



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08378

Date and time of decision: 23 June 2020 10:57:00
F Kerr, 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 Pashtun Shia from Pakistan. He arrived in Australia as an unauthorised maritime arrival [in] July 2013. On 19 December 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV). On 7 May 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 1 June 2020 the applicant's representative provided information to the IAA in the form of a submission and 14 attachments. Three subsequent emails of the same date to the IAA attached further documents. The submission takes issue with the delegate's decision, the way in which his interview was conducted, the evidence relied on by the delegate and what is submitted was the lengthy delay in making the decision on the application. I do not consider those aspects of the submission new information.
4. The submission also extracts from and refers to a large number of sources of country information attached to the emails of 1 June 2020. With the exception of the Department of Foreign Affairs and Trade (DFAT) Country Information Report Pakistan 20 February 2019 and the FATA Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019 the documents provided to the IAA were not before the delegate and are new information. For some of the information referred to in the submission, no copy or extract has been provided contrary to the Practice Direction for Applicants, Representatives and Authorised Recipients (a copy of which was provided to the applicant, and which I am satisfied his representative would be aware). I have decided under s.473FB(5), in the circumstances of this case, not to accept this material.
5. Of the remainder of the documents referred to, in the case of those attached to the submission, the majority of them relate to the Covid19 virus in Pakistan: government health statistics, the effect of the pandemic on economic conditions in Pakistan, the challenge globally of dealing with the virus and speculation about how it may impact states with a history of domestic unrest (the Covid19 material). Most of the Covid19 material pre-dates the delegate's decision and no explanation has been provided as to why it could not have been provided to the delegate. The applicant has been legally represented throughout the visa application process and his former representative (who was present during his SHEV interview) provided the delegate with a detailed post-SHEV interview submission as well as a number of documents and news articles said to be relevant to the applicant's circumstances as a Bangash Shia Pashtun from Parachinar. The Covid19 material is country information and does not relate to the applicant personally. It is not clear what bearing these documents and media articles have on the applicant's personal claims for protection. His representative submits that the delegate failed to deal with the Covid19 pandemic in Pakistan and that a global pandemic is so significant an exceptional circumstance that its emergence justifies the provision of new information to the IAA. I accept that this was not an issue considered by the delegate. However, apart from some assertions about its economic impact on Pakistan's ability to respond to the terrorist threat, it is not clear what particular bearing the Covid19 material has on the applicant's claims individual for protection. I am not satisfied that exceptional circumstances exist to justify considering the Covid19 material.

6. Two documents attached to the submission are not part of the Covid19 material. They are also country information: a DailyUrdu article dated 25 May 2020 and a document dated 1 June 2020 on the letterhead of Tahreek-e-Hussaini Pakistan Parachinar, District Kurram. Given the dates of these documents, I accept they could not have been provided to the delegate before he made his decision. The information is recent country information which, on its face, may bear on the applicant's claims for protection and I am satisfied exceptional circumstances exist to justify their consideration.
7. The UNHCR document "Beyond Proof Credibility Assessment in EU Asylum Systems" is dated May 2013. It is not credible personal information in the s.473DD sense. It also pre-dates the delegate's decision by a number of years and no explanation has been provided as to why this document could not have been provided to the delegate before he made his decision. As noted above, the applicant has been represented throughout the visa application process and his former representative provided extensive submissions and country information to the delegate after his SHEV interview. Its relevance to the applicant's claims is not apparent nor has it been explained in the submission. I am not satisfied that there are exceptional circumstances to justify considering the UNHCR document.
8. In regard to the European Asylum Seeker Office (EASO) and Pakistan Institute for Peace Studies (PIPS) reports, the reports pre-date the delegate's decision. However, in the case of the PIPS report, it is a later version of the PIPS report considered by the delegate. The submission submits there are exceptional circumstances to justify considering these reports as the delegate did not have regard to the most recent country information available as at the date of his decision. In my view, an applicant would expect the delegate to use the most recent country information available and would not know she or he hadn't until being provided with the decision. To that extent, I accept the information could not have been provided to the delegate before he made his decision. Both the PIPS and the EASO report are from credible, authoritative sources; they provide a more up-to-date picture of the security situation in Pakistan than some of the other sources considered by the delegate and I consider they assist in making an assessment of the current security climate in Pakistan. I am satisfied that exceptional circumstances exist to justify their consideration.
9. Finally, the applicant's representative requests that the applicant be interviewed by the IAA citing a number of perceived shortcomings in the way in which the delegate conducted the applicant's protection interview. Part 7AA of the Act provides for an exhaustive statement of the natural justice hearing rule. The IAA does not have a duty to get, request or accept any new information whether requested by an applicant or any other person, and may only consider new information in exceptional circumstances. The applicant has had assistance when preparing his SHEV application, during the process before the Department, and now with providing submissions to the IAA. I have listened carefully to his SHEV interview. The applicant was told a number of times during his interview of the importance of providing evidence about his own personal experiences not just about general country conditions for Shias. I am satisfied he had ample opportunity to discuss and enlarge on the experiences and claims set out in the two statements submitted to the delegate. There is no indication in the submission to the IAA about any further information the applicant would or could provide to the IAA that he was unable to provide to the delegate in either of those statements, his SHEV interview or the submission to the IAA. I am satisfied the applicant has had a meaningful opportunity to put forward all his evidence and claims. In the circumstances, I have decided not to exercise my discretion to interview the applicant.

Applicant's claims for protection

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

- He is a Pashtun Shia from Parachinar.
- From 2007 the security situation in Pakistan worsened. The Taliban (TTP) and other Sunni extremist groups carried out attacks on Shias from Parachinar. There were bomb blasts, kidnappings and threats in Parachinar.
- His second cousin was murdered by Sunni extremists in 2008.
- His father resigned from his job in Peshawar because he was afraid for his safety on account of his ethnicity and religious background.
- He went to Rawalpindi to study in May 2009. In January 2012 he and some Shia friends were attacked. One was killed and the other had his leg broken by Wahabi extremists. He escaped by running to the mosque.
- In early 2013, he and his friends were coming out of a [business]. They were attacked by people he thinks were from Lashkar-e-Jhangvi (LeJ). He ran away but some of his friends were badly injured.
- He and his three flatmates decided to go to Mardan to be safe from persecution. In Mardan, he overheard people threatening to kill them. They left Mardan the next day.
- The applicant left Peshawar in March 2013 for [Country 1], hoping to work for a [company]. He was diagnosed with [a medical condition] and refused a work visa. He returned home to Pakistan.
- On 21 March 2012, his brother [named], was nearly killed in an ambush on the Parachinar Road.
- The TTP has been active in his home village and has attacked a children's school.
- He could not relocate anywhere in Pakistan. His appearance, accent, and identity documents identify him as a Pashtun Shia. The government will not protect him.

Refugee assessment

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

Well-founded fear of persecution

12. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country

- the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
13. The applicant's identity is not in issue. He has provided a number of primary identification documents in support of his identity. I accept he is a national of Pakistan; Pakistan is the receiving country for the purposes of this decision. He has consistently claimed, and I accept, that he is a Pashtun Shia of the Bangash tribe from Parachinar. He has [specified siblings] in Australia; does not claim to have links to any other parts of Pakistan. His family remains there in the village of [name] near Parachinar in Upper Kurram, Khyber Pakhtunkhwa and I find that this is the area to which he will return.
14. The applicant has provided two statements in support of his application for protection. The first is dated 10 December 2016 and was attached to his SHEV application (the 2016 statement). The second is dated 20 November 2019; it's described as a supplementary statement and was provided to the delegate on 21 November 2019 (the 2019 statement). The applicant states, regarding the 2016 statement, that it was very rushed and he had no opportunity to check the translation was accurate. The 2019 statement sets out in detail the applicant's claims for protection and corrects/clarifies some information in the 2016 statement. The applicant states in the 2019 statement that he continues to rely on the 2016 statement and previous details provided to the Department in his SHEV application.
15. The 2019 statement sets out in detail the applicant's experiences from around 2007 when violence flared in the Parachinar area and then his life as a student in Rawalpindi from May 2007, then briefly in Mardan in 2013. After working in Mardan for around three months, the applicant also briefly travelled to [Country 1] intending to work there but was refused a work visa and had to leave [Country 1] in May 2013 after he was diagnosed with [a medical condition]. The applicant returned home briefly before making the journey to Australia where his [siblings] live. The applicant's family, address, education, work and travel details have been presented with a broad degree of consistency throughout the visa application process. Other than as discussed below, I accept the applicant's claims as set out in the 2019 statement.
16. At the beginning of his SHEV interview the delegate told the applicant that all the information he had provided to the Department from the time he arrived on Christmas Island would be considered. The delegate raised with him why he had not, at that interview on 26 August 2013, mentioned the death of his second cousin at the hands of the TTP; nor is it mentioned in his 2016 statement. The applicant stated his second cousin had been killed in 2009 in a place close to Parachinar and that he hadn't been happy with his previous legal representation. He had told his lawyer about it but he (the lawyer) asked him not to put more details in his application; because of that he'd changed lawyers. The delegate then put to him that in the 2019 statement he'd said his second cousin was murdered by Sunni extremists in 2008. The applicant agreed, despite having just given evidence that his second cousin was killed in 2009.
17. As the delegate noted in the applicant's SHEV interview, in his entry interview on Christmas Island, the applicant was asked whether any of his family members had been directly affected by bombs or the Taliban's actions, and he said his own family hadn't but friends living in the area

had. The applicant's representative, in a post-interview submission, provided a range of reasons why the applicant did not mention the death of his second cousin including that the death had occurred many years ago, the boat journey, it was not something the applicant wished to dwell on, and the death of the applicant's cousin was corroborated by statements made by his (the applicant's [sibling]) in [their] successful protection visa claims. The applicant had legal representation to prepare and lodge his SHEV application (including the 2016 statement) and I highly doubt that his lawyer would have told him not to put more supporting details in his application. I also note the change in his evidence about when his cousin was killed. Nonetheless, unlike the delegate, I accept the reasons why this incident was not mentioned until his 2019 statement. Given the time that has elapsed since the incident, I also consider the differences in his evidence about whether it in 2008 or 2009 not particularly significant. Further, this incident is plausible when considered against the background of widespread violence in that area at the time. I accept that his second cousin was killed by anti-Shia militants in either 2008 or 2009.

18. However, I have a number of other concerns about the applicant's failure to disclose at his entry interview some very significant matters which I think, if true, he would have mentioned if they had actually formed part of his experiences.

19. For example:

- in around January 2012, he was with a group of Shia friends in Rawalpindi. They were attacked on their way to visit the mosque; one friend had his leg broken and another was killed. The applicant ran to the mosque for safety;
- in around early 2013, he and his friends were attacked when they were coming out of a [business]. He suspects the attackers were members of LeJ and that his landlord passed on their details to their attackers. He and some of his friends ran away but others were badly injured.

20. I accept there are limitations on entry interviews. I also note the applicant said in the 2019 statement that the information he provided at his entry interview was only a summary of his claims for protection. He also referred to the interpreter on that occasion having a different dialect which he struggled to understand and to not being told, before or during the entry interview, that the information he provided would be used for the purposes of assessing his claims for protection.

21. I have listened to the applicant's entry interview. At the start of his interview on 26 August 2013 the applicant was advised of what was described as important information and it included the statement that "if the information you give at any future interview is different from what you tell me now, this could raise doubts about the reliability of what you have said." It is not apparent that the applicant struggled to understand the interpreter on that occasion and I note he answered yes to the question of whether he understood what he had just been told by the interviewing officer and whether he understood the interpreter. On that basis, I do not accept the applicant would have been unaware of the importance of providing a complete and consistent account of his claims for protection, even if only in summary form.

22. At his SHEV interview, the evidence he gave about the two incidents in which he claims he was attacked was lacking in detail; he stated that after the January 2012 incident he and his friends stopped going to the mosque but otherwise, he simply recited what he'd said in the 2019 statement. I did not find his evidence compelling. I also note that the 2013 incident referred to above was not mentioned in the applicant's 2016 statement. As the delegate put to the applicant in his SHEV interview, he was directly asked in his entry interview whether anything

specifically happened to him recently to make him want to leave Pakistan. The applicant referred to the difficulties of living in Parachinar and the presence of the Taliban in other parts of Pakistan. He did not mention either the January 2012 attack or the one in early 2013, in both of which he said he was attacked as well as his friends. In the context of his claims these are very significant omissions and I am not satisfied they occurred.

23. There were also some quite significant differences in his evidence about what happened in Mardan. In his 2019 statement, the applicant sought to correct/clarify some of the details in his 2016 statement. Even so, there is no mention in the 2016 statement of the incident at the Mardan hospital (the overheard threats) which he claimed in the 2019 statement was the catalyst for him and his friends to leave Mardan.
24. There is also the matter of his father's resignation from the [specified type] Company. The applicant claimed in the 2019 statement that in 2017 his father was forced to give up his job, which was putting food on the table for the family in Parachinar, because of anti-Shia violence in the area. He stated that the threats to Shias were so bad his father couldn't continue to work in Peshawar and was forced to beg his work to resign so he could flee to Parachinar. The claim that his father resigned to "flee" to Parachinar seems quite at odds with the resignation letter (dated 3 April 2017) which indicates his father's services were transferred to Parachinar in 2009 and he travelled all over KP province to work. The delegate did not accept this claim considering it more likely his father resigned because he had reached retirement age, noting in particular the time it appears to have taken for [Business 1] to accept his father's resignation. Like the delegate, I do not consider it plausible that it would take two years for his father's resignation to be accepted and put into effect. I also have a number of other concerns about his evidence.
25. Firstly, the language of the 3 April 2017 letter is, in my view, incompatible with a letter sent to the [specified manager] of [Business 1] in Peshawar. It refers to his father's services being transferred to Parachinar "a far flung area of Khyber Pakhtunkhwa province" and goes on to state that due to clashes and unrest by Sipa-e-Sahaba "(a sectarian and banned organization) in Pakistan" he could not continue his services. I have no doubt the [specified manager] of [Business 1] in Peshawar, itself a part of KP province, would also be aware the nature of the Sipa-e-Sahaba (SSP) organization. I do not accept that that level of explication would be necessary in the circumstances and I have the impression that the letter was designed for a different audience. Secondly, in his SHEV interview the applicant said his father worked in Peshawar for [Business 1] and that they provided small, secure accommodation for him there; his father wasn't allowed to move out of that secure accommodation because there were lots of people - shopkeepers, doctors, and police from Parachinar - who were killed. This is consistent with what the applicant said in the 2016 statement - that [Business 1] provided security to his father. But notwithstanding those security concerns, the letter indicates the applicant's father continued working and travelling all over KP province for the next eight years during some of the worst incidences of sectarian violence but it was not until 2017 that he appears to have raised particular security concerns associated with that job. Thirdly, subsequent to his SHEV interview the applicant provided two letters dated 30 November and 4 December 2017 between his father and [Business 1] which purport to show that [Business 1] acted on his father's concerns and provided him with two security guards. His representative states they show that the resignation process was nuanced and part of an ongoing process. However, these matters were not referred to in the applicant's SHEV interview even when the delegate pointed out that the two year gap between his father's resignation and the acceptance letter did not seem usual business practice. The applicant stated that the person (presumably his manager at [Business 1]) was his close friend and also his father knew about the business and had good skills and because of that they didn't want him to resign. There was no mention of his father being able to continue working for [Business 1] because he had been provided with personal security nor is it explained in the

submission to the delegate why the 30 November and 4 December 2017 letters between his father and [Business 1] were only provided after this issue was raised in his SHEV interview, as was the letter about [Business 1's] retirement policy. Finally, I note that the applicant stated in the 2016 statement that his father *used to work* (my emphasis) [in a specified role] at [Business 1], which in my view indicates that at least by the date of that statement (10 December 2016) his father had ceased his employment at [Business 1]. Additionally, the claim in the 2016 statement that his father received telephone threats because he was a well-known person because of that work and that the family also received threats several times was not mentioned in the applicant's entry interview, the 2019 statement or his SHEV interview. I am not satisfied the letters are genuine or that the applicant's father resigned from [Business 1] due to security concerns nor am I satisfied his father or members of his family received threats because his father was well-known for his work.

26. The applicant's previous representative made a number of submissions to the delegate regarding perceived inadequacies his the way in which his SHEV interview was conducted, including the interpretation of the applicant's evidence. I have had regard to those submissions but in my view, they do not at all assist in explaining some of the very serious issues identified above with the applicant's evidence.
27. For the reasons discussed, I have formed the view the applicant has exaggerated and embellished his evidence about his own and his father's experiences and concerns about his (and his family's) safety. I do not accept he himself was subject to two attacks in 2012 and 2013 in Rawalpindi, I do not accept he left Rawalpindi because he was afraid to stay and consistently with his SHEV application, I find he went to Mardan as he had finished his diploma and went to university in Mardan for further training. I do not accept that in Mardan he overheard people at the hospital threatening to kill him and his friends or that this incident made him decide to leave Mardan. I find his father's employment with [Business 1] ceased some time before 10 December 2016 for reasons unrelated to the applicant's claims for protection.
28. The applicant's evidence is that even before travelling to Rawalpindi for his education, he had been trying to find a way out of Pakistan and had begged his family to save money to help him escape. His evidence was that he initially intended to work in [Country 1] with [a relative] but after travelling there on a tourist visa intending to find work, he was unable to stay because of his health. Once he returned to Pakistan and found his [siblings] had gone to Australia he decided he would go too. In his SHEV interview, he was asked why he could not return to Parachinar. He stated that first, he didn't have much money and secondly, his family was worried about their safety.
29. I accept that as a young man, growing up in the Parachinar area of Kurram district, he, his friends, family and acquaintances were adversely affected due to the security situation, including when the convoy his brother was travelling in was shot at, and his brother was only able to complete his journey under army escort. This type of incident is consistent with the country information before me.
30. It is now, however, over seven years since the applicant left Pakistan. The evidence indicates that the Pakistani military has carried out four major security operations in KP province (which includes Kurram district) in recent years targeting militants. Violence in KP province has been steadily declining since 2014¹ when operation Zarb-e-Azb, a military offensive against militant strongholds in the North Waziristan tribal region, was launched and spread to other parts of the

¹ Centre for Research and Security Studies (CRSS) "Annual Security Report Special Edition 2013-2018" March 2019, 20190405163832

former FATA and KP province targeting terrorists, separatist and criminal groups². The 20 point National Action Plan (NAP) followed entailing both anti-terrorism measures as well as counter terrorism processes after militants attacked a school in Peshawar killing more than 140 children³. In February 2017 the military launched Operation Radd-ul-Fasaad, across the whole of Pakistan in response to an up-scale in terrorist attacks.⁴ After three attacks killed more than 120 people and caused injury to many more in in Kurram in 2017, the government launched Khyber-IV to target the TTP, LeJ and other terrorist groups as well as targeting IS connections across the Afghanistan border⁵.

31. This series of operations has significantly disrupted the activities of militant groups. Figures show that KP province has shown the second highest drop in violence across all the provinces of Pakistan since 2014⁶. After the attacks in 2017, there have not been any further large-scale or frequent attacks in Kurram district. The Pakistan Institute for Peace Studies (PIPS) counted one 'terrorist attack' in 2018⁷. DFAT refers to two attacks in the first quarter of 2018, including one involving an IED that targeted women and children⁸. It is not known if this is the same incident as the one reported in January 2018, when an IED exploded and hit a vehicle of a family of eight persons in Upper Kurram⁹. Reports of the incident do not indicate the group was deliberately attacked by a Sunni militant group on the basis that they were Shia and PIPS does not ascribe a sectarian motive to the attack¹⁰. Nor did any group claim responsibility which would be the usual course where deliberate attacks have occurred¹¹. Another two attacks in 2018 appear to have targeted security forces¹². While there continued to be reports of militant attacks in other districts of KP province, there were no other terrorist attacks in Kurram in 2018¹³. Significantly fewer road attacks in 2018 has restored confidence within the community for individuals (although not large groups) to travel on the Thall-Parachinar road although only between dawn and dusk¹⁴. As it does not appear that there have been any attacks on Shia Muslims whether alone or in groups, or by day or night, when travelling on the Thall-Parachinar road, this confidence appears well-founded.
32. From 1 January until 31 July 2019, PIPS counted no 'terrorist attacks' in Kurram tribal district and the security situation in 2019 was assessed in the first half of 2019 as much more 'stable' than in previous years¹⁵. More recently, Pakistan witnessed a further decline in the number of terrorist incidents and consequent casualties. In the latest PIPS report provided by the applicant's representative, terrorist attacks in 2019 were reported to have decreased by around 13 percent as compared to 2018, and the number of people killed in these attacks plummeted by 40 percent, continuing a trend of an overall gradual decrease in terrorist attacks and

² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

⁵ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

⁶ CRSS "Annual Security Report Special Edition 2013-2018" March 2019, 20190405163832

⁷ Pakistan Institute for Peace Studies (PIPS) "Pakistan Security Report 2018", 6 January 2019, 20190121110758

⁸ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

⁹ "Six of a family martyred in Kurram roadside blast", The News International (Pakistan), 31 January 2018, CXBB8A1DA25475

¹⁰ PIPS "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹¹ LeJ, for example, was quick to claim responsibility for the deadly blasts in Parachinar city in 2017: Eurasia Review, "Pakistan: Sectarian Savagery – Analysis", 29 November 2018, CXBB8A1DA40015; PIPS "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹² PIPS "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹³ See, for example, "Militants strike again", Dawn (Pakistan), 24 November 2018, CXBB8A1DA40016; Eurasia Review, "Pakistan: Sectarian Savagery – Analysis", 29 November 2018, CXBB8A1DA40015; PIPS "Pakistan Security Report 2018", 6 January 2019, 20190121110758

¹⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

¹⁵ EASO, "Pakistan: Security Situation", 30 October 2019

casualties since 2009¹⁶. The improvement in the security environment has been attributed to continuous anti-militant operational and surveillance campaigns by security forces and police counterterrorism departments, as well as some counter-extremism actions taken under the NAP¹⁷.

33. The applicant states that Parachinar is a red zone and has possibly the highest security of all Pakistan cities but even so, it is not immune from attacks which he believes is because the government is supporting the terrorist organisations. The country information referred to above does not support the applicant's views and indicates that the authorities are intent on implementing law and order measures in Kurram district. The security forces carried out many counter-terrorism operations in the first half of 2019 and apprehended some major commanders from different militant groups such as the Tehrik-e Taliban Pakistan (TTP) and Islamic State Khorasan Province (ISKP)¹⁸. The government has also invested considerable resources to restore security and protect residents including military fencing to decrease border permeability; stricter border controls between Afghanistan and Pakistan and the implementation of a series of increasingly strict security zones inside Parachinar, accessible only by producing access cards which can be obtained from security forces by residents on presentation of identity documents¹⁹. These and other measures have not only increased a sense of security among common people and boosted the confidence of the local investors but it has also broadened the prospects for foreign investment in the country²⁰.
34. In its 2019 report DFAT noted that Shias in Pakistan continue to face a threat from anti-Shia militant groups²¹. Overall, DFAT assesses that most Shias in Pakistan face a low risk of sectarian violence, although the risk of sectarian violence for civilians in Kurram, particularly in Parachinar, is higher than in other parts of the former FATA²². The basis for that assessment is not apparent given the decline in militant activity since 2017. Since DFAT's assessment, recent country information refers to the successful conduct of Shia religious festivals, such events and pilgrimages making Shias prominent in Pakistan²³. Ashura commemorations have taken place in peace over the past three years including in Kurram²⁴. In 2019, over 70,000 police officers were deployed in various parts of Pakistan, and mobile phone services were partially blocked as part of strict security measures to ensure the commemorations went ahead peacefully²⁵. Recent Chehlum Imam Hussain commemorations were also peacefully observed in Parachinar²⁶.
35. The applicant's representative submits that Kurram remains highly vulnerable to a resurgence in sectarian conflict and that the delegate failed to have regard both to the changing tactics of the militant groups and Kurram district's proximity to more volatile areas including other districts

¹⁶ Pakistan Institute for Peace Studies (PIPS) "Pakistan Security Report 2019", 5 January 2020

¹⁷ PIPS "Pakistan Security Report 2019", 5 January 2020, 20200114102703

¹⁸ EASO, "Pakistan: Security Situation", 30 October 2019,

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

²⁰ PIPS "Pakistan Security Report 2018", 6 January 2019, 20190121110758

²¹ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019 20190220093409

²² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²³ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

²⁴ "Ashura processions culminate peacefully across country", Dawn (Pakistan), 1 October 2017, CXC90406615826; "Ashura processions culminate peacefully in different districts", Express Tribune (Pakistan), 3 October 2017, CXC90406614861; "Ashura observed peacefully amid tight security in KP", Dawn (Pakistan), 23 September 2018, CXBB8A1DA35781; "Ashura observed across Pakistan amid tight security arrangements", Dawn (Pakistan), 10 September 2019, 20191022152039

²⁵ "Muharram in Pakistan: Daring to observe Ashura", Global Voices, 14 September 2019, 20191022151801

²⁶ "Chehlum Imam Hussain (RA) observed peacefully in KP", Tribal News Network (Pakistan), 20 October 2019, 20191021104054; "Mobile service suspended in many cities during Chehlum of Karbala martyrs", Tribal News Network (Pakistan), 20 October 2019, 20191021104457

in KP province²⁷. PIPS reported in 2020 that North Waziristan reemerged as a major hotspot of such violence where over 42 percent of the total 125 reported attacks from KP province were concentrated. It also assessed that the internal security dimension not only includes threats from hardcore radical and sectarian terrorist groups but also from groups that promote religious intolerance²⁸. It is apparent, and I accept, that significant challenges remain in Pakistan, however, I consider much of the submission about what might happen in future in Kurram speculative, noting that the PIPS 2019 report indicates that only a very small percentage of the terrorist attacks reported overall in Pakistan in 2019 were attributable to sectarian violence; the report makes no specific reference to the security situation at all in Kurram in 2019²⁹. Information provided by the applicant's representative refers to an attack on an imambargah in Shorko, Lower Kurram in April 2020³⁰. I am willing to accept this incident occurred. However, it does not appear to be anything other than a small scale, isolated incident which does not negate or detract from the weight of country information which does not suggest, in any way, that the threat of terrorism has been completely eliminated but that most terrorist groups have been weakened by successive military operations and violence in the area is considerably reduced.

36. The applicant referred in his 2019 statement to an attack by the Taliban on a children's school in his home village in October 2019. Although there is a report [in] October 2019³¹ provided to the delegate which refers to [a group of] extremists being found close to a school near Parachinar and being handed over to the authorities, the report does not suggest the school was attacked. Given it was an attack on a school in December 2014 that prompted the implementation of the NAP (including a reversal of the moratorium on the death penalty)³², I would expect that such a serious security breach as an attack on school children would have been reported. There is, however, no indication in any of the other country information before me to corroborate the claim that the Taliban (or other extremist groups) attacked a school in the Parachinar area in October 2019 and I do not accept that there was such an incident.
37. The applicant's representative also provided a copy of an article from DailyUrdu.net which includes two tweets translated into English about reports of militants attacking villages along the Pakistan/Afghanistan border in Kurram around 22/23 May 2020. The document from Tahreek-e-Hussaini Pakistan Parachinar similarly refers to an attack in that area but states it occurred around a week earlier on 15 May 2020 and it was carried out by Muqbal tribesmen. I have concerns about the reliability of both these sources. There is no indication from the tweets quoted by Daily Urdu that the sources are journalists, that the tweets are from reliable accounts, that the posters are actually based in that area, or where the information they refer to came from. One of the DailyUrdu tweets notes the reports are unconfirmed. Given this, the quite significant difference between the sources about when the attacks were said to have occurred, and the lack of any independent corroboration, I do not accept there was an attack in May 2020 on Shia villages in Upper Kurram by anti-Shia militants.
38. The applicant's representative submitted that notwithstanding the downturn in mass sectarian attacks in 2019, the core foundational factors for a resurgence remain in place and the global recession due to the Covid19 pandemic will have a particularly profound impact on Pakistan. Apart from some general assertions about the impact on Pakistan of the virus, in particular its economy, and how that economic threat may exacerbate the sectarian conflict, I consider the

²⁷ See, for example, Din, I U and Mahsud, M K "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019" FATA Research Centre, 13 January 2020, 20200122123739

²⁸ Pakistan Institute for Peace Studies (PIPS) "Pakistan Security Report 2019", 5 January 2020

²⁹ Pakistan Institute for Peace Studies (PIPS) "Pakistan Security Report 2019", 5 January 2020

³⁰ Letter dated from Tahreek e Hussaini Pakistan Parachinar

³¹ [Source deleted.]

³² DFAT, "DFAT Country Information Report Pakistan", 20 February 2019 20190220093409

submission about the effect the Covid19 pandemic may have on the security situation in Pakistan entirely speculative.

39. His representative has made a number of other submissions about the applicant's imputed political profile based on his Pashtun ethnicity, Shia religion and Bangash tribal affiliation. The applicant additionally referred to leaving because of a perception that he was pro-NATO, also based on, in particular, his Shia religion.
40. I accept that Shias have been targeted and subjected to violence in Kurram district in the past by anti-Shia elements (the TTP, LeJ, SSP, IS). However, the recent independent, credible sources before me indicate that the continuous anti-militant operational and surveillance campaigns by security forces and counter terrorism departments, as well as some counter-extremism actions taken under the National Action Plan (NAP), have helped sustain a declining trend from 2013 onward, leading to a drastic reduction in the frequency of terrorist-related and violent incidents across the country in 2019.³³
41. The applicant's former representative referred to the lack of reporting of incidents due to intimidation and threats to media organisations in Pakistan. I accept it is possible that some incidents may go unreported. But the reports considered above about Pakistan's security situation do not rely solely on media reporting; they provide a detailed, statistical analysis of security incidents in Pakistan (including in Kurram) from authoritative sources and I consider they give a reliable picture of the overall situation and trends of violence. They indicate that since the applicant was last in Parachinar/Kurram, the security and sectarian situation has improved substantially including in relation to travelling between areas in the district.
42. In considering the applicant's circumstances, I have taken into consideration the most recent country information about the security situation in Pakistan which is discussed above. The applicant is a relatively educated young man whose family (apart from [siblings] in Australia) continues to reside in the Parachinar area. While he referred in his SHEV interview to some concerns his family had expressed about their safety, he does not claim that his family members in Pakistan have faced problems of the type he claims he would face should he return. I accept that before leaving Pakistan he and his family's lives were impacted by sectarian violence in and around the Parachinar area and that they were exposed to bomb blasts, kidnappings and threats, that road access was problematic, and they suffered through an inability to obtain essential supplies and access services. I also accept that a cousin was killed and that his brother was in convoy that was targeted. These incidents were not, however, directed personally at the applicant or his family; his evidence indicates the incidents were part of the generalised sectarian violence against Shias in the area at the time which, as discussed above, has been the subject of sustained, substantial improvement. The applicant referred to some psychological issues he has had. I accept that this is the case. There is no evidence before me that the applicant is currently suffering from a diagnosed mental health condition or illness and I am not satisfied that he does. The applicant stated in his SHEV interview that he couldn't return to Pakistan because he had no money and referred generally to the limits of life in Parachinar. I accept that the ongoing security initiatives in Kurram and Parachinar in particular, have imposed limits on movement and access to services and trade opportunities. But the applicant has a diploma as well as a history of working in Australia, has family in Parachinar, and I am not satisfied that he would be unsuccessful in re-establishing himself there. I acknowledge what the applicant says about the violence in Parachinar running in cycles. I also acknowledge that the TTP and other militant groups have the capacity to carry out mass casualty attacks. However, taking into account the applicant's personal circumstances and based on the evidence before me I am not satisfied that

³³ PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

overall, the possibility that the applicant as a person with his profile and experiences, would face harm in Kurram for any of those reasons, rises to the level of a real chance.

43. In order to return to Pakistan, Pakistani citizens are required to have a valid passport to enter (or exit) and those who attempt to do so without valid documentation are liable to legal action³⁴. The applicant has consistently claimed to have left Pakistan legally using his own legitimate Pakistan passport (which I note has now expired). I accept that. As he did not leave illegally, I am not satisfied he is at risk of legal action on return.
44. Advice from DFAT is that those who return to Pakistan voluntarily and with valid travel documentation are typically processed like any other citizen returning to Pakistan. Those who are returned involuntarily or who travel on an emergency travel document are likely to attract attention from the authorities on arrival. Ministry of the Interior (MoI) staff will interview them and release them if their exit was deemed legal but may detain those deemed to have left illegally. Those who left Pakistan on valid travel documentation and have not committed any other crimes (including offences while abroad) are typically released within a couple of hours³⁵.
45. On the basis of the information before me I find that if the applicant returns voluntarily with a valid passport, he will be allowed to enter the country without questioning. If he returns involuntarily, he is likely to be interviewed during which he will be found to have departed Pakistan legally. He does not claim to be wanted in relation to any criminal offences and on that basis I find he will be released within a couple of hours. I am not satisfied this amounts to harm let alone serious harm. There is no suggestion by DFAT that returnees are subject to any mistreatment during any such questioning at the airport.
46. DFAT assessed that lack of economic opportunity acts as a significant push factor for external migration. According to the Minister for Overseas Pakistanis and Human Resources Development, approximately two and a half million Pakistanis travelled overseas for employment between 2015 and 2018. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate or because of having lived in a western country and returnees are typically able to reintegrate into the Pakistani community without repercussions stemming from their migration attempt³⁶.
47. Taking into account all of the information before me, I am not satisfied that the applicant would face a real chance of harm if he returned to Pakistan now or in the reasonably foreseeable future as a returnee asylum seeker from a Western country.
48. I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

49. 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

50. 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

³⁴ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

³⁵ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

³⁶ DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

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

51. 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.

52. 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.

53. The country information indicates, and I accept, that if the applicant returns to Pakistan, it is likely he will be briefly detained and questioned before being released into the community. There is no suggestion in DFAT's latest report that returnees are subject to mistreatment in this process. I am not satisfied that being briefly detained for the purpose of questioning amounts to pain or suffering, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or arbitrary deprivation of life. I am not satisfied that there is a real risk of the applicant suffering significant harm in the return process.

54. I have found that the applicant does not otherwise face a real chance of harm now or in the reasonably foreseeable future for any of the other reasons he has claimed. As 'real chance' and 'real risk' involve the same standard, it follows that I am also not satisfied that there is a real risk of him suffering significant harm for any of the other reasons claimed if he is returned to Pakistan.

Complementary protection: conclusion

55. 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.