



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08103

Date and time of decision: 5 May 2020 15:49:00
S Ryan, 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 national of Pakistan and arrived in Australia [in] July 2013. On 18 July 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 31 March 2020 and referred the matter to the IAA on 6 April 2020.

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). No further information has been obtained or received.
3. The applicant wrote to the IAA on 20 April 2020 to request an extension of time of an additional 21 days (until 18 May 2020) to make submissions to the IAA. He indicated that he did not have any income, has serious mental health challenges and has not been able to access legal advice due to COVID19 movement restrictions and an increased demand on community legal assistance providers. The IAA responded on the same day advising that is not satisfied that the circumstances warrant extending the time in this case
4. I note that the applicant has not previously indicated that he has any mental health issues and does not articulate what these are, or present any additional information to substantiate his claim to have a mental health condition. The initial 21 Day period ended on 27 April and the applicant has not made any further contact with the IAA. He has not given any indication that he has engaged a legal representative, or advised what efforts he has made in this respect.
5. With regard to the impact of COVID19 movement restrictions I note that the applicant does indicate whether he has sought to engage the same legal practitioner that assisted him with his SHEV application, or indicate how any movement restrictions have prevented him from or instructing a legal representative, or engaging the services of a new legal representative.
6. I further note that the applicant has given no indication as to whether he is seeking to provide new information with respect to his case, or what that information might be, or its significance to his case.
7. Considering all of these matters I am not satisfied that the circumstances warrant delaying the assessment of this case.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He is from [Village] in an area that is now known as the Kurram District of Khyber Pakhtunkhwa Province in Pakistan.
 - He fears being harmed by Sunni extremist groups on account of his Pashtun ethnicity, being a member of the Bangash tribe, and as a person who follows the Shia faith.
 - His profile with extremist groups is heightened as he is the eldest son of a high profile family known to oppose the Taliban.

- His mother is a female school teacher who has been repeatedly threatened by the Taliban. He was forced to cease his high school studies in 2004 on account of his association with his mother. His mother has continued her teaching and is committed to female literacy, both of which are opposed by the Taliban and which puts him in danger as her son.
- His grandfather is the prominent Shia cleric [Mr A]. His grandfather is a long-time opponent of the Taliban and has received threats from the Taliban stating they would kill his grandson.
- His younger brother, [Mr B] was targeted by Taliban as he was the eldest remaining son in the family. [Mr B] fled Pakistan to seek protection in Europe.

Factual findings

Identity and background

9. The applicant has provided a copy of his Pakistan passport, and a copy of his national identity card. There is no issue as to the applicant's claims regarding his identity or nationality. I accept, as he has claimed, that he is a national of Pakistan and of no other country. Pakistan is the receiving country for the purposes of the Act.
10. I accept the basic biographical details provided by the applicant, noting that the evidence he has provided in the SHEV application is consistent with other evidence he has provided to the Department of Home Affairs (the Department). I accept the applicant was born in [Year] in [Village], an area that is a short drive from the town of Parachinar. The applicant is of Pashtun ethnicity, belongs to the Bangash tribe, and follows the Shia sect of Islam. He has never married and does not have any children. He did not complete high school, leaving after [number] years of study in 2004. He states he has never had a formal job and that he did some work in his family home between 2004 and 2013. His parents and [number] of his [number] siblings have remained living in their home in [Village] and he is in regular contact with them. The applicant left Pakistan via Lahore airport in around June 2013 and travelled on a valid Pakistan passport issued in his true identity.
11. I have some concerns with the plausibility of the applicant's claim that, between 2004 and 2013, he did not engage in any work in Pakistan, other than a limited number of domestic chores in his home. I note that the applicant's family own farming land in a rural part of Pakistan and he gave evidence in the Entry Interview that his father worked as a farmer. He has elsewhere referred to being aware of and accepting his cultural and tribal traditions and obligations as the eldest son of a Pashtun Bangash family, and in this context it is difficult to believe that, as the family's eldest son who has ceased high school studies and has remained at home, that he would not be expected to assist his father to run the family farm. I note that he turned 18 years old in [Year] and has not indicated he has any health condition or physical ailment that would prevent him from undertaking farm work. Noting these factors and my concerns, detailed below, with the credibility of other evidence given by the applicant concerning his family's circumstances, I find that his duties whilst living as the eldest son with his family on a working farm in Kurram would have included some farming work.

Evidence in the Entry Interview

12. The applicant took part in an 'Arrival and Induction' interview (Entry Interview) with the Department on 12 August 2013. The applicant has claimed in his 2017 SHEV application that his

mother is a teacher and his grandfather is a prominent religious scholar who is a prominent and public critic of the Taliban. He has claimed that their activities led him to be personally targeted and threatened by the Taliban. I consider these claims are significantly inconsistent with the evidence the applicant gave during the 2013 Entry Interview.

13. In a written statement provided to the Department in 2017 the applicant has sought to explain the evidence he gave at the Entry Interview concerning his mother's occupation, claiming he had not mentioned she was a teacher as he did not properly understand the question being asked of him.
14. The interviewer asked the applicant to briefly state his reasons for leaving Pakistan, and the applicant initially provided a brief and general response about the presence of Taliban in his area and the poor security situation in Pakistan. The interviewer then asked him a number of specific questions about his personal situation in Pakistan, and invited him with open questions to describe how the presence of the Taliban in his home area affected him and his family. It is not apparent that the interviewer interrupted him or otherwise sought to limit his responses to these questions. I consider it particularly telling that the interviewer asked him two direct questions as to whether anything had specifically happened to him or his family that had made him leave Pakistan and he responded 'no' to each question.
15. I take into account the nature of the Entry Interview, noting it is not conducted for the purpose of a full exploration of a person's claim to asylum. Although I note it does, in part, seek to elicit a person's reasons for departing their country and other matters such as the circumstances of their family; that may be regarded as matters pertinent to a protection claim.
16. I also take into account that the interview was conducted after the applicant had completed an arduous journey from Pakistan to Australia, although in this instance I note the Entry Interview was conducted one month after his arrival to Australia. Having reviewed the audio record of this interview I consider it was conducted in calm and friendly manner. He was given information at the start of the interview about the purpose the interview and cautioned that if he were to provide different information in a future interview this could raise doubts about what he has said.
17. Considering the detailed responses he provided in that interview, it is not apparent from the responses he gave that he was suffering any ill effects from the journey to Australia. It is evident from the flow of the interview and from the detailed nature of his responses that he understood the accredited Pashtun interpreter and the questions he was being asked.
18. His claims concerning the profiles of his mother and grandfather are not minor details. They are central to the issues he now puts forward as the reasons he left Pakistan, and fears returning. Given the extent of the omissions, and the evidence he did provide in the Entry Interview, I do not accept that the applicant's omission of any part of his claim to have been a member of prominent family targeted by the Taliban can be plausibly attributed to the nature of the Entry Interview, or to any of the other reasons given by the applicant.

Evidence given in support of his SHEV application

19. In the November 2019 written statement the applicant claimed that he had struggled to articulate himself during the SHEV interview on account of the pressure of an immigration interview, his lack of education, and his rural upbringing. I take into account that the applicant was not represented at the time of the SHEV interview and that he has limited educational or professional experience, and little experience in formal interviews. I accept that these aspects

of the applicant's circumstances may have had some effect on the evidence he gave in the SHEV interview. I make some allowances with regard to his ability to precisely articulate his claims for protection and provide precise dates during the SHEV interview. Nevertheless, I note he received assistance from a legal practitioner to prepare the 2017 statement of claims, and also had the benefit of legal advice in preparing the written statement he provided to the delegate after the SHEV interview in November 2019. He has not claimed that these factors have prevented him from providing instruction to either of his legal representatives.

20. I am satisfied that the applicant was on notice of the key determinative issues in his case, and that he has had a meaningful opportunity to address his claims for protection.

Mother's profile

21. In a written statement provided with the SHEV application in 2017, the applicant claims his mother is a teacher who taught at a school with a mix of students from the Sunni and Shia faiths. She received threats from the Taliban telling her to cease teaching and that her son (the applicant) should not be going to school. Because of these threats the applicant was forced to stop his studies in or around 2004. His mother transferred to a different school and continued teaching, but discretely. He asserted in that statement that his mother was continuing to work as a teacher.
22. I have serious concerns with the applicant's claims in this regard, noting these circumstances are considerably inconsistent with evidence he has given in the 2013 Entry Interview and in the SHEV interview held in October 2019.
23. During the 2013 Entry Interview the applicant made no mention of his mother's employment as a teacher. The interviewer asked the applicant a number of questions about his father including his name, citizenship status and occupation. In his responses the applicant stated his father was a farmer and that the applicant's family was dependent on his father's income. The interviewer then asked the same questions about his mother and in responding to the question '*what is her occupation*' the applicant stated his mother was a housewife. I also note that the applicant was asked a separate question about his mother's income and he stated she is financially dependent on her husband.
24. In a written statement provided with the SHEV application in 2017 he gave the following explanation for the response he had given concerning his mother; "*I did not tell the officer my mother was a teacher as I did not properly understand the question when I appeared to have been asked what my mother did for work. My recollection was that I was asked to answer who in my family was responsible for home duties and I responded with "my mother"*".
25. I do not consider the explanation provided by the applicant is plausible, noting that he had answered the same line of questions about his father moments earlier and did not appear to have misunderstood the same question about his father's occupation. Nor does he offer any explanation as to why he stated his mother was financially dependent on his father, which is inconsistent with the evidence he gave with his SHEV application that his father is incapacitated and cannot work and that his family relied on his mother's income.
26. The applicant has claimed in the 2017 SHEV application that his mother continued to receive personal threats made by the Taliban and that the Taliban had specifically indicated they would target the applicant. He has claimed that the personal threats of harm from the Taliban against him and his family were ongoing, caused him to permanently abandon his high school studies and is a matter that was central to his reasons for leaving Pakistan.

27. As noted above, the applicant made no mention of any part of this claim when asked about his reasons for leaving Pakistan during the Entry Interview and specifically indicated that there had been no specific incidents involving his family that caused him to leave Pakistan. If it were true that his mother and grandfather were high profile opponents of the Taliban and had been receiving ongoing, personal threats from the Taliban, it is difficult to understand why he would give these answers, or why he would not have considered it relevant to mention the Taliban threats against his family in any other part of the Entry Interview.
28. I also have concerns with the evidence given by the applicant during the SHEV interview with respect to this claim. While it is broadly consistent with the claim he put forward in the SHEV application I consider his evidence to be lacking detail and to be vague, particularly with respect to his mother's place of employment, the timing of the Taliban threats and when his mother ceased teaching. He was repeatedly invited to speak about his mother's employment as a teacher and was invited to provide corroboratory evidence in support of this claim. Even making some allowances for the applicant's lack of education, his lack of familiarity with formal interviews and limited capacity to recall precise dates, I consider the paucity of his evidence concerning. I find it telling that he has provided such scant evidence in the SHEV interview when asked to describe his mother's work as a teacher and his reasons for ceasing studies in 2004. He was repeatedly invited to provide additional corroborative evidence with respect to his claims, and he has not provided any evidence that establishes that his mother has worked as a teacher or provided any explanation as to why he is unable to obtain any such evidence.
29. After the interview the applicant's legal representative provided copies of untranslated documents that he claims are evidence that members of his family received threat letters from the Taliban, and advised that they were in the process of having them translated. There is no evidence before me that any such translations were subsequently provided to the delegate. Considering these copies of untranslated document on their face, I find they contain little probative value. They do not amount to credible evidence demonstrating that the applicant or any member of his family were known to extremists, in 2007 and 2008, or at any other time. Nor do these documents establish that the applicant's mother has ever worked as a teacher, or that she has received personal threats from the Taliban.
30. Considering my concerns with the evidence he has provided with the SHEV application, and taken with the evidence he gave during the Entry Interview concerning his mother, I am not satisfied that the applicant's mother has worked as a teacher in Pakistan or that she has received threats from the Taliban as a result.

Grandfather's profile

31. The applicant claims his grandfather is a prominent Shia religious cleric and a community leader in Parachinar. He claims his grandfather is an active and public opponent of the Taliban and has received threats against his own life and that of his grandson, the applicant.
32. The delegate invited him to provide evidence in support of this claim and, in the post interview written submission prepared with the assistance of his legal representative, the applicant provided links to two videos posted in late 2016 and early 2017 on the [Social media] page of the group '[Group name]'. The applicant does not provide translated transcripts of these speeches, nor does he provide any further explanation or analysis of this material and how it relates to his personal claims for protection. There is no information on these videos in English that confirms the identity of the person making the speeches or giving any description of the context and content of these speeches. Even if I were to accept that the person making these speeches is the Shia cleric [Mr A], this does not amount to evidence corroborating the applicant's

claim that he is the grandson of this person, or that he has been personally threatened by the Taliban on account of being a member of the family of his grandfather.

33. For the reasons given earlier, I find that the untranslated documents purporting to be Taliban threat letters to be of little probative value. These documents do not establish that the applicant's grandfather is a prominent Shia leader in Kurram, or that the applicant's grandfather has received personal threats from the Taliban, or that the applicant himself was threatened on account of his familial relationship.
34. The applicant has claimed to be a close family member of a prominent Shia leader, and stated in the SHEV interview that he is in regular contact with his family in Kurram. He has provided a range of documents pertaining to his personal identity; however none of these establish any familial relationship to the Shia cleric [Mr A], with whom he claims to have a close personal association. The applicant was invited to provide further evidence with respect to this aspect of his claims during the SHEV interview, and I note the post-interview submission was prepared with the assistance of a legal practitioner. The applicant has not provided any corroborative evidence that establishes his familial relationship to the Shia cleric [Mr A], nor has he given any explanation as to why he cannot provide such evidence. Considering this is a matter that is central to his claims for protection, I consider the paucity of his evidence in this respect to be concerning.
35. My concerns with the evidence he has provided in support of this claim, taken with the he gave during the Entry Interview, and my earlier findings concerning the credibility of his claims pertaining to his mother's profile with the Taliban, lead me to the finding that the evidence he has provided with respect to his heightened profile as the eldest grandson of Shia cleric [Mr A] is not credible.
36. On the evidence he has given I am not satisfied that the applicant is the grandson of [Mr A], or that he has a familial relationship with a prominent Shia leader in Kurram. I am also not satisfied that the applicant is known or perceived by the Taliban to be the grandson of a Shia leader in Kurram, or that he has faced threats of harm on account of his close association with such a person.

Profile of [Mr B]

37. Considering the above findings concerning the credibility of the applicant's claims to be closely associated with persons threatened by the Taliban, it follows that I am not satisfied that the applicant's brother, [Mr B], has been targeted by the Taliban on account of his own familial relationship to the applicant's mother or grandfather. I am willing to accept that the applicant's brother [Mr B] may have left Pakistan, however I am not satisfied that this was for the reasons given by the applicant.

Refugee assessment

38. 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

39. 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.

40. For the reasons given above I am not satisfied that the applicant is the son of a teacher or the grandson of a Shia leader in Kurram, or that he has faced threats of harm on this account. I am not satisfied that the applicant is personally known to the Taliban or any other Sunni extremist group, or that he has been personally targeted and threatened by these groups on account of being the eldest son of a high profile family known to oppose the Taliban, or any other reasons.

41. I accept that the applicant may be readily identifiable to Sunni militants as a Pashtun Shia Bangash from Kurram. This may be on the basis of any combination of such things as his name, language, accent, social milieu and his manner of practicing religion. I also accept that, if he returned to Kurram, he will attend public areas and events frequented by Shias such as markets, cultural festivals, mosques, and religious ceremonies.

42. Considering the applicant's experiences of having growing up as a Shia Bangash in the Parachinar area of Kurram, and his awareness of similarly situated persons having been harmed or killed by extremist militants, particularly in the period leading up to his departure, I accept that he holds a subjective fear of harm if he were to return to Pakistan. However, noting that the refugee assessment is a forward-looking test, I am not satisfied that fear is well-founded for the following reasons.

43. The Australian Department of Foreign Affairs and Trade (DFAT) 2019 report describes Kurram as a tribal district in Khyber Pakhtunkhwa province, which EASO estimates has a total population of around 35 million people. Kurram Agency was part of a semi-autonomous tribal region on Pakistan's North-West border until its merger with Khyber Pakhtunkhwa Province in May 2018.

44. The Kurram tribal district, with an estimated population of 619 000 people, has been the site of prolonged tribal and sectarian based rivalries and disputes which have periodically led to intense fighting erupting between rival tribal and sectarian-based groups. The conflict has historically been between the Turi and Bangash Shias and the Bangash Sunni clans, although at various times, Sunni extremist groups from both Afghanistan and Pakistan have entered the conflict on the side of Sunni Bangash clans, for both sectarian and strategic reasons. The delegate considered that country information pertaining to the risk of harm faced by Turi Shia in Pakistan can be taken to apply to Bangash Shia, and I concur with this assessment.

45. Kurram and its neighbouring districts along the border with Afghanistan provide passageways between the mountainous border between Pakistan and Afghanistan. For this reason they have significant strategic value to the Sunni militant groups who have sought to operate in the tribal areas of Pakistan, including those insurgent groups engaged in conflict in Afghanistan and those fighting against the Pakistan state. The Shias tribes, who make up around 80% of the population of Upper Kurram, have long resisted Sunni militant groups attempting to base themselves there, or use the Kurram Valley to enter Afghanistan.
46. Between 2009 and 2014, the most intense period of the recent phase of armed conflict in Pakistan's tribal areas, Sunni militant groups took control of parts of the Thall-Parachinar Road that connected Upper Kurram to the rest of Pakistan and undertook targeted attacks on both military personnel and convoys of ordinary Shia civilians using the road.
47. The applicant submits that the security situation has not improved in Pakistan in the time he has been in Australia. However I find this view is not supported by recent, independent assessments from the FATA Research Centre (FRC), Pak Institute for Peace Studies (PIPS), DFAT, and the European Asylum Support Office (EASO). All of whom report that the security situation in Kurram and the surrounding region has improved significantly in recent years as a result of the Pakistan government's deployment of coordinated counter-terrorism operations across Pakistan since 2014. These reports all describe how anti-government and religiously-motivated Sunni sectarian militant groups operating in Pakistan have been significantly weakened by these military operations. As a result, incidents of terrorist, sectarian and other forms of criminal violence have declined significantly over the past five years, in Kurram, and across other areas of Pakistan.
48. There was a notable reversal in this trend in Kurram during the first half of 2017, when sectarian militants undertook four large-scale attacks on Shia civilians in Kurram during this period. These incidents prompted Pakistani authorities to respond by substantially expanding and escalating their security and counter-terrorism activities in the area; including taking control of all entry and exit checkpoints around Parachinar. DFAT reports that, since the middle of 2017, Pakistan's security forces have maintained strict controls on access to Parachinar and its surrounding areas.
49. The sources noted above show the Pakistan government has substantially improved the management and security of its border with Afghanistan, including the construction of military fencing which is expected to be completed this year. While there continued to be some small scale encounters between security forces and militants in Pakistan's tribal areas throughout 2018 and 2019, I consider it to be telling that PIPS report major reductions in cross-border clashes between the military and Pakistani militant groups sheltering in Afghanistan.
50. Whilst it is evident from the information before me that some militant groups continue have a presence in some of the tribal districts of Khyber Pakhtunkhwa Province, it is also apparent that their operational capacity, particularly their ability to undertake large-scale attacks, has been eviscerated. The FRC observe in its most recent report published in January 2020 that militant groups in the tribal areas have experienced a loss of training infrastructure, hideouts, safe havens and the gradual loss of local support within the Sunni Pashtun communities and that these factors have deprived them of local recruits and sources of terror financing. I further note that those occasional small-scale attacks and clashes involving militants that have occurred in the past few years in Kurram have overwhelmingly been clashes between insurgents and Pakistan security forces, and have not involved any substantial civilian casualties.
51. The FRC report that there were no civilian casualties in Kurram in 2019, either as a result of IEDs, suicide attacks, or other incidents resulting from the activities of militant groups or the Pakistan

security forces. The PIPS 2019 Pakistan Security Report reports similarly, suggesting no change in the security situation for Shias in Kurram when compared to 2018. PIPS report more broadly that there was a small rise in sectarian related attacks against members of the Shia community in Pakistan, albeit resulting in fewer deaths than in 2018 (eleven attacks killing 38 people and injuring 78 others). These attacks were mostly small in scale and almost all of these attacks occurred in Karachi and Quetta. PIPS report indicates there was only one sectarian attack in the Khyber Pakhtunkhwa Province, an isolated target killing in DI Khan District in which one person was killed. PIPS report there were no sectarian attacks on Shias in Kurram in 2019.

52. The Thall-Parachinar road, the transport arterial connecting Parachinar to Peshawar is open and in regular use by ordinary civilians, and has remained under control of the Pakistan authorities for a number of years without a major security incident. EASO report that provincial elections were held amid heightened security measures, the election process was peaceful with no major security incidents. Considering the frequency with which militant groups in Pakistan have used prominent political events like elections and political rallies to undertake violent attacks, I take the absence of any such attacks in Kurram and its surrounding districts during the 2018 election campaign to be significant evidence corroborating other reporting on the substantial improvements in the security situation in Kurram.
53. The Pakistani government's security forces have maintained a strong presence in Kurram since 2014. While the Pakistan Army is reportedly supportive of the FATA reforms which aim to replace martial and tribal law with civil administration and law enforcement institutions it is apparent that the capacity for civil institutions to take over and maintain the current state of security is very limited in the short term. Nonetheless I note that there is no country information before me suggesting that the Pakistan government has given any indication that it will withdraw or even reduce the military presence in Kurram in the foreseeable future.
54. The reports from FRC, DFAT, and EASO all note the factors that continue to make Kurram District vulnerable to the threat of a resurgence of communal and terrorist violence, in particular its history of tribal conflict, and its close proximity to the Afghan border and to other districts in Pakistan's tribal areas where Sunni insurgent groups continue to operate. While I take in account the prevalence and persistence of sectarian and other forms of violence in Kurram in the past two decades, it is very clear that in the past five years there has been a sustained, albeit at times uneven, decline in the number of sectarian-related violent events targeting Shias in Kurram. This is in line with the overall decline in sectarian violence in Pakistan during the same period, as well as other forms of violence, such as criminal, ethnic and political violence.
55. The durability of the current peaceful situation in Kurram is evident from the lack of any credible information before me suggesting there have been any successful terrorist or sectarian attacks of any nature in the Parachinar area between July 2017 and May 2020.
56. For the reasons given earlier I do not accept that the applicant's mother has ever worked as a teacher or that she is currently employed as a teacher. I also do not accept that the applicant is the family member of a prominent Shia cleric who is an active opponent of the Taliban. I do not accept that the applicant or any member of his family have previously been personally targeted or threatened by the Taliban for these or any reason and I am not satisfied that the applicant would be a person with an adverse personal profile with Sunni militant groups on return to Pakistan. I am not satisfied that he faces any chance of harm for these reasons.
57. In returning to his home in [Village] the applicant would likely travel on the roads between an international airport in a larger city like Lahore or Islamabad, and Kurram. In having regard to his risk of harm in making such a journey I note the low incidence of attacks made by religiously

inspired militants, criminal groups or insurgent militants on the roads between these cities and Kurram District in recent years. I consider it to be only a remote possibility that the applicant would be harmed on his return journey back to Kurram.

58. Finally, I have considered the chance of harm faced by the applicant as a result of being a bystander injured or killed during a militant attack on Pakistan government security personnel or infrastructure in Kurram, or as a result of military operations conducted by Pakistani or international forces, or as a result of an encounter with an unexploded ordinance placed in the community during the conflict. Having regard to information about the current effectiveness of the significant security and armed presence and government control in and around Parachinar, as well as the low number of violent incidents reported in Kurram in the past two years, I find that the chance of the applicant being killed or seriously injured for this reason is no more than remote.
59. For all of these reasons I consider the chance of the applicant being harmed, for the reasons of being a Pashtun Bangash Shia from Kurram, is remote. I am not satisfied the applicant faces a real chance of harm on these bases.

Refugee: conclusion

60. 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

61. 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

62. 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.
63. I have concluded above that the applicant does not face a real chance of any harm on any of the bases claimed. As 'real risk' and 'real chance' involve the application of the same standard, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

64. 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.