



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA20/08031

Date and time of decision: 20 April 2020 17:50:00  
M Tubridy, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan. On 12 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 16 March 2020 a delegate of the Minister (the delegate) refused to grant the visa. On 19 March 2020 the matter was referred to the IAA.

### 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).
3. Submissions have been made to the IAA and insofar as these tender arguments for why the delegate's decision is disagreed with (on the basis of information which was before the delegate) I have had regard to these submissions.
4. The submissions to the IAA submit that the applicant suffers from anxiety and depression (and that as a result he has a lack of motivation and concentration) and that this will have a significant impact on his life. The applicant's claim that he is affected by such problems, and that he has concerns about how these problems may affect him in Pakistan, is all new information. To the delegate it was claimed that at the time of his entry interview in May 2013 the applicant was mentally not in a position to fully outline his claims to protection as he had just gone through a long and treacherous journey to Australia. But it was not claimed that he had thereafter been affected by any mental health concerns, or that he had ever been affected by anything as specific as anxiety and depression, or that he was experiencing a lack of motivation and concentration. Nothing is said in the submission to the IAA to indicate that it is being claimed that the applicant has only recently developed such problems such that this claim could not have been provided to the delegate. Moreover, no medical evidence has been provided to substantiate the credibility of these new claims. I am not satisfied that there are exceptional circumstances to justify considering this new information.
5. The submissions to the IAA also make reference to several country information reports which were not before the delegate and which amount to new information. It is not apparent from the information provided about these reports that they were somehow unavailable, or that they for some other reason could not have been provided to the delegate, before the delegate made his decision. It is not apparent from the information provided about these reports that they amount to personal information. I am therefore not satisfied that either of the s.473DD(b) alternatives are met. Moreover, given that I already have before me information about the situation in Pakistan from a range of credible sources, and given that it is not apparent that any of the new country information referenced substantively adds to the information already before me (and in the case of the referenced DFAT thematic report on Shia Muslims in Pakistan of 15 January 2019 it is not apparent that any such report exists) I am not satisfied that there are exceptional circumstances to justify considering any of the new country information referenced in the applicant's submission to the IAA.

### Applicant's claims for protection

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

- He is a national of Pakistan and a Shia Muslim who is an ethnic Pashtun of the Turi tribe who originates from Upper Kurram in the Kurram District of Pakistan's Khyber Pakhtunkhwa Province.
- He fears that he will be killed by the Sipah-e-Sahaba Pakistan (SSP) because he is a Shia Muslim and because he was participating in protests organised by the Imamia Students Organization (ISO) and was an ISO member, and because he has been involved in a relationship with a woman who is the sister of two men who are SSP members and who originate from the Bannu.
- He also fears being abducted and/or killed by groups like the SSP and the Taliban and Islamic State because he is a Shia Muslim (and will thus will be perceived by such groups as a Kafir or non-believer in Islam) of the Turi tribe who originates from Parachinar (Upper Kurram).

### **Refugee assessment**

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

### **Well-founded fear of persecution**

8. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
9. The applicant claims to be a national of Pakistan and to substantiate this claim he has provided several identity documents, including his Pakistan computerised national identity card (CNIC). I accept that that the applicant is a national of Pakistan and I find Pakistan to be the applicant's receiving country.
10. The applicant claims to be a Shia Muslim and an ethnic Pashtun of the Turi tribe who originates from [Village] which is located in the tehsil (sub-district) of Upper Kurram in Kurram District (formerly Kurram Agency) in Pakistan's Khyber Pakhtunkhwa Province. His identity documents substantiate his claims about his area of origin and I note that the population of Upper Kurram is overwhelmingly comprised of Shia Muslims who are ethnic Pashtuns of the Turi tribe. I accept

that the applicant is a Shia Muslim and an ethnic Pashtun of the Turi tribe who originates from [Village] in Upper Kurram. In discussing his home area the applicant sometimes referred to himself as being from Parachinar and he explained that – although his own area of [Village] was some [number] kilometres from Parachinar city – the wider area of Upper Kurram was broadly referred to as Parachinar. It is apparent from wider reporting that Upper Kurram is often referred to by the name of its principal settlement of Parachinar.

11. The applicant claims to fear that he will be killed by the Sipah-e-Sahaba Pakistan (SSP) because he is a Shia Muslim and because he was participating in protests organised by the Imamia Students Organization (ISO) and was an ISO member, and because he has been involved in a relationship with a woman who is the sister of two men who are SSP members and who originate from the Bannu (at his SHEV interview the applicant referred to Bannu as being part of Waziristan but I not that in fact Bannu is in fact its own district and is located to the east of the districts of North and South of Waziristan in Pakistan's Khyber Pakhtunkhwa Province).
12. By way of background it has traditionally been the case in Pakistan (and among conservative Pashtun families in particular) that family honour is understood to reside in the purity of its female members, and that female purity and thus the honour of the family can be shamed by women who have unauthorised relationship with men from outside their family network. The traditional view has been that, were such dishonour to occur, honour can only be restored by the killing of the female member involved (which has come to be known as honour killing). To guard against such dishonour conservative families in Pakistan seek to have their daughters married at a young age (21 percent of girls in Pakistan marry before the age of 18) and they follow a traditional practice known as *purdah* wherein female movement is restricted to prevent any contact between them and men from outside of their family. The result is that women from such conservative families have little contact with the world outside their own family household, and where such contact does occur custom requires that the woman be accompanied by a male member of the family in the manner of a guardian.<sup>1</sup> The largely Pashtun population of Pakistan's Khyber Pakhtunkhwa Province are known for being particularly strict in observing *purdah*. Reports continues to appear to the honour killing of women by such families, and sometimes such families have also killed the outside male party to the dishonour in the manner of a revenge killing. The applicant sought to bring the delegate's attention to one such incident wherein it was reported that that five girls and a young man and his brothers had been killed by the girls' family members after a video had been made public of the girls and the boy dancing in the same room (though apparently not actually seen doing so together) while participating in some kind of public event (described variously as a wedding or as coed singing party), and that after the video became public a local cleric had decreed that the girls had dishonoured their tribe in this incident and had directed that they should be killed. Thus it can occur, even though women from such families are unlikely to ever have the opportunity to have unsupervised contact with an outside male, that an innocuous situation such as this can have very significant consequences if it leads to the community perception that an unauthorised interaction may have taken place.

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<sup>1</sup> DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 20190220093409; USDOS, "Pakistan 2018 Human Rights Report", 13 March 2019, 20190326095100; FRC, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; Faqeer, H. "FATA Handbook", IDS International, 1 June 2009, CIS28772; ICG, "Shaping a New Peace in Pakistan's Tribal Areas", 20 August 2018, 20190605155256; Yousafzai, S. "More women murdered in KP in 2019 as compared to 2018", Tribal News Network, 2 January 2020, 20200110150017; HRW, "World Report 2014 - Pakistan", 21 January 2014; HRW, "World Report 2019 - Pakistan", 20 December 2018; "In Pakistan, five girls were killed for having fun. Then the story took an even darker twist.", Washington Post, 17 December 2016; "Kohistan video murders: Three guilty in 'honour killing' blood feud", BBC News, 5 September 2019.

13. The applicant claims to be in a relationship with a girl who belongs to such a conservative family. In addition to describing the family as conservative he has also referred to them as a “radical Sunni family” whose brother’s belonged to the SSP. The SSP is a Sunni movement which is radical in the extent to which it seeks to adhere to and promote the observance of a conservative and fundamentalist Deobandi interpretation of Sunni Islam.<sup>2</sup> Such a family would likely observe purdah rigorously. Such a family would likely respond adversely were a female family member to have any unauthorised contact with a male from outside the family. The SSP is also known for its intolerance of adherents of other religions, and also of other interpretations of Islam. It eschews the kind of Sufi saint and shrine veneration engaged in by the Shia sect, and also by those Sunni Muslims (who make up the majority of Sunni Muslims in Pakistan) who adhere to the Barelvi interpretation of Sunni Islam, and the SSP is believed to have been responsible for a number of attacks on Shia Muslims, and on places of worship attended by Shia Muslims and Barelvi Sunni Muslims and Sufis, and also upon Christians and other religious groups. Such attacks have also been attributed to the militant group Lashkar-e-Jhangvi (LeJ) which is alleged to be the militant front of the SSP. Both SSP and LeJ have been proscribed in Pakistan but continue to operate covertly and it is suspected that the Ahle Sunnat Wal Jamaat (ASWJ) movement is a front for the SSP.
  
14. In his written claims the applicant has submitted that his relationship began while he was living in Rawalpindi which he had moved to in 2009 in order to study. He initially lived at a hostel and then he moved to a residence in Rawalpindi’s commercial market. In his SHEV application residential table the applicant has indicated that he began living at this residence that same year, 2009. A few days after settling in this residence he saw a girl on the roof of a nearby house who looked at him also until another woman appeared (who the applicant later learned was the girl’s cousin). It became his routine to see this girl on the roof and after a few days he threw her a piece of paper with his mobile telephone number written on it and after and after an hour she called him and they started talking. The girl, Ms I, said she had like him at first sight. They thereafter talked regularly for hours at a time and fell in love. She told him she was on holidays and living in her aunt’s house and that she was originally from Bannu in Khyber Pakhtunkhwa Province, and that she belonged to a radical Muslim family. They used to meet each other in a park or a restaurant. About six weeks after this Ms I’s holiday ended and she returned to Bannu. Thereafter they continued to talk regularly by telephone and they planned to get married. They had a happy long distance relationship for the next two years over 2010 to 2012. Ms I and the applicant were also able meet in park and spend time together when she came to Rawalpindi twice a year when on holidays from her college studies. The applicant claims that during 2012 Ms I called him from someone else’s mobile and told him that her brothers had learned about their relationship and were furious and had assaulted her and confiscated her mobile telephone and had sworn to kill the applicant. She also told him that her brothers were SSP members who hated Shia Muslims. In his written claims the applicant submitted that Ms I had told him at this time that him that her brothers were told by her cousin about their relationship. However, at his SHEV interview the applicant submitted that they had been unable to keep their relationship secret because Ms I’s brothers had caught her on the telephone with him. No mention was made of Ms I’s cousin having a role in any of this until the delegate questioned the applicant about how Ms I’s brothers could possibly know what he (the applicant) looked like, with the applicant responding that although he had never himself met Ms I’s cousin that Ms I’s cousin had seen him meeting with Ms I.

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<sup>2</sup> DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 20190220093409; DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265; EASO, "Pakistan Security Situation - COI Report", 30 October 2019, 20191031160110; Mahsud, M.K. "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543; Mohanty, T.R. "Pakistan: Sectarian Savagery – Analysis", Eurasia Review, 29 November 2018, CXBB8A1DA40015; SATP, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943.

15. In his written claims the applicant also appeared to be claiming that during his time in Rawalpindi he became known to the SSP because of his activities with the ISO. The ISO is reported to be the largest Shia student group in Pakistan. It was reportedly established in 1972 to offset the influence of student groups linked to Sunni political parties which were emerging at that time. It is a very large organisation. An estimated 50-70 per cent of all Shia students in Pakistan are thought to be members of the ISO and it operates in all four of Pakistan's provinces. The ISO advocates for, and provides services to, Shia students, in addition to lobbying on a wide range of national issues. The ISO also functions as a feeder organisation for Pakistan's mainstream Shia political parties. Deobandi Sunni groups have engaged in occasional violence against members of the ISO. In December 2010, for example, an IED attack at Karachi University killed several ISO members and militants attacked a procession of ISO members in 2012.<sup>3</sup> The applicant claims that between 2010 and 2012 he became more politically active and that he was participating in ISO protests against the atrocities committed by sectarian terrorist organisations like the SSP against Shia Muslims in Pakistan, particularly in Parachinar. In his written claims he submitted that he was an ISO member and that he helped organise new and existing members into non-violent protests, including by arranging banners and transport to protest sites. He claimed that the protests themselves were mostly safe (as these were conducted in front of the Islamabad Press club) but the danger was that the sectarian groups would observe the protests and target you when you were vulnerable. At the SHEV interview the applicant was asked about his ISO involvement and any positions he held. He said that he held no specific position and although he referred to involvement in protests he made no claims about organising new and existing members in the manner that had in his written claims. The applicant's evidence in this regard was vague and unsupported by any documentary evidence of his ISO membership or even involvement. In a subsequent submission it was tendered that the applicant was not a formal ISO member as such, and that he did not fill out any membership forms, and that he was simply an "informal member" in the manner of an active volunteer.
16. In his written claims the applicant claims that while he was preparing for his final exams in Rawalpindi he started to receive calls from various unknown numbers. These male callers, who he believes were SSP members, would interrogate him about his identity, family background and location, and would abuse him and threaten to kill him. In his written claims it was not clear whether the applicant was claiming that he considered these calls to be the result of ISO activities, or of the attention Ms I's SSP brothers, or of both, but at his SHEV interview he submitted that he considered these calls to be caused by Ms I's brothers. The applicant claims that he feared for his life during this time and that although he was in the process of preparing for his exams he would (for safety reasons) hardly ever leave his Rawalpindi residence. The applicant claims that he continued to reside at his Rawalpindi residence as long as he did because he did not think that Ms I's brothers knew the location of his house in Rawalpindi. In his written claims he submitted that although he was determined to finish his degree he eventually was too afraid to leave the house as he was scared for his life and so he had to withdraw from his course and he returned home to Parachinar in about September 2012 to visit his family. In his written claims the applicant submitted that he was attending university at this point and that the extent of the risk he faced in Rawalpindi was such that he discontinued his studies (in his second year) and the completion of his degree in order to find safety in Parachinar; and in his SHEV application education table his Rawalpindi college is referred to as a university, and in his travel table he refers to travelling home to Parachinar through Afghanistan every year while he was living in Rawalpindi during university holidays. However, at a May 2013 entry interview the applicant had told the Department that the Rawalpindi college which he attended was a secondary school, and although he mentioned

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<sup>3</sup> DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265.

undertaking a matriculation exam while in Rawalpindi he gave no indication that he had ever entered university studies. At his entry interview he indicated that he left studying to come to Australia but he gave no indication that he left any of his studies incomplete. Indeed, he stated that his family had not allowed him to leave Pakistan until 2012 he finished his matriculation studies. That this was the case, and that the applicant did not break off university studies out of fear, is also suggested by what the applicant had to say about his studies at his SHEV interview. For at the SHEV interview the applicant stated (consistent with his entry interview evidence) that when he was studying in Rawalpindi he was completing his Year 11 and Year 12 studies. At the SHEV interview he said that had never entered into any other further studies beyond this. Thus, it is evident that in 2012 the applicant returned to Upper Kurram after completing his Year 11 and 12 studies at a college in Rawalpindi and that he never entered university studies.

17. In his written claims the applicant submitted that the fury of Ms I's brothers had turned upon him because they did not want to draw attention to the shame she had brought on the family by killing Ms I, and so after returning to Parachinar he decided to leave Pakistan because of the danger posed by SSP even though he could not imagine life without Ms I. At his SHEV interview the delegate asked the applicant why he would have had fears that Ms I's brothers and/or other members of the SSP could locate him and harm him in Upper Kurram (for, as will be discussed in what follows, Upper Kurram has been dominated by its Turi Shia Muslim population over the recent decade to the exclusion of groups like the SSP such that it would be extremely difficult for such attackers to penetrate the area to search for and target a particular individual, such that attacks in Upper Kurram during this period have been limited to ventures such as suicide bomb attacks in market areas of Parachinar city). The applicant submitted, unconvincingly, that the SSP could locate him and kill him wherever he was in Pakistan. He also submitted that he had decided to leave Pakistan because he believed that Ms I's brothers would only kill Ms I once they had captured him such that his freedom would ensure her life (which seems at odds with what a person would generally expect to occur in such circumstances if the shame had become public, and also at odds with the applicant's own earlier claim that he believed Ms I had not been killed because the shame had not become public and her family would not kill her so as not to reveal this shame). He also submitted that he had decided to travel to Australia because he wanted to save her life too and to bring her to Australia as quickly as possible.
18. In his written claims the applicant submitted that he departed Pakistan on [in] March 2013 and that his departure occurred six months after he had decided to leave Pakistan. Thus, the applicant claims that his fears regarding Ms I's brothers and the SSP led him to decide to leave Pakistan for Australia in around early September 2013. I note, however, that the applicant has provided a scanned image of his Pakistan passport and that this was issued to him [in] 2012. This would seem to indicate that in fact the applicant had begun to prepare to leave Pakistan for Australia during the early part of 2012. Moreover, at the SHEV interview when the applicant was questioned about where he was when he applied for and was issued his passport he said that he did all of this while he was in Parachinar meaning that in early 2012 he was back in Upper Kurram and not in Rawalpindi. It may be that the applicant was not yet residing in Upper Kurram permanently at that time, since he has indicated in his travel tables that while living in Rawalpindi he spent his college holidays in Parachinar, but this too raises a problem since, if the applicant was returning to Parachinar during college holidays throughout his period of study in Rawalpindi, it seems doubtful that he could have been spending time in Rawalpindi with Ms I if college holiday periods were the times during which she was in Rawalpindi rather than Bannu. Moreover, I find it implausible that a girl from such a conservative Sunni family with brothers in the SSP (who would be among the most rigorous practitioners of purdah) would allow their daughter to live such a life, let alone that she would be in such a position as

to be able to go about in Rawalpindi unescorted such that she was able to meet with a man in parks and restaurants. I have not found any of this convincing.

19. Doubts also arise from the fact that in May 2013 (when giving information about his reasons for leaving Pakistan to the Department at an entry interview) the applicant had said nothing about having any fears in relation to having had such a relationship, or that he had been involved with the ISO. At his May 2013 entry interview he said that since 2007 it had been dangerous in Parachinar and that once (during the time when he was living in Rawalpindi) he had gone back to his village for holidays but then could not return (to Rawalpindi) for his studies because it was dangerous to go back, and there was target killing in Parachinar, and blasts not just in Parachinar but everywhere in Pakistan. Asked if anything had happened to him he answered no. Asked to explain why it would be difficult for him in Pakistan the applicant claimed to fear that he might be abducted by the Taliban while travelling from Kurram to another part of Pakistan and then ransomed for money or killed, and that the Taliban and other such unknown people were targeting people from his area (that is, Shia Turis from Kurram). Asked if there were any other reasons why he had left Pakistan the applicant said that it was just because it was dangerous. In his written claims the applicant submitted that he did not fully explain his claims at his entry interview because he felt very stressed and shy, and because in his own culture it is not acceptable to express your love for someone or to talk about relationships outside of marriage, and so he only answered the questions in simple terms. At the SHEV interview the delegate put it to the applicant that the fact that he had said nothing about such matters, or about his involvement with ISO, raised doubts about these claims, and that this could be the reason or part of the reason for refusing the visa. The applicant reiterated the explanation he had provided in his written claims. He also submitted that that when he arrived in Australia he did not know that the women had rights in Australia, or that honour issues would be seen differently in Australia to how they were seen in Pakistan. In a subsequent written submission to the delegate these arguments were repeated and it was also submitted that the applicant did not trust the entry interviewer who was a stranger, and that he had just completed a dangerous journey and was not mentally in a position to talk about such matters.
20. There are a number of problems with the various reasons which the applicant has proffered to explain why he made no claims at his entry interview with regard to his fearing harm on the basis of his having had a relationship with Ms I and/or because of his involvement in the ISO. I can accept that the applicant's journey to Australia may have been a difficult one but at the time his entry interview took place (on 16 May 2013) he had been in Australia for some two months (he arrived in Australia [in] March 2013) and he gave no indication at the entry interview that he was unfit in any way. I am thus not persuaded he was unfit to give evidence at the entry interview. The applicant claims that he was not aware that the Australian authorities could be trusted, or that matters regarding women were thought of differently to how they were thought of in Pakistan. Yet in the entry interview preamble the applicant was assured that the privacy of his information would be protected, and the applicant himself stated that he had chosen to come to Australia because there were rules and regulations and there was no discrimination. I am not persuaded that the applicant was unaware of how such matters are viewed in Australia, or that his claims would remain confidential matters. I can accept that a person from Pakistan might be unwilling to discuss with a stranger such a personal matter as a relationship with a woman. I note, however, that the entry interview with an Australian immigration officer was not a discussion with just any stranger (such as person on the street who would have no role in the matter of whether he might be removed from Australia to Pakistan). During the the preamble to the entry interview the applicant was put on notice that the interview would be his opportunity to provide any reasons why he should not be removed from Australia. If the applicant feared that he would be killed by men who considered that he had had an inappropriate relationship with their sister, and if the applicant



feared he would be killed on this basis if he was returned to Pakistan, and if it was his plan to try to bring Ms I to Australia as soon as quickly as possible, I find it implausible that he would have said nothing at all about any such matters at his entry interview when he was speaking to an Australian immigration officer about why he had left Pakistan and any reasons why he should not be returned.

21. The matter of the ISO, and the applicant's claimed his protest activities with the ISO, does not figure so prominently in the applicant's claims but even so, given the extent to which the interviewing officer at the entry interview persisted with his questions about whether there was any other reason why the applicant feared harm in Pakistan, it seems doubtful that the applicant would have made no mention whatsoever of his involvement in the ISO or in ISO protests if he had fears in this regard. Moreover, at the entry interview the applicant was specifically asked if he or any members of his family been associated or involved with any political group or organisation and he said no. He was then specifically asked if he or any members of his family had been involved in any activities or protests against the government and he said no. He was also asked whether he was a member of a particular social or religious group. He said that he was a Shia Muslim but he gave no indication that he was involved in any way in the ISO. I find it doubtful that he would have made no mention of his involvement with ISO in response to one or another of these questions if he was, as he now claims, an informal member of the ISO in the manner of an active volunteer. Moreover, and notwithstanding the manner in which the applicant had been put on notice by the delegate at the SHEV interview that this claim was in doubt, the applicant has provided no documentary evidence whatsoever from the ISO or from any other source to substantiate his claim to have had involvement of some kind with the ISO whether as an active volunteer and informal member or otherwise.
22. The delegate was willing to accept that the applicant was an ISO member given the extent of the support and representation the ISO provides. I accept that it is plausible that a Shia Muslim student might well be an ISO member and participate in ISO protests (indeed, as noted above an estimated 50-70 per cent of all Shia students are members of the ISO) and I accept that the applicant was a Shia Muslim student, and I note that Shia political and social and religious groups like the ISO are known for protesting against what they see as a lack of action by the Pakistan government against attacks upon Shias by groups like the SSP and LeJ and other such groups associated with the Pakistani Taliban. But given that the applicant made no mention at his entry interview of being a part of the ISO, and given that he has provided no documentary evidence to substantiate his claim to have been involved with the ISO in any way, I am not satisfied that the applicant himself has ever been in any way involved with the ISO or its protest activities, or that he was ever observed involving himself in such activities, and it is not apparent from the country information before me that Shia Muslims in Pakistan are at risk of being imputed with being involved with the ISO simply because they have been students and are Shia Muslims. I am therefore not satisfied that the applicant would face a real chance of harm of any kind on the basis of being perceived to be a member or supporter of the ISO if he were to return to Pakistan.
23. At the SHEV interview it was put to the applicant that he had provided no documentary evidence to substantiate his claim to have been in a relationship with Ms I over so many years as he claimed. Asked if he had any photographs of himself with Ms I the applicant said that he had had many of these on his mobile telephone in Pakistan but that he had given this mobile telephone to his family for their use before he departed Pakistan and that he had consequently deleted all of these photographs before giving it to them. I find it doubtful that in such circumstances the applicant would not simply have transferred such photographs to another device or kept them for himself in some other way. The applicant asked what other evidence he could provide and the delegate appropriately explained that it was up to him (the applicant)

to think about what evidence he had which might accomplish this. The delegate asked if the applicant had maintained contact with Ms I since he had arrived in Australia and the applicant said that he had by telephone calls. Asked when he had last been in contact with Ms I the applicant said he thought this had been about a month or a month-and-a-half earlier. The delegate suggested to the applicant that if he had been in contact with Ms I over so many years he could at least provide records of his communications with Ms I and that although this might not make for conclusive evidence it would at least be a start. The applicant said he would do this and also that he would provide a copy of Ms I's CNIC which she had sent to him.

24. The applicant subsequently provided a copy of a Pakistan CNIC said to belong to a woman by the name of Ms I. He also provided images said to be of himself in a video call with Ms I, and it was submitted that (although due to safety concerns it was not their usual practice to use video calls) this had been done following the SHEV interview so as to evidence the applicant's claims. The applicant also provided images of text message exchanges between him and Ms I (in what appears to be the Urdu language) and English translations for these. Although a translation of the CNIC has not been provided I can accept that the woman named on this document is named Ms I. Although the scan of the CNIC and its affixed picture of Ms I is of poor quality I can accept that the woman on the CNIC is the same woman seen in talking with the applicant in the video chat images. The scanned images of text messages include a passage of exchanged which appear to have taken place following the SHEV interview. In this exchange the matter of the recent SHEV interview is discussed and Ms I underlines to the applicant that he must not send any more messages or there would be problems for her again. This appears to reflect the applicant's account of the situation to the delegate in which the applicant had claimed that (ever since the discovery of the relationship by Ms I's brothers) for safety reasons the applicant never contacted Ms I and it was their practice that only she initiated contact (doing so beginning with the use of a code word to indicate she was not under any duress). I note, however, that at the SHEV interview the applicant spoke only of telephone calls and he gave no indication that he and Ms I sent each other text messages. In any event, these sequence of messages also reflect the applicant's claims in that Ms I expresses hope in the success of the applicant's application so he can take her with him, and she also expresses concern about the use of the Internet for communication (this appears to be a reference to the video call) with the applicant explaining to Ms I that he needed to do this to this so he could provide evidence of their situation. Ms I also states that the situation is as it was and "they" continue to look for the applicant and will kill him wherever they find him. In a Monday [Date] October exchange (which would appear to have taken place on Monday, [Date] October 2019, just two weeks before the SHEV interview) Ms I states that she is supplying the applicant her CNIC number and that she is willing to do this and help him so long as it does not create any problems for her (she does not specify what problems she has in mind).
25. However, earlier exchanges between the applicant and Ms I are of a nature somewhat or even altogether at odds with the applicant's claims about what the nature of his relationship with Ms I has been. In a Saturday [Date] May exchange (which would appear to be Saturday, [Date] May 2019), Ms I appears to state that she wishes to end their relationship and that she entrusts to him all their memories, pictures and videos (which seems at odds with the applicant's claim he has no such pictures or videos). Significantly, in a [date] October 2018 exchange, Ms I complains to the applicant that he is not responding to her messages. The applicant replies that he did not have a credit and that he has just come home from work and will call shortly. In this exchange (which it would seem did not take place for the specific purpose of providing evidence to substantiate the applicant's claims) it would seem that a more accurate glimpse is provided of what the nature of the relationship between the applicant and Ms I has been. In this exchange it would not seem that Ms I is in any way concerned about security in terms of her communications with the applicant. Instead, and in a manner not uncommon in a long

distance relationship, Ms I expresses her annoyance that she sent the applicant a message in the morning and still has not received a reply, and that she will not do so again because she has waited long enough. There follows an apologetic message from the applicant to the effect that he could not reply sooner because he did not have any credit to enable such a call, and that he has been at work, and that he will call shortly. The contrast between this exchange and those from the time of the SHEV interview is significant and raises serious doubts about the applicant's claim that his communications with Ms I have had to be conducted in a secretive manner because Ms I's family are against her having a relationship with the applicant.

26. Such evidence thus does little to overcome my doubts about the applicant's claim to fear harm because of his relationship with Ms I. I can accept that the applicant has been in a relationship with Ms I over recent years but I am not satisfied and I do not accept that Ms I belongs to a radical Sunni Muslim family, or that she originates from Bannu, or that the relationship between the applicant and Ms I is not accepted by their respective families, or that the applicant has ever been threatened by any members of Ms I's family or by any members of the SSP. I am therefore not satisfied that he would face a real chance of harm on any such basis if he were to return to Pakistan.
27. Given that the evidence indicates that the applicant has completed his studies in Rawalpindi and given that he has otherwise always made his home in the [Village] area of Upper Kurram I consider that [Village] is the area he would return to if he were to return to Pakistan.
28. The country information before me indicates that the Kurram region (formerly the Kurram Agency of the FATA but now the Kurram District of Khyber Pakhtunkhwa Province) is a valley network which protrudes out of Pakistan's western border into Afghanistan. It is divided into the three sub-districts (or tehsils) of Upper, Central and Lower Kurram and has a population of more than half a million persons of which Shias are thought to amount to some 40 percent with the remainder being Sunni. Upper Kurram is largely populated by members of the Turi tribe (which is exclusively Shia Muslim) and also Shia Muslim elements of the Bangash tribe. Those Sunnis normally resident in Upper Kurram belong to such tribes as the Mangal. The Sunni population predominates in Central and Lower Kurram, and both are dominated by the largely Sunni Bangash tribe. Upper Kurram has typically had a Shia Muslim population of around 80 percent and a Sunni Muslim population of around 20 percent, and the reverse has typically been the case in Lower and Central Kurram where Shia Muslims are in the minority. Life in Upper Kurram centres upon Parachinar which is located deep in Upper Kurram, while life in Central and Lower Kurram centres upon the city of Sadda.
29. Over the past century Kurram has been affected by occasional outbreaks of sectarian violence; notably in 1980s when Pakistan's backing for the Sunni mujahedeen networks fighting the Soviets in Afghanistan led to tensions owing to the militant operations being funnelled into Afghanistan through Upper Kurram's mountain passes. The Shia Turi who dominate Upper Kurram put a halt to this and likewise put a halt to attempts to funnel support to the Taliban through Upper Kurram in the 1990s. From 2007 a significant and long lasting dispute of the sectarian kind embroiled the local Sunni and Shia tribes of Kurram. The SSP reportedly played a role in fuelling tensions in the area in the years which had preceded the outbreak of violence, and during this time the SSP had reportedly established themselves in Lower Kurram and also in the neighbouring districts of Hangu, Kohat, and Orakzai.<sup>4</sup> Clashes reportedly broke out in Parachinar City (reportedly after some Sunnis chanted anti-Shia statements and after shots

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<sup>4</sup> Mahsud, M.K. "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543; PSRU, "Sectarian Violence in Pakistan's Kurram Agency", 1 September 2008, CIS16789; SATP, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943.

were suspected of having been fired at a Shia religious festival) resulting in the death of some Shias and some Sunnis and also in some property destruction, and the displacement of much of Upper Kurram's minority Sunni population into Central and Lower Kurram and elsewhere. Initially the fighting would appear to have occurred in the vicinity of the cities of Parachinar and Sadda but with the displacement of much of the Sunni population out of Upper Kurram, and the displacement of much of the Shia population out of Central and Lower Kurram, it would seem that thereafter fighting between the respective communities tended to occur at places on the fringe of Upper Kurram such as Balish Khel.<sup>5</sup>

30. Parachinar itself would not appear to have seen any significant clashes following 2008. For over subsequent years the manner in which the Shia Turi community enforced security in Upper Kurram was such that even for such local Sunni Muslims as remained in Upper Kurram movement was largely denied them by the local Shia population. In a similar manner the Sunni Muslims of Central and Lower Kurram sought to blockade the Shia Muslims of Upper Kurram such that Upper Kurram's Shia population was often only able to access wider Pakistan during this period by travelling up through the mountain passes into Afghanistan in order to re-enter Pakistan further north toward Peshawar at around Torkham (which is how the applicant claims he travelled between Upper Kurram and Rawalpindi). As a consequence Upper Kurram suffered difficulties during these years in terms of obtaining some foodstuffs and other material. Parachinar City also suffered a series of bomb attacks in its market areas which, as has been noted above, would appear to have been one of the few means by which an attack could be infiltrated into Upper Kurram. Such attacks would appear to have been carried out by groups associated with the Tehrik-i-Taliban (TTP) umbrella group known as the Pakistani Taliban. This group only formed officially in late 2007 even though prior to this time various Pakistan groups like the SSP and LeJ were sometimes referred to as the Taliban in a colloquial manner. At its formation the TTP stated that its official aim was to assist the Afghan Taliban in fighting its war in Afghanistan. Upper Kurram had long been important to the Afghan Taliban (and in particular to the Haqqani Network which was the Afghan Taliban's principal network in the region) as a means of running supplies from bases in Pakistan into Afghanistan. It had long been the case that the Shia Turi of Upper Kurram had denied the Haqqani Network access to these mountain passes. It would seem that when the TTP initially entered into the Kurram conflict it did so with demands that the Shia Turi allow the Taliban access to Afghanistan. This was also the demand of the Haqqani Network. However, with the passage of time it would seem that the Haqqani Network (although reportedly still present in the area and a concern to the Shia Turi) would not appear to have been engaged in any fighting against the Shia Turi in Kurram for some time, nor is there any indication that this situation is about to change. The groups associated with the Pakistan would, however, appear to remain interested in attacking the Shia Turi on the basis of an avowedly anti-Shia stance which the Afghan Taliban would not appear to share. In addition to perpetrating bomb attacks against Parachinar city, fighters associated with Pakistani Taliban groups are believed to be responsible for many of the killings of Shias which occurred when Shias were abducted while attempting to travel between Upper Kurram and Peshawar during the period of the road blockades.<sup>6</sup>

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<sup>5</sup> Mahsud, M.K. "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543; PSRU, "Sectarian Violence in Pakistan's Kurram Agency", 1 September 2008, CIS16789; SATP, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943; OCHA, "Overview - Kurram Agency", 8 November 2012, 20190520124628

<sup>6</sup> PSRU, "Sectarian Violence in Pakistan's Kurram Agency", 1 September 2008, CIS16789; Faqeer, H. "FATA Handbook", IDS International, 1 June 2009, CIS28772; Mahsud, M.K. "The Battle for Pakistan: Militancy and Conflict in Kurram", New America Foundation, 1 April 2010, CIS18543; Peer, B. "The Shiite Murders: Pakistan's Army of Jhangvi", The New Yorker, 9 March 2013; UK Home Office, "Country Information and Guidance, Pakistan - Shia Muslims", February 2015; DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265; EASO, "Pakistan Security Situation - COI Report", 30 October 2019, 20191031160110.

31. The Pakistan government sought to bring an end to the conflict by the deployment of troops and curfews, and by facilitating peace jirgas (Pashtun tribal councils) in an effort to restore peace. The Pakistan government was criticised by both local Shias and local Sunnis as favouring the other community. Nevertheless, the local Sunni tribesmen of Central and Lower Kurram reportedly grew tired of the intermittent conflict with the Upper Kurram Shia, and also with the presence in central and lower Kurram of the groups associated with the Pakistani Taliban, and this saw the negotiation of peace agreements and in January 2016 DFAT reported that the 2013 peace accord remained in place. From the most recent reporting available it would seem that (notwithstanding the occasional occurrence of some limited low level disputes between neighbouring Shia and Sunni communities in particular areas) the peace between the local Shia and Sunni communities of Kurram has held up to the present day and shows no sign of breaking for the foreseeable future, with persons displaced by previous years of conflict returning to their places of origin without any signs of tension. In January 2016 DFAT reported that the Thall-Parachinar Road remained open, and that security forces continued to maintain armed checkpoints along the road having conducted security operations in an effort to clear the area of remaining Pakistani Taliban fighters.<sup>7</sup>
  
32. There have, however, been further bomb attacks perpetrated in Parachinar city by anti-Shia groups associated with the Pakistani Taliban and, more recently, by the Islamic State movement (also an avowedly anti-Shia militant group). Notwithstanding the manner in which clashes had come to an end, and freedom of movement had been restored, the security measures noted above failed to prevent a 13 December 2015 bomb attack against a Parachinar City market which killed some 25 people and injured as many again. Just over a year later, on 21 January 2017, a Parachinar City marketplace suffered another such attack, with two further such attacks occurring on 31 March 2017 and 24 June 2017 resulting in some 200 deaths and many more injured, and seeing Kurram suffer the worst sectarian violence in the country for 2017 at a time when such violence had decreased markedly elsewhere. The attacks were claimed by various groups associated with the Pakistani Taliban, and in one instance by Islamic State, and the year also saw various other incidents and threats perpetrated in Kurram by these types of actors.<sup>8</sup>
  
33. Understandably the Shia population of Parachinar protested that the Pakistan government needed to do more in terms of providing protection. In response, Pakistan's security forces undertook further security operations in the area to eliminate such militant groups, and also implemented additional security measures. By February 2018, the Turi community estimated 40 per cent of military fencing in Kurram was complete, decreasing border permeability. Continuing security measures and tighter Afghanistan-Pakistan border controls also restricted movement. 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. Security forces have issued cards to access the red zones,

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<sup>7</sup> DFAT, "DFAT Thematic Report - Shias in Pakistan", 15 January 2016, CIS38A801265.

<sup>8</sup> FRC, "FATA Annual Security Report 2016", 24 January 2017, CISED850AD120; "Daesh leaflets in Kurram Agency threaten a 'specific sect'", The News, 8 February 2017, CXC9040661620; "No losses in truck blast near check-post in Kurram Agency", News International, 11 February 2017, CXC9040664774; "One injured in IED blast in Kurram Agency", The News, 13 March 2017, CXC9040664773; "Four Missiles Fired Into Upper Kurram Agency From Afghanistan", Tribal News Network, 2 April 2017, CXC9040665120; FRC, "FATA Annual Security Report 2017", 17 January 2018, CIS7B8394188; CRSS, "CRSS Annual Security Report 2017", 1 March 2018, CIS7B83941392; SATP, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943; "Shias of Parachinar; victims of Takfiri terrorism, govt. apathy", Mehr News Agency, 22 April 2018, 20190110132325; DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 20190220093409; EASO, "Pakistan Security Situation - COI Report", 30 October 2019, 20191031160110;.

which can be obtained by residents on presentation of identity documents (CNICs or passports).<sup>9</sup>

34. Notwithstanding this, and the improved security situation in Kurram at the time, in February 2019 DFAT assessed that Turis in Kurram agency faced a moderate risk of sectarian violence from militant groups on the basis of their Shia religion. It is now April 2020 and the situation now seems far more favourable. During 2028 there had been some signs of concern. In April 2018 and in September 2018 groups of Pakistani Taliban attempted to infiltrate into Kurram from Afghanistan and clashed with Pakistan's border security forces. In February 2019 DFAT reported that the Turi community had claimed that in January 2018 it had suffered two attacks including an improvised explosive device that targeted women and children. This would appear to be a reference to an incident which occurred in the Maqbal area of Upper Kurram wherein several family members were killed when their vehicle hit a roadside bomb.<sup>10</sup> Although attributed to the TTP in some monitoring it is not apparent that any group ever claimed responsibility for this incident (as is typically the case in such attacks) and in some reporting the blast was said to have resulted from a landmine; and it would seem that Maqbal was one of the areas which fought over in 2007 such that the 2018 incident may have involved a remnant of war.<sup>11</sup> In any event, since this time there have been few security disturbances in the Kurram region, and it would not appear that there been any major security incidents in the region which have resulted in any civilian casualties.<sup>12</sup> In February 2019 DFAT reported that the security measures put in place at that time had restored confidence within the community for individuals (although not large groups) to travel on the Tall-Parachinar road, although only between dawn and dusk. Given that over the last two years there would not appear to have been any abductions of or attacks upon civilian travellers along this route (whether by day or night or whether in small or large groups) this confidence would appear to be well-founded.
35. The delegate noted that Peshawar has an airport receiving international flights such that the applicant would be able to return to Pakistan via this airport and then travel directly by road to [Village] in Upper Kurram. Given the current security situation the delegate was not satisfied that the applicant would face a real chance of serious harm if he were to do this and return to his life in [Village]. To the IAA it has been submitted that safe travel on the Thall-Parachinar road between Peshawar and Parachinar might be possible but the delegate failed to have regard to the security situation between the point of entry in Pakistan and the beginning of the Thall-Parachinar road (that is, to the security situation between Peshawar and Thall). It was also submitted that the delegate failed to take into account the significance of security incidents and terrorist attacks across Pakistan more broadly.
36. From recent reporting it is apparent that in Hangu (the district in which Thall is located) and Peshawar and the districts between them there have been some security incidents over recent years, including some perpetrated by sectarian groups like Islamic State and those associated with the Pakistani Taliban (notably in November 2018 when a local Shia community in Orakzai was targeted in a bomb attack). It is not, however, apparent that recent years have seen any security incidents involving Shia Turi travellers in Peshawar or in the districts of Hangu or Kohat or Orakzai. Indeed, such security incidents as have occurred in these areas of Khyber

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<sup>9</sup> DFAT, "DFAT Country Information Report - Pakistan", 20 February 2019, 20190220093409; EASO, "Pakistan Security Situation - COI Report", 30 October 2019, 20191031160110; SATP, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943.

<sup>10</sup> "Six of a family martyred in Kurram roadside blast", News International -Pakistan, 31 January 2018, CXBB8A1DA25475.

<sup>11</sup> PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; SATP, "Shias Killed in Pakistan Since 2001", 17 June 2018, CIS7B839419943.

<sup>12</sup> EASO, "Pakistan Security Situation - COI Report", 30 October 2019, 20191031160110; PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; CRSS, "Quarterly Security Report 2019", 17 July 2019, 20190904144910.

Pakhtunkhwa Province in recent years have been few in number (apparently owing to ongoing operations by Pakistan's security forces and the increasingly favourable security situation in these areas) and although some other areas in Khyber Pakhtunkhwa Province have seen significant security problems (notably North Waziristan), it is not apparent that what is occurring in these more troubled areas of Khyber Pakhtunkhwa, or in Pakistan more broadly, will affect Kurram District or the route between Peshawar and Upper Kurram within the foreseeable future.<sup>13</sup>

37. To the IAA it has been submitted that the applicant would face a real chance of harm because of several matters referred to in DFAT's February 2019 report on Pakistan. Among these is the observation that: While military operations have improved the security situation in Parachinar and Kurram Agency, they have also restricted freedom of movement and limited the community's access to essential services and trade opportunities; and that: Military operations have also displaced many Turis, and some of the many who have since returned to their homes have faced extensive damage to property and crops. I accept that the Pakistan military's operations against militants had this effect on some Turis and their property and crops. I note, however, that at the SHEV interview it was not apparent that the applicant's own family had been in any way affected by such matters. Indeed, at the SHEV interview the applicant explained that he had previously referred to himself as being responsible for supporting his family because of his stake in his family's farming business (upon which his family relied for their subsistence), and he gave no indication that this business had been adversely affected by security operations or by any other matter or that it was no longer sufficient to support his family. Recent reporting on the situation in Upper Kurram gives no indication that Shia Turi inhabitants are unable to access essential services or to engage in agricultural business or other forms of employment.<sup>14</sup> Given the extent of the layers of security around the centre of Parachinar City I can accept that the applicant might be delayed to a greater extent than he otherwise would be when attempting to travel into the Parachinar city centre to access any services he might need from Parachinar City, but I do not consider that this would amount to harm.
38. To the IAA it has also been submitted that the country information before the delegate also indicated that the applicant would be at risk of societal discrimination such as extra and targeted security checks and surveillance against the Turi. It is not, however, apparent from the country information before me that security checks and surveillance are being undertaken in Kurram or elsewhere in Khyber Pakhtunkhwa Province against the Turi. Rather, such checking and surveillance as is being undertaken in Parachinar City is being undertaken to protect the Turi and to exclude potential threats to the Shia Turi. Given this, and given moreover that the applicant would be returning to Pashtun dominated Khyber Pakhtunkhwa Province, and given that he would be only transiting through other areas of Khyber Pakhtunkhwa Province briefly before returning to Shia Turi dominated Upper Kurram, the possibility of his suffering harm of some kind in the manner of societal discrimination seems remote.

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<sup>13</sup> PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; "Militants strike again", Dawn, 24 November 2018, CXBB8A1DA40016; EASO, "Pakistan Security Situation - COI Report", 30 October 2019, 20191031160110; PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758; CRSS, "Quarterly Security Report 2019", 17 July 2019, 20190904144910.

<sup>14</sup> "New academy to revive Parachinar's lost melodies", Tribal News Network, 20 June 2019, 20190621095542; "Minister directs for developing potential tourists sites in Kurram districts", APP News, 19 June 2019, 20190620104837; Tribal districts fetch Rs162bn in next budget", Dawn, 16 June 2019, 20190620135442; "FAO Organizes Agriculture Expo In Districts Kurram, Parachinar Of KP", Urdu Point, 28 June 2019, 20190701111457.

39. Although it seems doubtful that the applicant actually has any concerns about experiencing societal discrimination of some kind upon return to Pakistan I can accept that the applicant has genuine concerns about the returning to Upper Kurram given the manner in which it has been affected by conflict in past years. And even though it would not appear that [Village] itself has ever been affected by security incidents in the manner of some other areas of Kurram the incidents which have occurred in nearby Parachinar City over recent decades have been very serious indeed. However, given the manner in which Pakistan's security forces have responded to the matter of providing protection to Upper Kurram, and to the city of Parachinar in particular, and given the current overall security situation in the region including with regard to the route the applicant would travel from Peshawar to Upper Kurram, I am not satisfied that the applicant would for the foreseeable future face a real chance of harm of any kind from the SSP or the Taliban, or from Islamic State, or from any other actor, whether for reason of his being a Shia Muslim Turi Pashtun from Upper Kurram, or because of any political opinion imputed to him on this basis, or as a result of general insecurity issues, or for any other reason if he were to return to [Village] in Upper Kurram. I am therefore not satisfied that the applicant would face a real chance of serious harm if he returned to Pakistan.

#### **Refugee: conclusion**

40. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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41. 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**

42. 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.
43. For the reasons already given above I am not satisfied that the applicant would face a real risk of harm of any kind if he returned to Pakistan. I am therefore not satisfied that he would face a real risk of significant harm if he returned to Pakistan.

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

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



## **Decision**

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

## Applicable law

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### ***Migration Act 1958***

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

In this Act, unless the contrary intention appears:

...

***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.