



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08293

Date and time of decision: 12 June 2020 14:45:00
A Wilson, 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. He arrived in Australia [in] March 2013. On 10 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 24 April 2020 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate accepted the applicant is a Pashtun Shia from Orakzai District. However, the delegate did not accept his father and cousin were the victims of targeted killings by the Taliban or that the applicant had received death threat letters from the Taliban. The delegate was not otherwise satisfied the applicant had a well-founded fear of persecution from the Taliban or other Sunni militants or anyone else or that there was a real risk he would suffer significant harm if returned to Pakistan.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - he is a Pathan/Pashtun¹ Shia Muslim from a village in Lower Orakzai District where Shias make up only 5-10% of the population and where he can be identified as Shia by his name, by participating in Shia processions, by permanent marks on his back from self-flagellation and by Shias' different way of praying.
 - in the past his family were able to practise their faith. They attended a mosque in their village for regular prayers and attended an Imambargah outside the village for other religious activities. However, from about 2006 or 2007 it became difficult because of the rise of the Taliban who were present just outside the village. It was not possible for Shias like him to safely travel outside the village.
 - in 2008 his father, who had [service business] about 2km from the family home in the town [K] and who was a member of the Shia committee of village elders, was shot dead in his [business] a few days after he refused to [serve a Taliban customer].
 - in 2012 his cousin, who [detail deleted] lived in their village, was killed by the Taliban. A few days after his cousin refused to drive the Taliban somewhere in his van he was shot and killed two hours' drive outside the village.
 - from 2012 until he left Pakistan in mid-March 2013 he was enrolled in the first year of a [degree] at [University 1]. He also worked part time on a family owned farm and used his family's car to drive passengers places within his village. For a month or so prior to leaving Pakistan he did not work.

¹ Pathan is an alternative term for Pashtun.
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- around three to four months before he left Pakistan, which would have been around November-December 2012, he received two threats in writing that identified him by name at his home within three or four days of each other. They said words to the effect of "We won't spare you. We have already killed your father and cousin now it is your turn. Either you leave or we will kill you." The writing indicated the threats were from the Taliban. There were no police or reliable authorities to report his father's and cousin's deaths to and he did not report the threats he received. The copies he had of the threat letters were destroyed when a 2016 earthquake caused flooding and damage at his home.
 - he left Pakistan in mid-March 2013 because he feared his life was in danger. If he is returned to Pakistan he is afraid he would be killed by the Taliban. He has already had death threats and his father and cousin have been killed by them. He is aware from media reports that many other Shias have been killed by the Taliban throughout Pakistan. He believes the situation for Shia Muslims in Pakistan remains dangerous. He would be harmed because he is a Shia Muslim and because of his family's history of problems with the Taliban. The Taliban is particularly active in the area he comes from as it is close to the border with Afghanistan.
 - he would not be protected by anyone, including the authorities, who do not adequately protect Shias. He could not relocate safely to another area of Pakistan. He would find it difficult to find work outside his village as he has limited work experience and skills, having only worked on a part time basis on a farm and being a passenger driver within his village.
6. At the October 2019 SHEV interview and/or in the November 2019 post-interview submission the applicant made the following additional claims:
- he cannot live in Pakistan because Urdu is his second language.
 - if he were returned to Pakistan he would be persecuted because of his status as a returned asylum seeker, with actual and perceived links to a western country. He has spent significant time in a western country during his [age range] and has been susceptible to western culture, which would have impacted on his personality, views and beliefs. His development of western traits and absence of contact with Pakistani culture heighten his profile as a western sympathiser and distinguish him from other Pakistani men. He risks not only being imputed with a pro-west political opinion, but also being identified as a westerner.
 - he has undergone counselling and is suffering from depression and anxiety. His general practitioner has prescribed him medication and recommends he undergo further counselling. Pakistan does not provide adequate facilities for mental health and he will be unable to access sufficient mental health support and services.

Refugee assessment

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

Well-founded fear of persecution

8. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
9. On the basis of the applicant’s documentary and oral evidence I accept: he completed primary, middle and high school in his village and the town of [K]; he is engaged to a local woman; his mother, adult siblings and fiancée live in a village in Orakzai District.
10. In support of his identity the applicant provided a Pakistani National Identity Card (NIC) (and English translation) issued [in] 2011; a Pakistani Passport issued [in] 2012 and a Tribal Domicile Certificate. I accept that his name is as claimed and that he is a national of Pakistan. I find that Pakistan is his receiving country for the purpose of this review.
11. Pashtuns traditionally live among their own tribes and sub-tribes in Khyber Pakhtunkhwa province, which now includes the former Federally Administered Tribal Areas (FATA). Although many have migrated to urban areas. Orakzai District, where the applicant is from, is located in Khyber Pakhtunkhwa province. Pashtuns are identified by their use of the Pashto language and comprise an estimated 15.4 per cent of the population of Pakistan, making them the second-largest ethnic group in the country. DFAT assesses that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination. Pashtuns who are not Turis, or are not linked to the Awami National Party (ANP), face a similar risk of violence as other ethnic groups in Pakistan in the same locations². There are around 20 to 30 million Shias in Pakistan, although they are not the majority in any of the country’s provinces. Significant numbers of Shia live in Khyber Pakhtunkhwa province, including in Orakzai district. National Identity Cards do not identify a cardholder’s religion, and passports do not distinguish between Sunni and Shia Muslims. However, some Shia may be identifiable by common Shia names. Similarly, ethnic and tribal names can reveal a person’s tribal or sectarian affiliation, as can their address if they are from a predominantly Shia area. DFAT assess that Shias in the former FATA face a low risk of sectarian violence within the context of a moderate level of militant and criminal violence. High profile Shia face a moderate risk of violence³. In February 2019 DFAT reported there had been a relative decline in violent incidents, but that violence across the former FATA is still widespread and sectarian attacks can be lethal, although they did not specifically refer to Orakzai district. DFAT also indicated,

² Department of Foreign Affairs and Trade (DFAT), ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

³ DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

while there had been military operations and local agreements previously, since 2014 the Pakistan armed forces have launched several major security operations, including Operation Zarb-e-Azb, its successor Radd-ul-Fasaad, and the National Action Plan (NAP). In 2018, the Government announced its second National Security Policy, and the Ministry of Interior was reportedly preparing NAP-2. These operations have reportedly disrupted the activities of militant groups, limited their access to former safe havens and resulted in a significant decrease in the number and severity of attacks on Shias. There are also tighter Afghanistan-Pakistan border controls⁴.

12. A Fact Finding Mission report published by the Austrian Federal Office for Immigration and Asylum in early 2016 referred to an operation against militants being launched in Orakzai district in 2009. It also noted Lower Orakzai, where the applicant is from, had been cleared of militants and that the military had established a strong presence there. It stated there were some sectarian conflicts between Sunni and Shia Muslims in the region but not to the same extent as in some other districts. It attributed the stability in Lower Orakzai to the Shia population and said Shias had never had problems with militants controlling their areas. Nevertheless, they still suffered to some extent, as militants operated in their areas. However, once the militants started spreading the military arrived and cleared Lower Orakzai and helped the Shia population. It noted there has been sectarian violence from both sides (Sunni and Shia) before the start of militant activity. The report also said most militants had fled Upper Orakzai and those that stayed now remain in small pockets only and there were only sporadic clashes between the militants and the military⁵.
13. The South Asia Terrorism Portal (SATP) database of Shias killed in Pakistan between 2001 and mid-2018 refers to five incidents of sectarian violence affecting Shias in Orakzai district over the eighteen year period. A number of people were killed and injured in two incidents in 2006 when Sunnis and Shias fought over a shrine; at least 12 Shias were killed when a roadside bomb hit their bus in 2012; in 2014 two Shia mourners were killed and 28 others were injured when militants fired rockets at an Ashura procession; and in 2015 a bomb targeting Shias at a volleyball match killed at least four persons and injured eight⁶. In a special report the Center for Research and Security Studies (CRSS) indicated that across Pakistan, and across all metrics, violence-related casualties continued to decline in 2018, registering a 45% drop from the previous year, and 86% drop since 2013. CRSS largely attributed the unprecedented decline in violence to extensive operations conducted across the country. While they characterised progress on eliminating terrorism as exceptional, they cautioned the root cause of extremism has not been eliminated. The CRSS recorded that Orakzai district suffered 52 fatalities from sectarian violence in the five years between 2013 and 2018, although they did not identify the religious affiliation of those killed⁷. Media reports indicate Islamic State carried out a suicide bomb attack against Shiite Muslims in a market in Orakzai district in November 2018 killing 57 and wounding many others⁸. Documenting the same incident the Pakistan Institute for Peace Studies (PIPS) recorded that at least 35 people were killed, including over two dozen Shia Muslims, seven Sunnis and three Sikhs. Forty others sustained injuries. The suicide attack by Islamic State happened in a bazaar in front of a Shia madrassa [Islamic school]⁹. The FATA

⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁵ Ministry of the Interior, Austria, 'Fact Finding Mission Report Pakistan (Austrian Government)', 1 September 2015, CISEC96CF15387.

⁶ South Asian Terrorism Portal (SATP), 'Shias Killed in Pakistan Since 2001'.

⁷ Center for Research and Security Studies (CRSS), CRSS Annual Security Report Special Edition 2013-2018, March 2019, 20190405163832.

⁸ 'Pakistan: Deadly blast hits market in Orakzai district', Al Jazeera, 23 November 2018. 'Islamic state claims responsibility for Pakistan market suicide bombing', Reuters, 25 November 2018.

⁹ Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

Research Centre (FRC) reported that Orakzai district remained largely peaceful during 2019. There was one terrorist attack on security forces and no civilian casualties compared to three violent incidents in 2018¹⁰.

14. I accept the applicant is a Pashtun from a village in Lower Orakzai district, Kohat division, Khyber Pakhtunkhwa province. His NIC and his passport, which are regarded as more reliable forms of identification¹¹, indicate Lower Orakzai is the area where he was born and resided. In addition, country information referred to above indicates Khyber Pakhtunkhwa province is where Pashtuns customarily live. I note the applicant's NIC refers to his 'caste' being Mani Khel. The applicant has not claimed he fears harm in connection with his caste. I accept the applicant is from the Mani Khel caste and find that he is not a Turi or a Bangash Shia. I also accept the applicant is a Shia Muslim. The applicant has consistently claimed that is his religion since arriving in Australia in 2013. As already noted his NIC and passport indicate he originates from Orakzai district and country information cited above states a considerable population of Shias live in Khyber Pakhtunkhwa province, including in Orakzai district. However, I am not satisfied Shias make up less than 10% of the population where the applicant is from, as he claimed. Apart from the applicant's assertion, other information does not support this is the case. Several country information sources indicate there is a considerable population of Shias in Orakzai district¹². Nor am I satisfied the applicant's back bears scars from self-flagellation. Apart from his assertion, he has not provided any corroborating evidence, such as photographs of his back. Nor did he show the delegate any scars. I am not satisfied it was impossible for the applicant to safely travel outside the village. He travelled from the village to [his university] in 2012 without apparent incident. I also note the applicant has not specified what type of difficulties he had practising his religion. Nor has he claimed his family have suffered harm carrying out religious activities in his absence.
15. If returned to Pakistan, I find it very likely the applicant would return to Orakzai district. Apart from the [period] when he undertook tertiary study at a university that appears to be in [another] district, the applicant lived his whole life in Orakzai district. Furthermore, his mother, adult siblings and fiancée continue to live in Lower Orakzai and his family also own and operate a farm there. In addition, as already stated country information indicates Orakzai district is an area where there are sizeable numbers of Pashtun Shias.
16. I am not satisfied the applicant's father was a Shia elder in their village. Apart from asserting his father held such a role, the applicant provided no information about what that involved or how long his father had held the position or why it is relevant to the applicant's claims to fear harm. In any case, the applicant did not claim his father's death was connected with him being a village elder.
17. I am willing to accept the applicant's father died in 2008. The applicant has consistently claimed his father passed away in that year since he arrived in Australia. However, I am not satisfied the applicant's father died in the circumstances claimed at the hands of militants. The applicant provided a death certificate purportedly issued by a local hospital. While country information indicates hospitals in Pakistan do issue a document that enables the deceased's family to apply for an official death certificate from the central government body¹³, I have concerns about the genuineness of the hospital document provided by the applicant. It is brief and lacks the sort

¹⁰ FATA Research Centre (FRC), 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019', 13 January 2020, 20200122123739.

¹¹ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹² PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758. DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹³ 'Obtain Nadra Death Certificate from Pakistan', BirthCertificatePakistan.com website.

of detail you would normally expect on an official document, such as a letterhead, an address for the hospital and a clear title for the official who signed it. Also the certificate is undated. Additionally, country information indicates fraudulent death certificates of this type are commonly available in Pakistan¹⁴. In any event, while the certificate on its face corroborates the applicant's father died as a result of being shot the circumstance in which he died - a domestic clash - does not seem to reflect the applicant's claim the Taliban shot his father because he refused to [serve them]. Nor has the applicant explained why he has not provided a more reliable centrally issued official death certificate for his father. Furthermore, it does not seem credible that the Taliban, which is a Sunni group, would approach a Shia [business] for assistance if there was sectarian tension in the area. Or if they did, and the applicant's father refused to help the Taliban, it seems highly unlikely given the group's reputation for violence¹⁵ that they would not have harmed his father at the time of refusal rather than wait several days and return to harm him. I also note on my findings the applicant lived in the village in Lower Orakzai for several years after his father's death and completed high school in the nearby town, the location he claimed his father was murdered, without suffering any harm.

18. Nor am I satisfied that the applicant's [cousin] died in 2012. The evidence provided in support of this claim is confusing. In the statement of claims accompanying the 2017 SHEV application the applicant claims his cousin was shot and killed in a town some distance from their village several days after refusing to provide transport for the Taliban. In the death certificate provided his cousin is recorded as having died in a bomb blast. I have listened to the audio recording of the SHEV interview during which this claim was discussed in some detail. I do not agree with the delegate's intimation during the interview that the applicant did not attempt to address the discrepancy surrounding the manner of his cousin's death. The applicant did offer several explanations, however none were persuasive.
19. At one point the applicant seemed to distance himself from the death certificate that on its face contradicts the SHEV statement, indicating he did not know what the certificate said because his brother had sent it directly to the Department of Home Affairs (the Department), while still maintaining it is genuine. However, I have concerns about the authenticity of the death certificate. Like the other death certificate provided, it is brief, undated and lacks the sort of detail you would normally expect on an official document. Also it is difficult to reconcile the death certificate being issued by a hospital in the town near the applicant's village when his cousin purportedly died in a different town two hours' drive away.
20. At another point the applicant said his [relative] did not tell him how his cousin (her husband) had died and he had (erroneously) assumed his cousin had been shot and killed by the Taliban like his father. The applicant was an adult at the time of his cousin's death and still living in Pakistan. I do not find it credible he would be told of his cousin's death but not how he died or that he would not have enquired about the circumstances at the time or later given the applicant is in contact with his family and has relied on the purported death as a key claim in his protection application.
21. At a further point, the applicant suggested an interpreting error may account for the highlighted differences. It is not clear whether the applicant is referring to an interpreting error in the 2017 statement of claims or to an interpreting error during the 2019 SHEV interview, as is submitted by his representative in the post-interview submission. In any case, I am not convinced the applicant's lack of clarity surrounding his cousin's claimed death can be

¹⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁵ United Kingdom Home Office, 'Country of Origin Information Report – Pakistan', 9 August 2013. DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

explained by misinterpretation in either case. While the SHEV statement includes a rider that it may contain errors based on the limited time devoted to its preparation, it also says the statement was read back to the applicant with an interpreter and he agreed with the contents. The applicant also reads English, albeit as a second language. I also note at the outset of the 2019 SHEV interview the applicant indicated there was nothing he wished to change in the 2017 SHEV statement. It is also unclear whether the applicant was assisted by a Pashtun (his first language) or Urdu (his second language) speaker when preparing the SHEV statement. Nor am I satisfied there was miscommunication between the applicant and the Urdu interpreter on this issue during the SHEV interview. The applicant requested an Urdu interpreter for the interview. At the outset of the interview the applicant confirmed he understood the interpreter. Until the delegate raised concerns about how the applicant's cousin had died the applicant had not indicated he was having any difficulty understanding the interpreter. Also the applicant has not specified what exactly was miscommunicated in relation to the cousin's death. I am not satisfied the applicant and Urdu interpreter could not communicate satisfactorily. The applicant participated in a two and a half hour interview. His answers to the delegate's questions made sense. There were a couple of occasions where clarification was sought but this is usual when using an interpreter and indicative of the interpreter seeking to accurately interpret what is said. It was also evident the applicant understands English. He indicated in the SHEV application he speaks, reads and writes English and on several occasions responded before the interpreter had interpreted what had been said in English.

22. Nor do I accept the argument that it is immaterial whether the applicant's cousin was targeted and shot or accidentally killed in a random bomb attack because the family considers the circumstances surrounding the father's and cousin's deaths to be substantially similar. The applicant's lack of knowledge about his cousin's death and the problems with the death certificate call into question that any such event occurred. I also note the country information before me concerning sectarian violence does not support a bombing or targeted killing in the relevant town at the time of the cousin's purported death. Nor does it seem credible that the Sunni Taliban would seek to hire a Shia individual's van or that several days later they would follow or locate the cousin in a town two hours' drive from his home town and kill him when they could simply have commandeered his vehicle when they wanted it.
23. I accept the applicant attended [an undergraduate degree] course at [University 1]. He has provided a copy of his examination results certificate. I also accept the applicant worked part-time on his family's farm. Country information indicates that over 40% of the Pakistan labour force is employed in agriculture¹⁶. However, I am not satisfied the applicant drove his family's car as a private taxi between mid-2010 and leaving Pakistan in March 2013. The applicant provided little information about this role and at the SHEV interview stated he was not driving professionally. Nor did he explain how or to what extent he managed to undertake taxi work while he was at school and while he was studying at [University 1] in the neighbouring district in [year]. I also note the Pakistan Driver's Licence he provided was only issued in [2012].
24. For a number of reasons I also am not satisfied the applicant received several Taliban death threats addressed to him at his home in late 2012. Firstly, I do not accept the applicant's father and cousin were killed by the Taliban in 2008 and 2012 respectively. It therefore follows I do not accept his family had an adverse profile with the Taliban and as a consequence the applicant was targeted for written warnings by them. Secondly, the country information before me does not support the Taliban issued threat letters to individual Shias in the applicant's district or even more broadly in Pakistan. The Fact Finding Mission report published by the Austrian Federal Office for Immigration and Asylum observed the practice of sending threat

¹⁶ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.
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letters is generally uncommon in Pakistan and usually only high profile politicians, journalists and members of NGOs who are publicly active against militant groups receive threat letters¹⁷. The applicant is none of these. Thirdly, if it is true he received threats from the Taliban, the applicant has not explained why or how his other family members who have continued to live in the village have not been threatened or harmed by the Taliban or anyone else in the seven years he has been absent from Pakistan. Nor does it otherwise seem credible the applicant would attract the adverse attention of the Taliban. In 2012 he had been studying at university some distance from his village and prior to that he was a high school student. The applicant has not claimed that he was involved with any political party or militia. I do not consider the applicant would be regarded by the Taliban or anyone else as a high profile Shia or a threat.

25. While country information cited above suggests remnants of Taliban or other Sunni militants may continue to exist in isolated pockets in Orakzai district, having regard to the weight of the country information and the applicant's particular circumstances I am not satisfied there is a real chance he will suffer any harm from them now or in the reasonably foreseeable future. The applicant is not a high profile Shia and has not been involved with the ANP or any other political party. Nor is he a member of the Turi tribe. The applicant will be returning to a district where he has a family and broader network and with which he is familiar. I consider it highly likely the applicant will find employment on the family farm, where he has worked previously. I accept the applicant has worked [in an occupation] in Australia. Although he has not claimed he intends or will have the opportunity to work in a similar capacity if he is returned to Pakistan, should the applicant do so I am not satisfied there is a real chance he would suffer any harm given the stable security situation in the district in the last couple of years or that he would be denied the capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist. I also am not satisfied the applicant would be impeded from practising his religion. The overwhelming weight of information before me evidences that in the seven years the applicant has been absent from Orakzai district the government has undertaken a range of measures and as a result the security and sectarian situation there has stabilised. I do not accept the applicant's assertion the area remains a focal point for terror and militant activity. The country information does not support this. The security and associated measures taken by the authorities may have impacted on the lives of the inhabitants of Orakzai district. Yet country information before me refers to only one sectarian incident targeting Shias in Orakzai in 2018 and no incidents involving civilians in that district in 2019 or 2020 to date. This is not indicative of widespread sectarian, militant or other violence in Orakzai district. In reaching my conclusions I have drawn on an array of sources, a number of which, such as PIPS, CRSS, SATP and FRC, report in detail down to the district level and lower. I attach weight to the more recent CRSS and FRC reports. While the DFAT report, which was published prior to these reports, refers to violence across the former FATA remaining widespread it does not refer to any incidents in Orakzai district. The later reports prepared by reputable organisations do not support the DFAT assessment in relation to Orakzai district. While it is possible that sporadic militant or sectarian attacks by the Taliban or other Sunni extremists may occur in Orakzai district in the reasonably foreseeable future having regard to the nature and frequency of militant and sectarian incidents in Orakzai district I am not satisfied that they rise to the level of real chance.
26. I accept the applicant is Pashtun and that Urdu is a second language for him. The applicant has consistently stated he speaks, reads and writes Pashto and soon after he arrived in Australia he indicated it was his preferred language. Country information before me indicates Pashto is the language spoken by Pashtuns while Urdu and English are the official languages of

¹⁷ Ministry of the Interior, Austria, 'Fact Finding Mission Report Pakistan (Austrian Government)', 1 September 2015, CISEC96CF15387.
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Pakistan¹⁸. However, I am not satisfied there is real chance the applicant will suffer any harm in connection with Urdu being a second language for him now or in the reasonably foreseeable future. The applicant provided little information about why he would be at risk of harm as a non-native Urdu speaker. The applicant has not identified any past harm he has suffered because Urdu is his second language. Country information states that Pakistan is linguistically diverse¹⁹ but does not support that citizens who speak Urdu as a second language are harmed. The applicant appears to be proficient in Urdu. In the SHEV application the applicant indicated he speaks, reads and writes the Urdu language. He also completed [number] years of schooling in Pakistan and gained entrance to a tertiary institution in a country where around 43% of the population is illiterate²⁰ which suggests he has not been denied access to services or otherwise disadvantaged as a non-native Urdu speaker.

27. Country information before me indicates Pakistani citizens require a valid passport to enter or exit Pakistan. However, country information also notes that in practice, returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are typically processed like any other citizen returning to Pakistan. The government issues 'genuine returnees' with temporary documents when they arrive. A genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered destination countries. Those who are returned involuntarily or who travel on emergency travel documents are likely to attract attention from the authorities upon arrival. The Ministry of the Interior will interview failed returnees and release them if their exit was deemed to be legal. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return, irrespective of whether they departed legally or not. People returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. Returnees are responsible for arranging their own onward transportation from their point of entry into Pakistan. Voluntary returnees may be eligible for assistance from IOM and/or domestic NGOs. Returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt and do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country²¹.
28. I am satisfied the applicant departed Pakistan legally using a passport in his own name. He provided a copy of the biodata page of the passport he used to travel to Australia. In addition, his consistent account of his departure from Pakistan reflects the country information referred to above. However, I do not accept the applicant spent significant time in a western country during his [age range] as stated at one point in the post-interview submission. The applicant was [an age] year old adult when he arrived in Australia in March 2013 and he indicated in the SHEV application he had not travelled overseas prior to coming to Australia. Nor am I satisfied western culture has impacted on his personality, views and beliefs or that he has developed western traits. The applicant has provided very limited information on how living in Australia has affected him or altered his perceptions and he has not specified any western attributes he has adopted. I am not satisfied he would be imputed to be pro-western or identified as a westerner. Nor am I satisfied the applicant has lacked contact with Pakistani culture while he has been in Australia. He indicated he has remained in regular contact with his family in

¹⁸ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁹ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²⁰ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²¹ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

Pakistan. If he is returned to Pakistan, it is possible it may be suspected that the applicant has been in Australia, noting that country information indicates that over six million Pakistanis work and study outside Pakistan²². However, I am not satisfied there is a real chance the applicant would be harmed by the Taliban or anyone else because he has lived in a western country. Country information before me does not support that returnees from the West are targeted for harm by the Taliban, Sunni militants, the authorities or anyone else. Country information also indicates western influence is pervasive in many parts of Pakistan. Western films and music are widely available and western-branded retail chains operate throughout the country. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives²³. I also note the applicant indicated in the SHEV application that he has never been the subject of an arrest warrant or charged or convicted with any office in Pakistan and he has not claimed that he has been convicted of any crimes in Australia. I consider it highly likely that on arrival in Pakistan the applicant will, if he returns voluntarily, be allowed to enter the country without question. If he returns involuntarily it is very likely he will be interviewed and found to have departed Pakistan legally and found not to be wanted for criminal offences and released within a couple of hours. If it were to occur, I do not consider such an interview would rise to the level of serious harm. Nor am I satisfied there is a real chance of the applicant suffering any harm returning to Orakzai district. Country information cited above indicates the overall security environment in Pakistan and the district to which he will return has greatly improved. I am satisfied the applicant would be able to safely and legally access Orakzai district. I conclude that the applicant having sought asylum in Australia would not be a matter of interest. I am not satisfied there is a real chance the applicant would suffer any harm because he sought asylum overseas before returning to Pakistan or for any of the associated reasons claimed.

29. DFAT reports basic health care in Pakistan is free, but limited capacity, lack of funding, corruption, slow economic growth and overarching governance challenges combine to reduce quality and accessibility. Wealthier Pakistanis have access to better quality private health care and many religious and secular charities provide health services generally focused on supporting the specific needs of their community or sect²⁴. A recent article noted a hospital in Orakzai District, where the applicant is from, was one among a number of recently completed state-of-the-art hospitals in the former FATA²⁵. A mental health advocate indicated Pakistan has one of the lowest patient-to-doctor ratios in mental health in the world. There are less than 400 trained psychiatrists nation-wide and services for mental health are stunted due to the lack of implementing mechanisms for relevant legislation, with only 2.4 per cent of the country's annual expenditure going towards health, of which less than two per cent is allocated for mental health specifically²⁶. Another author noted the Pakistan government's failure in relation to mental illness is somewhat alleviated by international and local non-profits who have set up camps where patients can see doctors, receive prescriptions for medicines and engage in therapy. Their programs also train citizens to recognise symptoms and side effects of mental illnesses²⁷. A number of therapeutic drugs to treat mental health are reportedly available at the primary health care level in Pakistan²⁸.

30. I accept the applicant attended five sessions with [an agency] social worker between February and May 2017 where he was provided with psycho-education, behavioural activation and

²² DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²³ DFAT, 'DFAT Country Information Report: Pakistan', 1 September 2017, CISED50AD5515.

²⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²⁵ 'K-P plans 68 health units in seven merged districts', Express Tribune (Pakistan), 11 May 2019, 20190513093052.

²⁶ Daanika Kamal, 'The state of mental health legislation in Pakistan', Daily Times (online) 1 September 2018.

²⁷ 'Pakistan's mental health problem', Al Jazeera, 7 October 2015.

²⁸ United Kingdom Home Office, 'Country of Origin Information Report – Pakistan', 9 August 2013.

counselling which he said alleviated his mental health symptoms to some extent, as set out in the social worker's reports. I also accept that in late October 2019 the applicant's general practitioner diagnosed him as suffering from depression and anxiety, prescribed him medication to help with his symptoms, noted the applicant had previously undergone counselling, presumably referring to the 2017 sessions, and recommended he undergo further counselling, as per his letter of 26 October 2019.

31. Nevertheless, the general practitioner's letter is cursory. It does not indicate how long the general practitioner has been treating the applicant, how long the applicant has been suffering from anxiety and depression, what the applicant's prognosis is, how long he will need to continue to take medication or how many more counselling sessions he will require. The general practitioner's letter was prepared seven months ago. No updated information on this topic was provided to the Department in the five and half months that elapsed between the post-interview submission and the delegate's decision, although the applicant and the registered migration agent who attended the interview with him were advised any information provided before a decision was made would be considered. Nor has updated information been provided to the IAA concerning the current state of the applicant's psychological health. It is unclear whether the applicant underwent further counselling as was recommended or whether he continues to take medication for his symptoms. I also note the commencement of counselling for the applicant's mental health symptoms appears to have coincided with the reminder to him from the Department that he needed to lodge a protection visa application. The letter from his general practitioner similarly coincided with him having attended the protection visa interview a few days previously where the delegate indicated he had concerns about a number of the applicant's claims for protection. On the information before me, I am not satisfied the applicant is currently suffering from or being treated for anxiety and depression. In any case if the applicant were suffering from anxiety or depression and requiring medication or counselling, I am not satisfied he would be unable to obtain it. Country information confirms that medication for psychological symptoms is available in Pakistan²⁹. Moreover, while health facilities in Pakistan may be not be resourced as in Australia, the evidence that is available to me does not suggest that in the event medication or counselling were sought, the applicant would be denied medication or other treatment, or restricted in his ability to obtain medication or treatment, as a result of any systematic and discriminatory conduct, including for any of the reasons in s.5J(1)(a) or otherwise.
32. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Pakistan.

Refugee: conclusion

33. 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

34. 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.

²⁹ United Kingdom Home Office, 'Country of Origin Information Report – Pakistan', 9 August 2013.
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Real risk of significant harm

35. 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.
36. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
37. If the applicant were to require medication or counselling in Pakistan, I accept the standard of medical treatment he would receive in Pakistan may not match the standard of treatment he would receive in Australia. However, I am not satisfied that there is a real risk the applicant would be unable to access medication for mental health symptoms or any other medical condition(s) or that any restriction on his ability to access treatment would constitute significant harm. I am also not satisfied that any limitations in the services available are the result of an intention to cause pain and suffering that can reasonably be regarded as cruel or inhuman, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life as understood in the context of s.36(2)(aa). I am not satisfied on the evidence that if he returned to Pakistan, and required medication for mental health symptoms or other medical treatment, the applicant would be at real risk of being subjected to significant harm.
38. I accept if the applicant is returned involuntarily to Pakistan he may be questioned for a few hours by authorities at the airport before being released. However I am not satisfied that there is an intention to cause pain and suffering that can be reasonably regarded as cruel or inhuman, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life. I am not satisfied on the evidence that if he is returned to Pakistan, and if he is questioned at the airport, the applicant would be at real risk of being subjected to significant harm.
39. I have otherwise concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard³⁰, 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

40. 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).

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.
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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.