant said “maybe something happened to the other people in the protest and may be some left Pakistan already”. His vague answer does not suggest that he is aware if any of the other protest participants came to any harm. I also note that he has not provided any supporting evidence of any attacks against these students by the Taliban. When asked by the delegate why the applicant’s participation in this protest would be an issue now given it occurred seven years ago, the applicant responded that racism against Shias is continuing and they are keeping the name of those people “on the list” and he sure they have his name. Again, the applicant has not provided any supporting evidence of these claims.
30. It also appears that this protest occurred at the middle or the end of 2012 but the applicant did not depart Pakistan until May 2013 and he did not claim to come to any harm in the period before he left Pakistan which appears to have been quite a number of months. When the delegate asked the applicant how he managed to remain safe during this time, he said that he was staying at home and not going out much. The delegate then pointed out that if someone was going to “get him” that was a long enough timeframe for them to find him and do something. In response, the applicant said that he did not give them the time because he was living in his village which belongs to Shiites and he knew his village very well and knew how to look after himself and be safe in his village and his house. The delegate noted that, if that was the case, why did he have to leave Pakistan. He said he could not stay like that for such a long time as, at some point, he would have to leave his village for things such as accessing medical services. However, I note the applicant has claimed that he travelled to Islamabad to find an agent to assist him to leave the country and stayed there for two or three days and then returned to his village and stayed there until the agent made all the arrangements. He then travelled back to Islamabad [and] then to [another city] from where departed Pakistan. These are not the actions of someone who is so afraid of being personally targeted outside his village by the Taliban. There is also there is no evidence that he came to any harm from the Taliban or any other group or person when he left his village on these two occasions. The fact that the applicant was able to safely remain in his village for such a long period of time and conduct these trips outside his area without coming to any harm also causes me to doubt that he was ever of personal adverse interest to the Taliban.
31. On the evidence before me, I do not accept that the applicant attended/led a student protest at his college in 2012 in relation to the lack of government protection against attacks in his area and in protest against the Taliban. I therefore also do not accept that his college subsequently received threats from the Taliban against these protestors. I am not satisfied he has a well-founded fear of persecution in Pakistan in relation to these claims.

Fear of Harm as a Shia Pashtun Turi from Parachinar and failed asylum seeker

32. The applicant also fears harm from the Taliban as a Shia Pashtun Turi from Parachinar. He claims the Pakistani government is unable or unwilling to protect him as attacks are continuing and the Taliban are still active.
33. A post-interview submission that was sent to the delegate claims that that the cumulative profile of Pashtun Shia Turis as pro-US, pro-Iran and anti-Talban must be carefully considered. This

cumulative profile means they are at risk in Kurram and throughout Pakistan. It submits that Turis are imputed to be pro-US and NATO as their success in blocking the Haqqani incursion into Parachinar and Upper Kurram is seen to have assisted the US efforts in targeting these militants. Turis are also perceived as being politically pro-Iran because of their Shia faith. This has been exacerbated by a willingness of many Shias to fight in the Syrian conflict. Sectarian groups such as Lashkar-e-Jhangvi (LeJ) and Islamic State, have publicised an ongoing intention to target Turi/Bangash tribesman owing to their Shia faith and the fact that some tribesman are fighting in Iranian-backed militias in Syria. To evidence this, a 2017 attack in Parachinar was directly linked to the Syrian conflict by LeJ. Pashtun Shia Turis actively fought against the Taliban and this is an important characteristic that separates out Pashtun Shia Turis from all other collective Shia groups in Pakistan. The post-interview submission also refers to reports of increasing religious extremism in Pakistan and also submits that the US withdrawal from Afghanistan is entirely likely to increase the terror attacks in Pakistan. It also refers to country information indicating a link between increasing Saudi Arabia influence in Pakistan which will also likely impact the persecution of Shias in Pakistan.

34. Country information before me describes the security situation in Pakistan as complex and influenced by factors such as political violence, insurgent violence, ethnic conflicts and sectarian violence. I accept that the Shia community in Parachinar fought against the encroachment by the Taliban in Kurram and have been subject to past attacks from groups such as the LeJ because of their Shia faith and because of accusations that they are fighting the Sunnis in Syria.
35. Despite this history, reliable country information before me also indicates the security situation in Kurram has improved significantly in recent years. In 2014, the Pakistani Army launched a military offensive named Zarb-e-Azb which targeted militant strongholds in the North Waziristan tribal region. That year the former Prime Minister Nawaz Sharif also announced a 20-point comprehensive plan of action, the National Action Plan (NAP), in order to confront the insurgent threat. In 2015 and 2016, Operation Zarb-e-Azb continued during which Pakistani army targeted a wide array of militant groups in the tribal areas.⁴ A report from 2014 indicates that displaced people had started to return to Kurram and Sunnis and Shia Tribal leaders were cooperating with one another. One commentator noted that the Sunnis from Kurram later came to regret their former collaboration with the Taliban during the past conflict.⁵ There are also no credible recent reports before me of the Sunni community in Kurram targeting Shias in retribution for the earlier conflict.
36. According to a 2016 report published by the Australian Department of Foreign Affairs and Trade (DFAT), since the commencement of “Zarb-e-Azb”, Pakistani military operations against terrorist and militant groups in the former FATA and Karachi substantially reduced the level of generalised and sectarian violence throughout the country.⁶ Other sources noted that, although not without its criticisms, Operation Zarb-e-Azb reduced the level of violence and most areas were cleared of militants, except a few pockets and sleeper cells.⁷
37. Despite these measures, in the first six months of 2017 Sunni militants such as the LeJ and Tehrik-i-Taliban Pakistan (TTP) carried out several attacks against the Shia community in Parachinar which killed over 120 people. LeJ claimed their attack was due to Pakistanis fighting against Sunni

⁴ European Asylum Support Office (EASO), “EASO Country of Origin Information Report - Pakistan Security Situation”, 16 October 2018, CIS7B8394110560

⁵ Arif Rafiq, “Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007”, Middle East Institute, 1 December 2014, CIS2F827D91993

⁶ DFAT, “DFAT Thematic Report - Shias in Pakistan”, 15 January 2016, CIS38A801265

⁷ EASO, “EASO Country of Origin Information Report - Pakistan Security Situation”, 16 October 2018, CIS7B8394110560

militants in Syria as noted in the post-interview submission.⁸ In his statement which was prepared on 31 January 2017 the applicant claims that there was a recent blast at a vegetable market in Parachinar and it killed many people including his best friend. I accept these claims as country information before me confirm an attack occurred in a market in Parachinar in January 2017.⁹

38. In response to militant attacks in 2017, the government of Pakistan announced another countrywide military operation codenamed Radd-ul-Fasaad aimed at eliminating the threat of terrorism and consolidating the gains of Operation Zarb-e-Azb. It is further aimed at ensuring the security of Pakistan's borders.¹⁰ On 16 July 2017, the Pakistani army launched Operation Khyber-IV to clear Rajgal Valley in Khyber Agency of militants.¹¹ Khyber-IV also targeted Islamic State of Iraq and the Levant (ISIL) connections across the border with Afghanistan's Nangarhar province.¹²
39. The FATA Research Centre observed in its quarterly analysis of the first three months of 2018, a decrease in terrorism and counter terrorism incidents in all agencies of the FATA.¹³ A report by the Center for Research and Security Studies cited in the post-interview submission also noted that across Pakistan, and across all metrics, violence-related casualties continued to decline in 2018, registering a 45% drop from the previous year, and 86% drop since 2013. In 2018 security forces foiled at least ten major terror bids or plots and as many as 105 militants were killed, including LeJ leaders. It has also been reported that military operations eliminated the strongholds of the TTP in the former FATA.¹⁴ Country information before me also notes that, although the Haqqani Network relocated to Kurram Agency in 2016,¹⁵ the 2019 DFAT report stated that this groups' focus was on attacking international forces in Afghanistan and the Afghan government. Further, there are no reports before me that this group has claimed responsibility for any attacks against the Shia community in Kurram in recent years.
40. In DFAT's most recent report on Pakistan published in February 2019 (DFAT 2019 report), it also noted that observers credit Operation Zarb-e-Azb, its successor Radd-ul-Fasaad, and other government measures with a significant reduction in the number of violent and terrorism-related attacks in Pakistan.¹⁶
41. Another major policy initiative in 2018 was the passage of the 25th constitutional amendment, which merged the former FATA with the adjacent Khyber Pakhtunkhwa (KP) province which will allow for the installation of a proper law and order mechanism. It is claimed this will hopefully forestall any incipient militant group as the previous administrative vacuum in the former FATA had provided militants with a free space to operate, with little impunity.¹⁷

⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; "Pakistan: Sectarian Savagery – Analysis", Eurasia Review, 29 November 2018, CXBB8A1DA40015

⁹ "Bomb wrecks crowded market in Parachinar", Express Tribune (Pakistan), 22 January 2017, CXC904066518

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

¹¹ Ibid.

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

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

¹⁴ Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2018", 6 January 2019, 20190121110758; EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

¹⁵ Ibid.

¹⁶ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁷ PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

42. There is also a recent report before me of government plans to explore tourism potential in Kurram.¹⁸ This further indicates a commitment and confidence by the Pakistani authorities in their ability to secure the area.
43. In the 2019 DFAT report, DFAT also commented that these government operations and associated counter-terrorism activities significantly decreased the number and severity of attacks on Turis. It reported that the Pakistan government had started fencing the border with Afghanistan and by February 2018, the Turi community estimated 40% of military fencing in Kurram was complete, decreasing border permeability. Turis also advised that the military implements a 20 to 30 square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located.¹⁹ In August 2018, Pakistani military officials were also quoted as saying that Pakistan will deploy 60,000 soldiers in the next two years to patrol the Afghan border in an effort to curb 'the flow of insurgents' passing between the two countries.²⁰
44. The 2019 DFAT report also noted that in the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device (IED) that reportedly targeted women and children. No further details about these incidents have been included in this report. Another report before me refers to an incident in January 2018 where six people were killed in Kurram District but does not refer to any further information.²¹ However other reports before me refer to an incident where seven members of a family were hit by a landmine in Upper Kurram in January 2018 but these reports do not indicate these people were deliberately attacked by a militant group because they were Shia Turi.²² I also note the South Asia Terrorism Portal report cited in the post-interview submission lists attacks against Shias in Pakistan from 2001 until 17 June 2018 but did not note any attacks in Kurram in the first six months of 2018. The above information does not suggest that this alleged incident was a deliberate attack against the Turi/Shia community in Kurram by a militant group.
45. During the protection visa interview the applicant said that the Pakistan and world media are not showing everything that is happening. The post-interview submission also reiterates that the 2019 DFAT report acknowledges the full scale of this targeting is not known due to the media blackout in Pakistan. The DFAT report makes a specific reference to the media blackout in KP and the fact that there is no access to information in this area and the Pakistani government physically restricts physical access to the area. It also notes that terrorist groups are similarly increasing attacks on journalists. However, I have noted that some of the international reports cited in the above submission refer to events that have not been reported by Pakistan local media such as protests in Parachinar, so even if the local media is restricted, it is evidence such information is published by other international media sources. This is also evident in other credible reports before me by organisations such as the European Asylum Support Office, the Centre for Research and Security Studies and the Pakistan Institute for Peace Studies which provide comprehensive reporting on terrorist incidents in Pakistan. The applicant has also not provided credible supporting evidence from alternative sources of recent militant attacks in Kurram District.

¹⁸ "Govt plans to explore tourism potential in Kurram, Orakzai", Dawn (Pakistan), 7 January 2019, 20190110141300

¹⁹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²⁰ Ibid.

²¹ EASO, "EASO Country of Origin Information Report - Pakistan Security Situation", 16 October 2018, CIS7B8394110560

²² "Six of a family martyred in Kurram roadside blast", The News International (Pakistan), 31 January 2018, CXBB8A1DA25475; DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

46. I have taken into account claims in the post-interview submissions about the broader political international context and the concerns raised about the implications of an American peace deal with the Taliban in Afghanistan and Saudi Arabian influence in Pakistan but I find the alleged potential impact on the Shia community in Pakistan to be too speculative.²³
47. The post-interview submission refers to a number of decisions of the Administrative Appeals Tribunal (AAT), however, I am not bound by decisions of the AAT so I have not given them any weight in my assessment.
48. The applicant claims that Shia mosques are frequently targeted in Pakistan and he would be scared to attend a mosque. In its 2019 report DFAT stated that Shiites are most vulnerable during large gatherings, such as Ashura processions. Heightened state protection measures during these events partly mitigate the threats associated with this greater exposure. A recent report before me noted that Ashura processions were conducted peacefully around the country in 2019. It was reported that in Khyber Pakhtunkhwa more than 18,000 personnel of police and other law enforcing agencies were deployed in different parts of the province including aerial surveillance of the procession routes carried out to maintain law and order.²⁴ There are no other reports before me of attacks during such occasions or Shia mosques in Kurram since 2017.
49. In the same report DFAT stated that, according to the media, discrimination and violence towards Shia tribes, particularly Turis, remains significant in Kurram due to state concerns regarding Iranian influence and the greater presence of Taliban and Al Qaeda. The post-interview submission notes that it is unclear what DFAT means when it says “due to state concerns regarding Iranian influence” however it claims it appears to connect growing Iranian political influence with an increased risk for Turis and Shia Bangash. I agree that it is unclear what DFAT is referring to. Further, in the absence of the source of this information or form of the alleged discrimination and violence they are referring to and by whom, I have given this statement little weight.
50. Despite an improved security situation in Parachinar and Kurram and the overall declining trend in sectarian violence since 2014 in Pakistan, in its 2019 report, DFAT observed that societal intolerance and religious extremism appear to have increased, suggesting the underlying causes of violence remain and armed groups remain a threat to Pakistan’s domestic security. The post-interview submission also refers to other sources about increasing religious extremism in Pakistan. Other sources before me also noted that the environment for insurgent attacks was still present and the threat of extremism still lingers.²⁵ DFAT assessed that attacks and violence against Turis can, and may still occur and Shias in Pakistan continue to face a threat from anti-Shia militant groups. It assessed that Turis in Kurram still face a moderate risk of sectarian violence from militant groups because of their Shia faith and the risk of sectarian violence for civilians in Kurram, particularly in Parachinar, is higher than in other parts of the former FATA.
51. I have taken into account the history of Upper Kurram and the past conflict that affected the Turi/Bangash Shia community and more recent subsequent attacks including those that occurred in the first half of 2017 and I also take into account that militant groups are still active in Pakistan. However I give significant weight to the improved security situation in Kurram (and Upper Kurram) due to a number of government measures which is evidenced by the lack of reported militant attacks against this community since 2017.

²³ EASO, “EASO Country of Origin Information Report - Pakistan Security Situation”, 16 October 2018, CIS7B8394110560

²⁴ “Ashura processions conclude peacefully across the country”, Express Tribune (Pakistan), 10 September 2019, 20190911090700

²⁵ EASO, “EASO Country of Origin Information Report - Pakistan Security Situation”, 16 October 2018, CIS7B8394110560

52. The applicant claims that his family in Pakistan are not safe and they are staying in the village and they do not go anywhere. Given the significant improvement in security in Upper Kurram since 2017, I do not accept that his family are too afraid to leave their village.
53. The post-interview submission also claims that those who are perceived to have links to Iran are also at risk of state-based persecution, with reports that officials are “disappearing” Shia with purported links to Iran. Officials are detaining individuals and questioning them about financial support or if they are involved in the Syrian conflict. The reports suggest that most of those who had been detained or gone missing had returned from a pilgrimage to the Middle East and had been suspected of being engaged in some form of militant activity in Syria or “IS” fights across the region. I am not satisfied the applicant fits the profile of those allegedly targeted or that there is a real chance he will be perceived to have such a profile just because he is Shia/from Parachinar or any other reason.
54. In its 2019 report, DFAT also noted that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination and that Turis face similar risk of official discrimination as other Pashtuns based on ethnicity and no additional risk of official discrimination based on their religion. It notes that Pashtuns traditionally live among their own tribes and sub-tribes in KP and the former FATA and I have given weight to the fact that Upper Kurram is a majority Pashtun area.
55. The applicant also claims to fear being attacked by the Taliban on the roads. In 2016, DFAT indicated that the Thal-Parachinar Road remained open and there had been no major security incidents on the road in 2015. Federal security forces maintained armed checkpoints along the road, which is used by both civilian and military vehicles but that a 2015 attack in Parachinar highlighted a degree of vulnerability.²⁶ In its 2019 report, DFAT stated that travel in parts of Pakistan is dangerous for all travellers, regardless of sectarian, religious or ethnic affiliations and travellers in remote areas of Pakistan including KP and districts in the former FATA are at great risk of criminal or militant violence due to their isolation and the limited presence of security forces and many roads fit this profile. However, in the same report DFAT also stated Turis reported significantly fewer road attacks in 2018, as military operations have forced militants into the mountains. It noted that this has restored confidence within the community for individuals (not large groups) to travel on this road, although only between dawn and dusk. This indicates a much improved security situation on these roads. Despite DFAT’s last comment about individuals only being able to travel during the daytime, there are no recent reported attacks on the applicant’s community on these roads before me. The applicant also claimed that he travelled on two occasions to Islamabad to make arrangements to leave Pakistan and did not claim to have come to any harm.
56. Although not raised by the applicant, the delegate assessed whether he would face harm in Pakistan as a failed asylum seeker from a western country. DFAT has stated in its 2019 report that the Pakistani authorities will interview failed returnees and release them if their exit was deemed to be legal. DFAT states that those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. I note the applicant has claimed to have departed Pakistan legally and has not claimed to have committed any offences. DFAT further notes that returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt. It assessed that

²⁶ DFAT, “DFAT Thematic Report - Shias in Pakistan”, 15 January 2016, CIS38A801265

returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country.²⁷

57. I have considered the applicant's profile and the country information before me indicating a significantly improved security situation in Pakistan and in Kurram District in recent years. On the evidence before me I am not satisfied the applicant will face a real chance of harm from any group or person in the reasonably foreseeable future if he were to return to Pakistan.

Refugee: conclusion

58. 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

59. 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

60. 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.

61. 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.

62. I have not accepted that the applicant attended a protest against the Pakistani authorities and the Taliban at his college in Parachinar in 2012 and that he was subsequently threatened by the Taliban for this reason. I am not satisfied he will face a real risk of significant harm in Pakistan in relation to these claims.

63. Having considered the applicant's profile and the country information before me about the improved security situation in Kurram District and Pakistan, I have found the applicant will not face a real chance of harm in Pakistan. Consequently he will also not face a real risk of any harm in Pakistan.²⁸ I am not satisfied the applicant will face a real risk of significant harm in Pakistan.

64. It has been claimed that there is inadequate mental health services in Pakistan and I accept that this is the case. However, I find that even if the applicant were to struggle to access appropriate

²⁷ Ibid.

²⁸ *MIAC v SZQRB* (2013) 210 FCR 505.

care, this does not amount to torture, an arbitrary deprivation of his life, the death penalty or the intentional infliction of pain or suffering or extreme humiliation which is unreasonable as defined in the Act. It is also claimed that the applicant's mental health will deteriorate if he were to return to Pakistan. I find that any adverse impact on his mental health as a result of his return to Pakistan does not involve the conduct of a third party as required by the definition of significant harm in the Act. For these reasons, I am not satisfied the applicant will face a real risk of significant harm in Pakistan because of his mental health issues.

Complementary protection: conclusion

65. 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.