



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08454

Date and time of decision: 30 June 2020 14:53:00
S Ryan, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan and arrived in Australia on [date] July 2013. On 9 June 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 27 May 2020 and referred the matter to the IAA on 1 June 2020.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the Migration Act 1958 (the Act). The portions of the submission to the IAA made up of argument responding to the delegate's decision, and reasserting claims and evidence that was before the delegate are not new information and I have had regard to those matters. The submission to the IAA has also included information that was not considered by the delegate and is new information.
3. Under s.473DD(b) the applicant must satisfy the IAA in relation to any new information given by the applicant that either the new information was not, and could not, have been provided to the delegate before the decision was made, or, that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims. Additionally, under s.473DD(a), the IAA must be satisfied that there are exceptional circumstances to justify considering the new information.

Media reports

4. The applicant provided two news reports (dated 6 May and 14 May 2020) describing a bomb blast at a Shia mosque in Kurram that appears to have occurred on or around 5 May 2020. The submissions asserts that this information was not available to the applicant prior to the delegate's decision, although I note that this event was reported more than three weeks before the decision was made. Nevertheless, these are recent and credible reports of a terrorist event in Kurram that occurred shortly before the delegate's decision and were not considered as part of that assessment. Given the timeframes I am willing to accept the applicant's claim that he was also unaware of this event prior to the decision being made. The applicant's claims for protection are based in part on his fear of being targeted for sectarian reasons and the information relates what appears to be a recent sectarian attack targeting a Shia mosque in Kurram. For these reasons I am satisfied that there are exceptional circumstances to consider the information.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is of Pashtun ethnicity, from the Bangash tribe, and follows the Shia sect of Islam. He is from Parachinar in the Kurram District of Khyber Pakhtunkhwa Province of Pakistan. He is a national of Pakistan only.
 - He fears harm from Sunni extremist groups on account of his cumulative profile as a Pashtun Bangash Shia from Kurram

- Shias from Parachinar are targeted by Sunni militant groups target because they have engaged in armed opposition to them, and also because these groups assume they hold political opinions in support of the United States (US), Iran and the Assad regime in Syria.
- The Pakistan authorities are unable or unwilling to protect him from Sunni extremist groups. He would be persecuted by Pakistan authorities on account of his perceived links to Iran and to Shia militias fighting with the Assad regime in Syria, and on account of having resided in Australia and sought asylum there.
- If he returned to Pakistan his cousins will attempt to kill him in order to take control of his family's land in Kurram.
- His risk of harm for all of these reasons exists in all of areas of Pakistan

Factual findings

Background and Identity

6. The applicant's identity as a Pashtun Bangash Shia from Parachinar is not a matter in question. He has provided copies of his Pakistan passport, as well as a number of documents issued in Pakistan, including a national identity card (CNIC), a birth certificate, marriage certificate, and police clearance certificate.
7. The applicant was born in 1986 in a village in [Location], an area close to the town of Parachinar. The applicant's family left [Location] in 1990 and since then have lived in [Suburb] in the town of Parachinar. He completed eight years of schooling and then left to work on the family's farm in [Location]. I accept the applicant's claim that, after his father died of natural causes in 2007, he became the sole owner of the family's farming land in [Location] on the basis that he is the eldest son of his father. The applicant confirmed during the SHEV interview that his brothers have continued to farm the family's land. From the end of 2009 until early 2013 he lived in [Country], working as [an Occupation], and he has also worked in the same field in Australia since December 2016.
8. He was married in 2009 and has two children, born in 2010 and 2013. He confirmed in the SHEV interview that he maintains regular contact with his wife who lives with his children in his family's house in Parachinar. His wife and children, mother and [younger] brothers all live in the same house.
9. The applicant left Pakistan via Karachi airport in June 2013 and travelled on a valid Pakistan passport issued in his true identity. He provided the same passport to the delegate at the SHEV interview. There is no issue as to the applicant's claims regarding his identity or nationality. I accept, as he has claimed, that he is a national of Pakistan and of no other country. Pakistan is the receiving country for the purposes of this assessment.

Enmity with his cousins

10. The applicant claims his paternal cousins have been plotting to kill him since his father died in 2007 and he fears they would kill him if he returned to Kurram, or any other part of Pakistan. While I accept the applicant's claim that he became the sole owner of his family's farming land in [Location] following his father's death, I have serious concerns with his claim that his cousins are plotting to kill him so as to be able to claim his family's land.

11. In assessing the applicant's evidence, I have taken into consideration that country information before me confirms that disputes over land in Pakistan's tribal areas are common and can result in instances of intra-community violence, although the sources before me (particularly Zahab, Middle East Institute and DFAT) suggest these conflicts are typically between different tribes or religious sects.
12. I also note that it is also not clear from the information before me, the extent to which Pashtun tribal codes continue to have precedence in Kurram over Pakistan's mainstream legal framework governing property and succession. DFAT indicate that the FATA reforms enacted in 2018 to bring tribal areas within Pakistan's mainstream judicial and dispute resolution systems remain in the early stages of implementation. I note in this context that the applicant has acknowledged during the SHEV interview that Kurram's changed status as a district of Khyber Pakhtunkhwa has resulted in a changes with respect to landowners, indicating his family have begun paying tax on their land. Nevertheless, the March 2020 property certificate issued in was provided by the applicant suggests that tribal elders continue to play a role in verifying property ownership. In the absence of information suggesting otherwise I am willing to accept the applicant's claim that disputes over land ownership in Kurram may still be matters that are settled, at least primarily, by tribal elders according to Pashtun tribal codes.
13. The submission to the IAA argues that the delegate failed to give proper consideration to this aspect of the applicant's claims and that the applicant cannot be expected to be able to relay legal succession laws and tribal rules concerning his property, and nor should he be required to. The applicant's legal representative does not provide any further reasoning to support these assertions. Nor have the submissions to the IAA offered any explanation as to why more detailed reasoning and supporting evidence concerning this central aspect of his protection claims could not have been provided as part of the extensive post-interview written submissions prepared by the applicant's legal representative and provided to the delegate.
14. The applicant has raised his cousins' claims to his family's land as a significant part of his claims and has posited that the reason his cousins are motivated to kill him is that they would be entitled to lawfully claim his family's land in the event of the applicant's death. He has been assisted by legal representatives throughout the assessment of his SHEV application and in the matter being reviewed by the IAA. I also note he has been repeatedly cautioned, including during the SHEV interview that it is his responsibility to provide the particulars of his claims and provide sufficient evidence to establish those claims.
15. During the SHEV interview the delegate invited the delegate to explain this aspect of his claims, and after hearing his evidence, put to the applicant that she had considered independent information with respect of the laws in Pakistan concerning land and property rights which suggested the applicant's brothers would have rights to claim the land in the event the applicant died. She also put to him that her understanding of relevant laws in Pakistan suggest the cousins may be unable to claim the land if it were found that they were responsible for the applicant's death. The applicant responded by suggesting that different tribal laws applied in Kurram and these meant that his cousins could make a claim against the property in the event of the applicant death, ahead of the applicant's [brothers]. He also claimed that the tribal elders in [Location] would side with his cousins in ruling against the applicant's family as they themselves wished to acquire the land and would prefer to purchase it from his cousins. He also argued that in Kurram District the succession laws preventing persons benefiting from murder did not apply when the perpetrator was related to the victim.
16. The delegate put him on notice that independent country information contradicted his claims, and I consider that it is apparent from the responses he gave to the delegate's questions that,

contrary to his representative's assertion, the applicant was claiming to have specific knowledge concerning the tribal laws in Kurram on property ownership and succession as they apply to his circumstances. The applicant did not specify how he came to acquire this information and has not provided any corroborative information to substantiate his claim that his cousins would be in a position under Pashtun tribal law to lawfully make a claim on his family's land. I note that after the SHEV interview the applicant or his representative has engaged with tribal elders in [Location] and obtained documents concerning his lawful ownership of the land. However he has provided no evidence in support of a critical aspect of his claim; that Pashtun tribal laws would permit this land to be taken from his family, noting three of his siblings are adult men, and be given to his paternal cousins in the event of his death.

17. The submission to the IAA contends that this was a topic only briefly discussed at the SHEV interview. However, having reviewed the audio record, it is apparent that the delegate spent a substantial portion of the SHEV interview asking the applicant to explain the circumstances of the family property, the nature of his cousins' claim on the land and what steps they took in acting on their enmity. I am satisfied these claims were discussed in considerable detail, that he was on notice as to the determinative matters, and he has had a reasonable opportunity to put forward his claims and supporting evidence.
18. The evidence before me indicates that in March 2020 the applicant sought and received formal recognition by tribal elders in [Location] of his ownership of farming land in the area. The evidence given by the applicant during the SHEV interview indicates that the applicant's family have maintained a strong connection to their family land, maintaining it as a working farm for many decades, and that two of his adult brothers continue to work on the farm to the present day. In contrast the applicant has claimed that his three cousins had sold all of their own land in [Location] to fund their drug habits, and have repeatedly made it known in their community that they would like to harm the applicant in order to acquire his land.
19. The applicant gave evidence that the tribal elders in [Location] are aware of the cousins' threats and that the elders had reported these threats to his mother. I consider the applicant's description of the interactions between tribal elders and his mother appears to contradict the applicant's claims that the tribal elders are complicit in the plot to kill the applicant and acquire the family's land. The applicant's evidence did not suggest that he or any member of his family have been harassed, threatened or harmed whilst working on their land, or that his brothers' right to work on their farm in the seven years since the applicant's departure from Kurram in 2013 has been questioned by anyone. Considered the evidence as a whole, I have serious doubts as to the plausibility and veracity of the applicant's claim that tribal elders in [Location] are hostile to his family's ownership of farming land, such that they would support the applicant's cousins against the applicant's own family in making a claim to have an entitlement to this land.
20. Even if I were to accept that three of the applicant's cousins have formed an enmity against him and have had planned to kill him for the past thirteen years, is not apparent that the cousins have ever acted on these intentions. I note that the applicant claims their enmity commenced after his father's death in 2007, that then he had worked on the farm for three years until leaving for [Country] in 2010. In 2013 the applicant returned to live for at least three months in his family home in Kurram. It would seem that, despite having many opportunities whilst he was in close proximity to them, it not apparent that his cousins have attacked or even directly threatened the applicant during these periods.
21. I consider the evidence given by the applicant during the SHEV interview in support of this claim lacked cogent reasoning. I take into account the argument provided by the applicant's legal representative, that the applicant's limited education affected the manner in which he provided

evidence concerning property laws in Kurram and that the depth of his understanding of related legal concepts may have been limited. However I note that the applicant's legal representative assisted him in preparing his claims and also attended the interview. AS noted earlier the delegate had put the applicant on notice that she had concerns with this aspect of his claims. The 28 page submissions prepared by his legal representative that were provided to the delegate after the interview do not put forward any more detailed explanations or corroborative evidence concerning the application of Pakistan property laws and/or Pashtun tribal law as they apply to his particular situation, nor do the submissions suggest this is not possible. Given the centrality of the issue concerning the personal enmity with his cousins and their ability to make claims on his property, I find the paucity of his evidence concerning.

22. Having regard to all of the evidence before me I find the applicant's claims are not credible. I am not satisfied that, under Pashtun tribal laws, the applicant's immediate family would be unable to claim the family's farming land in the event the applicant died. Nor am I satisfied that any enmity between the applicant and his paternal cousins, such that it may exist, has led to them making plans or undertaking attempts to kill the applicant in order to acquire his farming land in [Location].

Personal profile

23. The applicant claims that, as a Pashtun Bangash Shia from Kurram, he will be targeted by Sunni militant groups on account of being perceived to holding opinions opposing them, and because these groups will also assume he holds political opinions in support of the US/NATO, Iran and the Assad regime in Syria. It is clear from the country information before me, including the arguments and evidence presented by the applicant's representative, that sectarian militia groups impute all Turi and Bangash Shias in Kurram to hold these political opinions and that the applicant's community has engaged in armed opposition to Sunni extremist groups.
24. I accept that the applicant has provided consistent evidence concerning his lack of direct involvement in armed fighting against the Taliban and/or Sunni tribes whilst he lived in Kurram. The statement provided his SHEV application indicated he was personally opposed to fighting in the violent conflict and I accept he holds this opinion sincerely. The evidence he gave during the SHEV interview concerning his attendance at a tribal 'fighting post' in 2007 did not suggest he had ever been an active combatant in a militia. I am willing to accept as plausible that the applicant avoided joining a tribal militia or engaging in any form of armed combat in Kurram. He has not claimed to have faced any harm for having done so. I accept his evidence that he was one of many people in his community requested by tribal elders to make financial contributions to tribal forces defending Kurram from the Taliban, but that at other times, he supported tribal militias in non-combat roles; such as transporting water supplies. There are no indications from his evidence that he made any prominent or significant contributions to the tribal or Shia militias or that, as a result of his limited support, he would be known anyone in Pakistan as a member or prominent supporter of a tribal or Shia militia group.
25. The submission to the IAA is critical of the delegate's observation that, during his interactions with the Department, the applicant expressed no specific political opinions, arguing that this observation was relied upon to make an adverse finding and should have been put to the applicant for response. While I accept that the delegate did not specifically ask the applicant about his political opinions during the SHEV interview, it is also true that the applicant did not raise this as a claim until after the SHEV interview. The delegate began the interview by reminding the applicant of his obligation to put forward all of his claims and provide supporting evidence, and had also repeatedly asked him at various stages of the same interview whether he had any further claims or matters he wished to raise. I consider it telling that neither the

applicant nor his representative indicated to the delegate during the SHEV interview he held personal political opinions that were relevant to his protection claims.

26. The claim is first raised in the post-interview written submission and is expressed in the broadest sense. While I accept as self-evident that the applicant, as a Shia, opposes extremist and sectarian Sunni groups, the submission does not specify whether the pro-Iran, pro-Assad, pro-US political opinions would be imputed to him by Sunni extremists or are opinions that he actually holds. It is telling that, beyond criticising the delegate's observations that the applicant had not indicated his political opinions, the submission to the IAA does not then seek to provide new information articulating what those personal political opinions are, or indicate whether or in what manner he has articulated or acted on these opinions.
27. The applicant has not claimed that he or any member of his family have publicly expressed any opinions that might attract attention from sectarian militias, or were ever identified as members of a Shia militia, or held prominent positions in their community on account of being tribal, religious or political leaders, or that they have drawn the adverse attention of Sunni extremist militant groups for any other reason.
28. The imputed political opinions stem from broader geo-political factors and are relevant to considering why Shias from Kurram have been targeted in the past by Sunni extremist groups in Pakistan, and these factors are also relevant to my assessment of the risk of harm that would be faced by the applicant if he were to return to Pakistan. However I consider the imputed political opinion profile applies to all Shias from Kurram, and I do not accept that, without more, the imputed political opinions differentiate the applicant from his community, and do not alter or elevate the risk of harm that the applicant faces on the basis that he is a Pashtun Bangash Shia from Kurram.
29. I accept the applicant's claims with regard to his experience of having been trapped for hours in an imambargah in Parachinar in 2007 during armed conflict between Sunni and Shia forces. I also accept his claim that his uncle was one of many people killed in a bombing incident in Parachinar in 2017. While I accept these events would have been considerable impact on the applicant, it is not apparent that he was harmed in the 2007 incident, or that his uncle was personally targeted in the 2017 bombing. The evidence before me does not suggest the applicant has ever held a profile with Sunni militant groups that heightened his risk of harm above other members of the Shia community, or that he would face a heightened risk of harm upon return to Pakistan as a result of these incidents.

Refugee assessment

30. 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

31. 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.
32. For the reasons given earlier I am not satisfied that the applicant's cousins in Kurram have been planning or attempting to kill the applicant before he came to Australia. The evidence before me also does not suggest that any matters have arisen since the applicant came to Australia that would lead to them attempt to harm him were he to return to Pakistan. I am not satisfied that the applicant faces a real chance of harm on this basis.
33. I have found for reasons given earlier, that I am not satisfied the applicant has a personal, adverse profile with any Sunni militant group; however I do accept the applicant may be identifiable to Sunni militant groups as a Pashtun Bangash Shia from Kurram. I find that this may be due to any combination of personal characteristics which includes; his name, place of origin, language, accent, social milieu, and religious practise.
34. Considering the applicant's personal experiences of prolonged periods of sectarian tension and armed conflict in Kurram, and his awareness of similarly situated persons being harmed and killed in Kurram, I accept that he holds a subjective fear of harm if he were to return to Pakistan. However, noting that the refugee assessment is a forward-looking test, I am not satisfied that fear is well-founded for the following reasons.
35. The Australian Department of Foreign Affairs and Trade (DFAT) 2019 report describes Kurram as a district in Khyber Pakhtunkhwa province. Kurram, which has a population of around 619 000 people, was formerly part of a semi-autonomous tribal region on Pakistan's North-West border until its merger with Khyber Pakhtunkhwa Province in May 2018. The applicant's home area is in the Upper Kurram administrative area, which is often referred to as Parachinar, and which is the name of the largest town in Kurram District. Shias make up around 80 per cent of the population of Upper Kurram, are predominantly members of the Pashtun Turi and Bangash tribes.
36. Kurram has been the site of longstanding tribal and sectarian based rivalries and disputes and these have periodically led to intense fighting erupting between rival tribal and sectarian-based groups. According to Mahsud and Zahab, the conflict has historically been between the Turi and Bangash Shias and the Bangash Sunni clans, although at various times, Sunni extremist groups from both Afghanistan and Pakistan have entered the conflict on the side of Sunni Bangash clans, for both sectarian and strategic reasons. The delegate considered that country information pertaining to the risk of harm faced by Turi Shia in Pakistan can be taken to apply to Bangash Shia, and I concur with this assessment.
37. The submissions made by the applicant's representative emphasise the cyclical nature of the sectarian violence in Pakistan and it is true that the recurrence of sectarianism has been a feature

of the prolonged armed conflict in Kurram, the only district in Pakistan's tribal areas with a large Shia population. The Kurram Valley provides a crucial passageway between Pakistan and Afghanistan and has had significant strategic value to Sunni militant groups operating in the tribal areas of Pakistan, including those groups engaged in conflict in Afghanistan and those groups fighting against the Pakistan state. Mahsud describes how the majority Shia community in Upper Kurram opposed the use of their region as a base for attacks by the Afghan Mujahidin fighting against the Soviets in the 1980s. Following the collapse of the Taliban regime in 2002 the Shias of Upper Kurram resisted the Taliban and other Sunni militant groups who were attempting to base themselves in their area.

38. Zahab writes that the arrival of the pro-Taliban Pakistani militants and Punjabi Sunni sectarian militias to Kurram from 2007 triggered a particularly violent period, leading to years of armed clashes between Sunni and Shia militant groups, as well as violent attacks on civilians with sectarian intent. Mahsud describes the rapid escalation of sectarian violence during this period resulting in much of the Shia population of Lower Kurram being expelled to Upper Kurram, while much of the Sunni population around Parachinar was forcibly displaced to Lower Kurram. During the most intense period of the conflict Sunni groups took control of the Thall-Parachinar Road connecting Upper Kurram to the rest of Pakistan.
39. During the SHEV interview the applicant indicated that a '*level of safety*' has been brought to Parachinar on account of the actions and ongoing presence of the Pakistani government security forces. This observation is supported by recent, independent assessments from EASO, DFAT, the FATA Research Centre (FRC), the Pak Institute for Peace Studies (PIPS), and the Pakistan Institute for Conflict and Security Studies (PICSS). These sources report that the security situation in Kurram and the surrounding region has improved significantly in recent years as a result of the Pakistan government's ongoing deployment of coordinated counter-terrorism operations across Pakistan since 2014. These sources describe how anti-government and religiously motivated Sunni sectarian militant groups operating in Pakistan have been significantly weakened by these military operations. As a result, incidents of terrorist, sectarian and other forms of criminal violence have declined significantly over the past five years, in Kurram, and across other areas of Pakistan.
40. In assessing the security situation in Kurram for the foreseeable future I take into account the significant reversal in this trend during the first half of 2017, when sectarian militants undertook four large-scale attacks on Shia civilians in Kurram. This sequence of mass casualty attacks on civilians in Parachinar prompted Pakistani authorities to respond by substantially expanding and escalating their security and counter-terrorism activities in the area; including taking control of all entry and exit checkpoints around Parachinar. DFAT reports that, since the middle of 2017, Pakistan's security forces have maintained strict controls on access to Parachinar and its surrounding areas.
41. The sources noted above also show the Pakistan government has substantially improved the management and security of its border with Afghanistan, including the construction of military fencing which is expected to be completed this year. While there continued to be some small scale encounters between security forces and militants in Pakistan's tribal areas throughout 2018 and 2019, I consider it to be telling that PIPS report major reductions in cross-border clashes between the military and Pakistani militant groups sheltering in Afghanistan.
42. Whilst it is evident that some militant groups continue have a presence in some of the tribal districts of Khyber Pakhtunkhwa Province, it is also apparent that their operational capacity, particularly their ability to undertake large-scale attacks, has been eviscerated. The FRC observe in its most recent report published in January 2020 that militant groups in the tribal areas have

experienced a loss of training infrastructure, hideouts, safe havens and the gradual loss of local support within the Sunni Pashtun communities and that these factors have deprived them of local recruits and sources of terror financing.

43. The FRC report that there were no civilian casualties in Kurram in 2019, either as a result of direct attacks by militant groups or as a result of clashes with Pakistan's security forces. The PIPS 2019 Pakistan Security Report reports similarly, and observes more broadly that there was a small rise in sectarian related attacks against members of the Shia community in Pakistan, albeit resulting in fewer deaths than in 2018 (eleven attacks killing 38 people and injuring 78 others). These attacks were mostly small in scale and almost all of these attacks occurred in Karachi and Quetta. The PIPS 2019 report indicates there was only one sectarian attack in the Khyber Pakhtunkhwa Province, an isolated target killing in DI Khan District in which one person was killed.
44. I further note that the incidents in the PIPS and FRC reports describing occasional incidents involving militant groups in the past few years in Kurram have not involved any substantial civilian casualties, and have overwhelmingly been small-scale clashes involving the militant groups and Pakistan security forces. The Thall-Parachinar road, the transport arterial connecting Parachinar to Peshawar is open and in regular use by ordinary civilians, and has remained under control of the Pakistan authorities for a number of years without a major security incident.
45. The post interview submission to the delegate argues that the Pakistani government has repressed public reporting on sectarian violence as it wishes to represent to the international community that it is making improvements to control sectarian violence. The submission claims many attacks on Shias in Kurram are not reported and cites the DFAT's report referring to journalists covering security issues receiving threats from militants, Taliban and government officials and that physical access to the former FATA is restricted by Pakistan's security forces. I note references in the DFAT report to sources observing that Pakistani journalists and public intellectuals self-censor for fear of enforced disappearance by Pakistan security forces. The applicant's representative argues that, given this context, it is highly plausible that the full extent of issues experienced by Turi Shias remains unknown.
46. The information before me includes a number of reports providing recent, detailed analysis by a number of credible and independent Pakistan-based civil research agencies; namely PIPS and FRC and PICSS. I note that these are professional research organisations that publicly disclose their methodologies in collecting and analysing and verifying reports and other forms of data on violent incidents in Pakistan and that indicate that they have primary field sources and do not solely rely on media coverage or official data. I also note that there is contemporary reporting and analysis on the situation in Kurram from independent and credible international sources; including DFAT and EASO.
47. These sources also report on the situation in Kurram in some detail, including direct engagement with Turi community sources. I consider the comments from DFAT concerning media restrictions and censorship are made at a general level and note that DFAT do not indicate that there any significant restrictions on the information they have been able to access in the reporting specifically describing the security situation in Kurram.
48. I am willing to accept that there may be some incidents involving sectarian and tribal tensions or suspected militant activity that are not reported by the above sources because they do not involve fatalities or casualties, or are not deemed sufficiently significant to report, or can take time to formally verify and corroborate. I note in this context that there are substantial amounts of contemporaneous media reporting on Kurram that was provided by the applicant with his SHEV application and in other materials obtained by the delegate. I do not consider that any

limitations or delays on public reporting on security incidents, including religious and other forms of communal violence in Pakistan, such that they may exist, operate to the extent that they erode the reliability of the assessments made by sources discussed above.

49. Turning to the most recent country information provided by the applicant concerning the May 2020 explosion at a mosque in Lower Kurram, I accept this is a credible account of a recent sectarian incident in Kurram in which an imambargah was destroyed by an explosive device, injuring one person. Nevertheless, I also note this sectarian attack is somewhat concerning in the context of Kurram, this was a small scale attack that injured one person and did not occur in the applicant's home area of Upper Kurram. There is no suggestion from either of the reports, or any other information before me that this incident has triggered retaliatory attacks or other forms of communal violence or suggesting that militant groups have reinvigorated capacity to undertake larger scale attacks in Kurram in the foreseeable future. I also consider that these news reports suggest that local media can and do report on militant activity, even small scale incidents, and are not prohibited from describing them as sectarian in nature, which may be taken to suggest that media and other forms of reporting on the security situation in Kurram is not substantially restricted by Pakistan's security forces.
50. While I take in account the prevalence and persistence of sectarian and other forms of violence in Kurram, it is clear that over a period of more than five years there has been a sustained, albeit uneven decline in the number of sectarian-related violent events targeting Shias in Kurram and across Pakistan, in line with the decline in other forms of violence, such as criminal, ethnic and political violence in Pakistan. I acknowledge this decline is a reflection on the effectiveness of Pakistan's counter-terrorism operations over the same period and on the current security arrangements, rather than any change in intent from sectarian militant groups who continue to declare their intent to target Shias (including Turi Shias) in Pakistan. However the information before me does not indicate that the current security arrangements in Kurram are likely to change and I consider the durability of the current situation is evident from the lack of any credible information before me suggesting there have been any successful terrorist attacks of any nature in the Parachinar area between July 2017 and June 2020.
51. For the reasons given elsewhere in this decision I am not satisfied that the applicant has been or is currently personally known to any Sunni extremist group, or that he faces a heightened risk of harm from these groups on account of his past experience of militant attacks or that of his family. I am not satisfied that he had, or that he currently has, or would have on return to Pakistan, a personal, adverse profile with any Sunni extremist group in Pakistan.
52. While I accept that there remains some risk of further sectarian attacks on Shias in Kurram in the foreseeable future, for the reasons given above, and considering the particular circumstances of the applicant, I am not satisfied that the risk of harm he faces in Kurram as a result of an attack by Sunni militant groups is any more than remote.
53. The applicant has claimed in the 2017 statement provided with his SHEV application that he fears being persecuted by the Pakistan authorities as they will question his whereabouts since he departed Pakistan in 2013, and will view his attempt to seek protection in Australia as bringing shame on the country. I note that the applicant has not subsequently referred to this claim elsewhere, or provided more detailed reasoning or evidence as to why he believes the Pakistan authorities know or would come to know of his asylum claim, or why they would persecute him for this reason or on account of his stay in Australia.
54. The applicant last departed Pakistan legally in June 2013 on a genuine passport issued in his true identity, although this passport has since expired. In returning to Pakistan the applicant will

likely need to apply for a temporary Pakistan passport that has been issued in Australia and, although there is no reason to believe that the applicant's particular claims for asylum will be known to Pakistan authorities, I am willing accept it is possible that his return to Pakistan in this context may lead the Pakistani authorities to infer he may have sought asylum whilst staying in Australia.

55. DFAT understands that those returned to Pakistan in these circumstances 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. The evidence before me does not suggest the applicant would be suspected by Pakistani authorities of having committed a crime. There is no credible information before me indicating the applicant is wanted for crimes in Pakistan, or that he has committed any offences while abroad. Nor is there any information suggesting he would be suspected of having departed Pakistan illegally or having been involved in human trafficking or people smuggling operations. DFAT's assessment of the situation for returnees to Pakistan does not indicate that a person who has lived in and sought asylum in Australia would be targeted by Pakistani government authorities for these reasons.
56. The March 2020 post-interview written submission raises a further claims that the applicant fears harm from Pakistan authorities on account of being perceived to hold pro-Iran opinions and/or being suspected to have some involvement with Shia militant groups involved in the Syrian conflict. The submission also refers to the mistreatment and abuses of ethnic Pashtuns by Pakistan authorities on account of their perceived association with Sunni insurgent militancy and also Pashtun nationalist/activist groups.
57. I note that his claim that Pashtuns face discrimination and persecution based on their ethnicity is, to a large degree, provided in the context of an argument that he cannot relocate to other areas of Pakistan, where Pashtuns are a minority. This is not a matter that arises in this assessment. I accept nevertheless that he has also raised a similar issue in the 2017 statement provided with his SHEV application where he claimed to have been abused by Pakistan security forces at checkpoints in Kurram. It is telling that neither the applicant nor his representative mention this claim again, and that his brief reference to this issue does not specify the nature of the abuse he claims security forces perpetrate at checkpoints in Kurram.
58. It is clear that the ongoing presence of Pakistan's security forces in and around Parachinar has made the area substantially safer for residents. However I also accept that the heightened security arrangements may also have a negative impact on the lives of residents; resulting in increased interactions with security forces and also involves some restriction of their movements. The applicant would be returning to Parachinar as a member of the Shia Pashtun majority and would be able to provide identification to security personnel at checkpoints establishing his identity and residency arrangements. There is no other information before me that suggests Shias living in Kurram face abuse or other forms of harm whilst interacting with the security forces protecting Parachinar and its surrounding areas. On the information before me I consider it is no more than a remote possibility that he would be harmed as a result of being stopped at a security checkpoint on route to Kurram or whilst living in Kurram.
59. Looking more broadly, there is credible evidence of Pashtuns in Khyber Pakhtunkhwa Province being targeted and harmed by security forces on the basis of having been suspected to be involved in a Sunni insurgent militant group or Pashtun nationalist/activist groups. By his own evidence he is readily identifiable in all areas of Pakistan as a Bangash Shia from Parachinar and so it would appear there is little likelihood that he would be arrested or harmed by Pakistan's security forces as a suspected Sunni militant, or as a supporter of Sunni extremism. He does not claim to have been involved in Pashtun nationalist or Pashtun rights advocacy groups, or that

he has ever been suspected of such activity. He has not claimed to have ever been a prominent or public critic of the Pakistan military, or to have been associated with groups or persons who do. The information before me does not suggest that he would commence these types of public activities on return to Pakistan. I consider the chance of the applicant being harmed for these reasons is no more than remote.

60. The submission included references to reporting on the alleged enforced disappearance of Shia men perceived to have links to Iran or who are known or suspected to be providing support for Shia militant groups or to have been combatants in the Syrian conflict. DFAT's report indicates the applicant is not likely to face a real risk of persecution and/or serious harm from Pakistan authorities solely for reason of being a Shia. I accept the applicant's claim that he has never fought or training with a Shia militant group and there are no indications that his brief involvement in supporting his tribe in resisting the Taliban would come to the attention of the Pakistan authorities or lead to their adverse interest if it were discovered or inferred. He does not claim to have ever visited countries known to host Shia militant groups, and in his prior travel to and from [Country] and Pakistan in 2010-2013 period there are no indications that he had come to the attention of Pakistan authorities.
61. There are no other indications from the information before me that the applicant would be suspected by Pakistani authorities to have any suspected or actual links to Shia militancy. I further note he did not indicate he had come to the attention of Pakistan authorities or that he had any issues applying to renew his Pakistani passport in 2011, or in departing Pakistan in 2013. The country information before me does not suggest that Shias who come to the adverse attention of Pakistan authorities as suspected Shia militants do so solely for the reason that they are they Pashtun Shias from Kurram. I find that the chance of the applicant coming to the adverse attention of Pakistani authorities as a suspected Shia militant or active supporter of Shia militancy is remote.
62. In returning to his home in Parachinar the applicant would travel on the roads from international airports, either in Lahore, Karachi or Islamabad. In having regard to his risk of harm in making such a journey I note the low incidence of attacks made by religiously inspired militants, criminal groups or insurgent militants on the roads between these cities and Parachinar in recent years. I consider it to be no more than a remote possibility that the applicant would be harmed on his return journey back to Parachinar.
63. For all of these reasons I consider the chance of the applicant being harmed, for the reasons of being a Pashtun Bangash Shia from Kurram who would be returning from Australia where he sought asylum, is remote. I am not satisfied the applicant faces a real chance of harm on these bases.

Refugee: conclusion

64. I am not satisfied the applicant faces a real chance of harm on any of the bases claimed, I am therefore not satisfied the applicant has a well-founded fear of persecution. 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

65. 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.

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

Complementary protection: conclusion

67. 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.