



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA20/08492

Date and time of decision: 10 July 2020 11:54:00  
D Power, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Shia from Pakistan. On 13 December 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 11 June 2020, a delegate of the Minister for Immigration refused to grant the visa. The delegate found that the applicant did not have a well-founded fear of harm or a real risk of significant harm on the basis of his faith, tribal affiliation or ethnicity, the unauthorised disclosure of his personal details on the internet, the impact of the coronavirus or as a former asylum seeker or returnee from a western country.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 3 July 2020, the IAA received a submission from the applicant. The submission discusses in general terms the applicant's life circumstances and immigration history since coming to Australia. These matters may be regarded as argument rather than information, and I have had regard to the issues raised. The submission also reiterates and discusses claims made to the delegate.
5. The applicant also claims that Pakistan continues to be unsafe for him and states that there was recently a bombing of an Imambargah in "Shurki" and a bombing last week (at the time of 3 July email) in Parachinar. No appreciable detail has been provided about these events, nor has a copy of the relevant information been provided (or even an identification of the source of that information). Practice Direction 1 states that where new information is provided to the Authority a copy of that information must also be provided. I note that the applicant is unrepresented. However, the applicant was represented before the Department. He was also emailed information with the acknowledgement of the referral of his application that outlined (in his own language) the requirements for providing information to the Authority. I note that although the applicant had initially provided an email address that did not appear to be working, he contacted the Authority on 1 July 2020 and provided an updated email. He was subsequently re-sent the relevant information that same day. In the circumstances, and having regard to s.473FB(5), I am not prepared to accept this information.

### Applicant's claims for protection

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6. The applicant's claims can be summarised as follows:
  - The applicant's people have been persecuted by the militant and terrorist groups, particularly the Taliban, because of their Shia faith.
  - The applicant's Shia community were harassed and attacked. The applicant's village was attacked on a weekly basis and sometimes twice within a week. Shias were attacked while travelling.
  - The applicant's cousins have been killed and his friends and relatives have been targeted.
  - The applicant's parents were scared for his life and convinced him to leave the country

- The applicant would not feel safe anywhere in Pakistan. People who did move away “suffered quite badly”. Even in the capital Islamabad there are extremist elements.
- The government will not protect Shias. Government officers showed sympathy to the plight of Shias but did nothing. The authorities are corrupt and unable to protect themselves.
- The Taliban are aware of every arrival and departure and would punish the applicant for attempting to flee their shadow rule.

7. At interview, the applicant made the following claims:

- In 2010, the applicant was fired upon by the Taliban while walking with a group of villagers to fix a water pipe. Two people were injured but the applicant was able to escape into a nearby forest.
- That same year, the Taliban fired upon their village. Three people died. The applicant’s family home was hit but fortunately nobody in the house was hurt.

### **Refugee assessment**

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8. 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**

9. 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.

10. I accept that the applicant is a Shia Pashtun from the Bangash tribe. The applicant has provided copies of his National Identity Card (NIC) and passport confirming both his identity and his claim to originate from Kurram in the former Federally Administered Tribal Areas (FATA). The applicant has also given a consistent account of his identity and his other particulars since arriving in Australia. In light of this and the documentation he has provided, I accept that the applicant’s

identity, ethnicity, tribal affiliation and nationality are as claimed, that he is a national of Pakistan, and that Pakistan is his receiving country for the purposes of this review.

11. The applicant was born and spent all of his life in [Village], near Parachinar in Kurram. The applicant is married, and his wife and children remain in Parachinar, as do his parents and siblings. I am satisfied that Parachinar, and Kurram more broadly, is the area to which he would very likely return in Pakistan.
12. The applicant stated in his written claims that his Shia community were frequently attacked by the Taliban, that people travelling in the area were fired upon and that his own village was attacked on a weekly basis. He also claims that the violence affected friends and relatives and that a cousin of his was killed during the violence taking place at that time.
13. At interview, the applicant also advanced two instances in which he had been personally caught up in the violence. Both of these claimed events occurred in 2010. In the first incident, the applicant was with a group of villagers who had gone to repair a pipe to bring badly needed water back to the village. The group were fired upon by the Taliban and two people were injured. The applicant claims that he was able to escape harm by running back into the forest. In the second incident, the Taliban allegedly fired mortars on the applicant's village. One mortar landed in the yard of his cousin's house, and three people died. The last mortar hit the wall of the applicant's family home but fortunately no-one inside was injured.
14. Country information confirms the seriousness of the security situation in Kurram, and Parachinar particularly, in the years before the applicant's departure from Pakistan in 2012. The Department of Foreign Affairs and Trade (DFAT) states that Kurram was the site of an extended series of sectarian attacks by the Tehreek-e-Taliban (TTP) between 2008 and 2014, and noted a "significant spike" in targeted killings of Turis between 2009 and 2014 along the Tall-Parachinar Highway linking Kurram Agency and Peshawar<sup>1</sup>. Given the conditions that prevailed in Kurram at the time, I am prepared to accept that there was conflict in the applicant's home area, that the roads were unsafe, and that the applicant witnessed acts of sectarian violence. I also accept that there were incidents that directly or indirectly involved members of his extended family or people he knew. However, these incidents, including those in 2010 involving the applicant being fired upon, all appear to have resulted from the very poor security situation in the area at the time. While there were clearly groups in the area targeting Turis and Shias in general, including his Shia village, there is no evidence (nor has the applicant contended) that he or his family were individually targeted in the incidents described above beyond the fact that they were part of the Shia community there or that they ever personally came to the attention of any militant or extremist group in Kurram.
15. The applicant has also claimed that he would be targeted by the Taliban and other extremist elements because of his Shia faith. The applicant's agent has put forward country information to support the view, inter alia, that Shias in Pakistan are targeted, militant activity is still evident in Pakistan and that there still exists a real threat to Shias from Kurram Agency. Some of the information put forward, such as articles examining three mass casualty attacks in Parachinar in 2017, goes to matters that are not in dispute. There is also extensive quoting from various sources describing militant groups such as the TTP and Lashkar-e-Jhangvi (LeJ) and their anti-Shia agenda.
16. Kurram Agency was site of a significant sectarian conflict at the time of the applicant's departure, and for some of the applicant's formative years. However, DFAT states that following an attack

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<sup>1</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

on army school in Peshawar in December 2014 that killed over 140 children<sup>2</sup>, the Government introduced the National Action Plan (NAP) that same month. The implementation of the NAP had (and continues to have) a significant impact on Pakistan's security environment. The NAP and associated military operations are credited with a significant reduction in violent incidents and terrorist attacks in Pakistan<sup>3</sup>.

17. The applicant's agent has claimed that as a Bangash he faces a greater risk of violence than the general Shia population. The agent has stated the applicant would be targeted for reasons such as the perception that the Turi/Bangash are pro-Iran or pro-United States. DFAT confirms that significant numbers of the Bangash tribe are Shia<sup>4</sup>. There is little information available on the situation for Bangash specifically in Kurram (including information of the targeting of Bangash specifically), although the applicant's submission refers to Bangash and Turi as effectively being regarded as being in the same position. The applicant is a Shia, living in a city known for its Turi Shia population, and I accept that as a Bangash he may be regarded similarly to that of the Turi Shia population there. I am willing to accept the applicant may be identifiable as a Shia Bangash/Turi. Country information cited earlier also confirms that Kurram was the site of significant sectarian conflict in the years prior to the applicant's departure, much of it involving targeted attacks on the Turi community by the Taliban. There were also three attacks in Parachinar (where the applicant's family has long resided) in 2017 that claimed many lives and which are referenced in some of the material provided by the applicant. Given all of the above, I consider the risks for Turis, or those associated with them, as similarly applying to the applicant as a Shia Bangash.
18. As noted above, DFAT confirms three major attacks in Parachinar in the first half of 2017. These attacks specifically targeted Turis and claimed 120 lives. However, since those attacks in 2017 there have been sustained positive indications in regard to the security situation for Shias (including Turis/Bangash) in Khyber Pakhtunkhwa (KP) province. The number and severity of violent incidents in KP province has decreased significantly since those 2017 attacks, although DFAT notes that the improvement in security has come at the cost of some restriction on freedom of movement and economic opportunity<sup>5</sup>. Fatalities and injuries from terrorist attacks declined in 2018 by 43% and 46% respectively from 2017. PIPS also indicates that security and law enforcement deaths accounted for the largest share of those fatalities - 75 deaths in KP province in 2018 out of the total of 196 terror-related fatalities<sup>6</sup>. More broadly in KP province, 36 Shias were killed in 2018, the highest figure for any group outside of security and law enforcement<sup>7</sup>. However, PIPS notes that the majority of those Shia fatalities (25) came from a single attack on a marketplace near a Shia madrassa in Orakzai district, an incident referred to in the agent's submission to the delegate<sup>8</sup>. DFAT notes that security and law enforcement were the targets of 136 attacks in Pakistan as a whole in 2018, whereas there were just seven attacks overall targeting Shias<sup>9</sup>. I note also the information from PIPS that in May 2018 security forces killed Salman Badini, a key LeJ leader allegedly responsible for the targeted killing of more than 100 Hazara Shias and policemen<sup>10</sup>. This would appear to further underscore the commitment of

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<sup>2</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Pakistan Institute for Peace Studies (PIPS), "Pakistan Security Report 2018", 6 January 2019, 20190121110758

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

<sup>10</sup> PIPS, "Pakistan Security Report 2018", 6 January 2019, 20190121110758

Pakistan authorities not only to combat terrorism and anti-Shia extremism, but directly confront those responsible for attacks.

19. In 2019, there was a further improvement in the situation, with the FATA Research Centre (FRC) recording a 24% overall decline in casualties in the KP tribal districts<sup>11</sup>. Again, security and law enforcement personnel bore the brunt of the violence that did occur, making up 57% of all fatalities recorded<sup>12</sup>.
20. The overall improvement in the situation in Kurram Agency, a district within KP province noted for its concentration of (mostly Turi) Shias<sup>13</sup>, is arguably even more notable. PIPS lists just a single attack on civilians in Kurram for 2018, which claimed seven lives<sup>14</sup>. DFAT noted the trend of decreased attacks against Turis in 2018 and assessed that it was likely to continue into 2019<sup>15</sup>. That cautious optimism appears to have borne out with the FATA recording no terrorism incidents at all for Kurram in 2019<sup>16</sup>. There is no information before me to suggest that there have been significant incidents in Kurram in 2020 or that there has been any marked change in situation in Kurram since these reports were issued.
21. In his written claims, the applicant has stated the Pakistani government and the authorities in KP province did nothing to protect the Shia community despite repeated requests. However, the country information evidences that Pakistani authorities have taken significant security measures in Kurram and elsewhere to protect Shias. News reports have detailed the significant efforts of the authorities to protect Shia religious celebrations (such as Ashura, a major Shia religious event) across Pakistan, including the deployment of a strong security presence, aerial surveillance by drone cameras, special security deployments along procession routes and at Imambargahs, and shutting down the mobile network<sup>17</sup>. This information accords with DFAT statements that “heightened state protection measures” are put in place during Ashura celebrations<sup>18</sup>. The Ashura processions for 2017, 2018 and 2019 were held without incident, including in KP Province<sup>19</sup>.
22. I have noted the major attacks in 2017 in Parachinar, and the concerns expressed about extremist influences in KP province. The agent has also talked about the role the Turis played in opposing the Taliban in earlier conflicts and that this contributes to a heightened risk profile for Turis and Bangash Shias in the area such as the applicant. However, the fact remains that for 2019, there were no attacks at all in Kurram and just one attack the year before in a district that

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<sup>11</sup> Fata Research Centre (FRC), “Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019”, Irfan U Din and Mansur Khan Mahsud, 13 January 2020, 20200122123739

<sup>12</sup> Ibid

<sup>13</sup> DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

<sup>14</sup> PIPS, “Pakistan Security Report 2018”, 6 January 2019, 20190121110758

<sup>15</sup> DFAT, “DFAT Country Information Report. Pakistan”, 20 February 2019, 20190220093409

<sup>16</sup> FRC, “Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019”, Irfan U Din and Mansur Khan Mahsud, 13 January 2020, 20200122123739

<sup>17</sup> Dawn (Pakistan), “Ashura observed peacefully amid tight security in KP”, 23 September 2018, CXBB8A1DA35781; Dawn (Pakistan), ‘Ashura observed across Pakistan amid tight security arrangements’, 10 September 2019, 20191022152039; Global Voices, ‘Muharram in Pakistan: Daring to observe Ashura’, 14 September 2019, 20191022151801; Tribal News Network (Pakistan), “Chehlum Imam Hussain (RA) observed peacefully in KP”, 20 October 2019, 20191021104054; Tribal News Network (Pakistan), “Mobile service suspended in many cities during Chehlum of Karbala martyrs”, 20 October 2019, 20191021104457

<sup>18</sup> Ibid

<sup>19</sup> Express Tribune (Pakistan), “Ashura processions culminate peacefully in different districts”, 3 October 2017, CXC90406614861; ‘Muslims mark Ashura across Pakistan’, News International (Pakistan), 22 September 2018, CXBB8A1DA35779; ‘Ashura observed peacefully amid tight security in KP’, Dawn (Pakistan), 23 September 2018, CXBB8A1DA35781; Global Voices, “Muharram in Pakistan: Daring to observe Ashura”, 14 September 2019, 20191022151801; Dawn (Pakistan), “Ashura observed across Pakistan amid tight security arrangements”, 10 September 2019, Tribal News Network (Pakistan), “Chehlum Imam Hussain (RA) observed peacefully in KP”, 20 October 2019, 20191021104054

numbers over 600,000 people<sup>20</sup>. For KP province as a whole, with an overall population of over 30 million people, there were only 35 civilian fatalities in 2019<sup>21</sup>. The deaths from the attacks noted above should not be glossed over but must also be viewed in context. Although the applicant's agent has talked about the 'cyclical' nature of violence in Pakistan, both sectarian and overall terrorist violence in Pakistan has been trending downwards for many years<sup>22</sup>. Kurram itself has also been stable for several years since the 2017 attacks and there is nothing in the information before me to suggest that this outlook will change in the foreseeable future. The significant reduction in violence noted in the 2019 PIPS report and the 2020 FRC report would indicate that these peace efforts have endured. Notable also is the fact that elections were held without apparent incident in Kurram in 2018, even in areas whose elections had to be cancelled in 2013 during the violent unrest that prevailed at that time<sup>23</sup>. Further, the Thall-Parachinar highway, closed for many years and at one time symbolic of the intractable conflict in Kurram, has now re-opened and "returned to life" with many campaign supporters using it to travel during the elections. DFAT confirms that the road remains open and that military operations have restored community confidence to travel on the road, albeit only for individuals (not large groups) and in daylight hours.

23. The applicant's agent has quoted from the 2019 DFAT report in support of their contention that coverage of events, particularly terrorist incidents, in the FATA is suppressed. The agent also highlighted a quoted portion of a New York Times article alleging that Pakistani news authorities have remained "largely silent" on these issues due to intimidation by government authorities. Reporting on the terrorist and counter-terrorist activities in Pakistan may be a sensitive issue. However, the information in the reports before me comes from a variety of sources, some based outside Pakistan (such as EASO) or that incorporated information sources in addition to mainstream media reporting (such as PIPS and the FRC). I note that the FRC maintains its own field researchers in all seven districts of the former FATA. PIPS consults local officials and journalists, where appropriate, in compiling its reports. Both organisations monitor regional media sources in addition to national outlets. These organisations themselves note that their figures may not capture every instance of violence. However, these reports are from reputable organisations with comprehensive methodologies, and which draw on a wide range of information that includes local contributors and non-media information sources. I do not accept the proposition that the figures they provide significantly underestimate or downplay the overall levels of sectarian violence in Pakistan.

24. The agent included in their submission to the delegate excerpts from two Administrative Appeals Tribunal (AAT) decisions. One decision found that a Turi Shia (apparently unrelated to the applicant) would be at risk of harm in Kurram Agency. In the other decision dating back to November 2016, the Tribunal was not satisfied that the applicant would be able to rely on tribal and familial supports outside of his home area. Both these decisions concern individual applicants and are not written (or intended) as general guidance in regard to Turi (or Bangash) Shias. The finding in one of the quoted AAT decisions is that the applicant would face a real chance of harm in Kurram and could not safely relocate anywhere in Pakistan. However, considering the country information set out above, particularly the more recent country information regarding the security situation in Kurram Agency, and taking into account his personal circumstances, I have reached a different conclusion in regard to the referred applicant.

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<sup>20</sup> European Asylum Support Office (EASO), "Pakistan Security Situation", 30 October 2019, 20191031160110

<sup>21</sup> FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", Irfan U Din and Mansur Khan Mahsud, 13 January 2020, 20200122123739

<sup>22</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409;

<sup>23</sup> 'Election campaigns help public life return to normalcy', Abdullah Malik, Daily Times (Pakistan), 14 July 2018, 20190111101033

25. The applicant's agent has also referred to the impact of the Syrian conflict and the possible withdrawal of US troops from Afghanistan. The agent has included an opinion piece from the Globe and Post. It speculates what would happen if the US withdrew from Pakistan. It presupposes that the US would withdraw comprehensively or completely, the Taliban would overrun the central Afghani government, and that the Taliban would provide a haven for the TTP to attack targets across the border in Pakistan. At present, no agreement with the Taliban has been finalised and US troops remain in Afghanistan. The arguments that things would get worse for Pakistan, and Kurram particularly, in the event of a US withdrawal appear to be entirely speculative.
26. Similarly, the agent has also drawn a link between Pakistan's relationship with Saudi Arabia and Saudi Arabia's potential influence on Pakistan's domestic politics and extremist elements within Pakistan. However, the figures above suggest that the situation for Shias in Pakistan is improving. Whatever the speculation regarding Saudi Arabia's influence on militant elements within Pakistan, the evidence before me indicates that the Pakistani government has taken substantial measures to address sectarian violence and that those measures have met with considerable success within Kurram and KP province more generally. Also noted above is clear evidence of the willingness of Pakistani authorities to target senior personnel within extremist and anti-Shia groups such as the TTP and LeJ.
27. The applicant's agent has also claimed that he will be targeted due to his Pashtun ethnicity. I note that the applicant's ethnicity appears to be almost invariably mentioned as part of what the agent asserts is a cumulative profile that incorporates the applicant's Pashtun ethnicity with his religion and tribal grouping. However, the applicant has not indicated any instances where he was targeted or harmed due to his Pashtun ethnicity per se, nor is it immediately evident how the applicant's Pashtun ethnicity would contribute to his risk of harm in Kurram. Pashtuns are Pakistan's second largest ethnic group, comprising just over 15 per cent of the population<sup>24</sup>. Pashtuns are heavily involved in the transport sector, but also well-represented in the security forces<sup>25</sup>. The TTP's support base is Sunni, and since Pashtuns are also predominantly Sunni there are reports that some Pashtuns have been subject to racial profiling and harassment by security forces<sup>26</sup>. DFAT does note reports that some Pashtuns have paid bribes as high as \$5500 AUD to avoid being listed as terrorists<sup>27</sup>. However, the report gives no indication of the frequency of such incidents. It also states that these issues apply to Pashtuns migrating within Pakistan and especially to Karachi and Lahore, whereas the applicant would be returning to KP province. I note that the applicant is a Shia, not a Sunni, Pashtun and to that extent very unlikely to be seen as affiliated with Sunni extremist organisations. DFAT also notes that the risk of official discrimination "in the form of terrorism-related and racial profiling" occurs in areas where Pashtuns are in the minority<sup>28</sup>. As noted earlier, KP province is mostly Pashtun and the applicant would not be in the minority there<sup>29</sup>.
28. The agent also submitted information regarding a protest in North Waziristan in which the army fired on members of the P.T.M, or Pashtun Tahafuz Movement<sup>30</sup>, a Pashtun activist organisation. I note that the Waziristan region is a particularly troubled one<sup>31</sup>. The applicant has been resident

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<sup>24</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> FRC, "Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2019", Irfan U Din and Mansur Khan Mahsud, 13 January 2020, 20200122123739



in Australia for the past seven years. He has never claimed to have gone to Syria (nor Iran and Iraq) or to have had any association past or present with Shia militants, pro-Syrian groups or Pashtun activism. The applicant has also not made any claim to have spoken out on the Syrian conflict, issues facing Pashtuns or on Pakistani politics generally, nor expressed an intention or desire to do so on return to Pakistan.

29. DFAT does report that, according to the media, discrimination and violence towards Turis remains significant within Kurram Agency, due to concerns regarding Iranian influence within the Shia community and the enduring presence of groups such as Islamic State and Al Qaeda<sup>32</sup>. DFAT also states that Turis face a moderate risk of sectarian violence. However, DFAT does not elaborate on the form this discrimination takes or the nature and frequency of the violence, nor does it point any pattern of incidents after 2017 that would indicate that this is the case. The other country information above also indicates that there has been a significant decline in violent attacks in KP province and Kurram particularly since 2017, and does not reflect such a risk. Other country information before me does not indicate that Turi / Bangash Shia Pashtuns per se in Kurram suffer adverse attention or discrimination because of perceptions of foreign influence. I also consider that the weight of the country information above indicates not only a significant decline in overall violence in KP province and Kurram but a particularly marked decline in sectarian violence there. DFAT notes the particular the concentration of Shias in Kurram (and Parachinar in particular). While this has made the area a target in the past for sectarian attacks, it also means the applicant would be returning to a large Shia community.
30. The applicant claimed that he would not be able to relocate anywhere in Pakistan, because everywhere in Pakistan is unsafe for Shias. In the submission to the delegate, the agent also stated that there is no evidence that the applicant would be able to access tribal or other supports if he relocated elsewhere in Pakistan. I am not satisfied that the applicant has a well-founded fear of persecution in Kurram where most of his family still resides, and to that extent these concerns about relocation are not material to this review. The applicant seems otherwise well-equipped to find employment in Kurram. In his SHEV application he indicated that he speaks and reads Urdu and Pashto, to which he has added some facility in English due to his time here in Australia. The applicant stated at interview that he still holds the [job] he obtained in 2015. When in Pakistan he worked for many years as [an Occupation 1] with his father. The applicant is still relatively young and in apparent good health. He also confirmed at interview that he has sent several thousand dollars back home, indicating that he has been able to save a reasonable sum of money while here in Australia.
31. The applicant's agent has claimed that the applicant suffers from mental health issues and forwarded to the delegate a report from the applicant's treating psychologist dated 17 November 2019. The psychologist states that the applicant suffers from a major depressive disorder with symptoms of Post-Traumatic Stress Disorder.
32. The psychologist does not indicate that the applicant's mental health issues prevent him from working or carrying out his daily activities. There is also no evidence (or claim) that the applicant has ever been prescribed medication to deal with his mental health issues, nor is there any evidence he ever required urgent psychological treatment. Although the psychologist states his belief that continued treatment of the applicant is necessary to manage his mental health and reduce his risk of suicide, he does not indicate that the applicant ever had suicidal ideations, episodes of self-harm or other severe mental health indicators. None of the applicant's health issues appear to have prevented him maintaining employment for the last five years. I note also that despite arriving in Australia in 2012, the applicant was only referred to a psychologist a few

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<sup>32</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

months prior to his protection interview in November 2019. As the psychologist notes, the applicant appears to be a relatively resilient individual who has continued to work “tirelessly” in the [industry] despite the issues he faces.

33. The psychologist states that the main factors perpetuating and exacerbating the applicant’s mental health issues are his desire to see his family again, the uncertainty over his visa status, fear of being returned to Pakistan and worry about his parents (particularly regarding their health concerns). Clearly, the applicant wishes to remain in Australia and continue his life here. However, if he were to return to Pakistan the uncertainty over his immigration matters would at least be resolved and he would be back with his family. As to his fear of returning to Pakistan, the security situation was very serious when the applicant left Pakistan and it is understandable that this may continue to shape his perceptions of life there. However, the country information set out above clearly indicates a significant and sustained improvement in the situation in Kurram.
34. The applicant’s agent also sent a separate submission to the delegate discussing the impact of the coronavirus in Pakistan. Few countries remain unaffected by the coronavirus, which has become a global pandemic<sup>33</sup>. However, the applicant has not put forward any information to suggest that he would be denied health treatment for any of the reasons set out in s.5J(1)(a). While the healthcare sector in Pakistan faces many challenges, likely to be exacerbated by the impact of the coronavirus, healthcare nonetheless remains free in Pakistan<sup>34</sup>. The applicant has not put forward any information from his doctor to suggest that he has an aggravated level of risk in regard to the coronavirus. I note that the information supplied by the applicant’s agent indicates that as at April 10, 2020, Pakistan had 4,489 cases of coronavirus but only 63 fatalities. While the situation is very fluid, the articles supplied by the applicant also indicate that where outbreaks in KP province have been detected, authorities have acted appropriately to seal the border with Iran, and by putting quarantine, social distancing and other measures in place<sup>35</sup>.
35. The applicant’s agent included material from the New York Times indicating that some extremist groups were allegedly using the coronavirus as a recruiting tool. However, no information has been put forward to suggest that this has resulted in an actual increase in sectarian violence or that there have been any significant attacks in Kurram in 2020 after a very quiet 2019.
36. I note the agent’s assertion that the coronavirus will have a significant economic and social impact in Pakistan. The applicant’s agent has asserted that Christine Lagarde identified Pakistan as a “fragile” state. However, there is no such reference in the source provided by the agent in which Lagarde appears (in a speech delivered in Islamabad in 2016) to give a relatively sanguine account of Pakistan’s future economic prospects<sup>36</sup>. The applicant has also quoted from the US Atlantic Council to assert that the coronavirus will have deeper impacts on emerging economies, although this remark has not been footnoted and does not appear to relate specifically to Pakistan.
37. Nonetheless, it is reasonable to assume that the coronavirus will have an economic impact in Pakistan, as it has in many countries. As one of the articles notes, economic “contagion is now spreading as fast as the disease itself”<sup>37</sup>. However, regardless of the overall impact of the pandemic on Pakistan, the applicant has not established that he would be constrained from obtaining employment or otherwise subsisting for any of the reasons set out in s.5J(1)(a).

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<sup>33</sup> BBC, “The Law of Generosity combatting coronavirus in Pakistan”, 1 April 2020

<sup>34</sup> DFAT, “DFAT Country Information Report Pakistan”, 20 February 2019, 20190220093409

<sup>35</sup> Bloomberg, “Pakistan Virus Cases Double Led by Pilgrims Returning From Iran”, 18 March 2020

<sup>36</sup> International Monetary Fund, “Pakistan and Emerging Markets in the World Economy”, Christine Lagarde, 24 October 2016

<sup>37</sup> Harvard Business Review, “Understanding the Economic Shock of Coronavirus”, March 27 2020

Although the agent has put forward information to suggest that the former FATA is one of the poorer areas of Pakistan, the applicant has not indicated that his family have ever been prevented from earning a living. I note that the applicant's family continues to live in Kurram. His father ran his own [workshop]. The family sell milk from the cows that they own. The applicant's wife also earns money as [an Occupation 2]. Although the applicant has latterly sent sums of money home to his family to provide support during his father's serious illness, the family have otherwise been able to adequately support themselves. I note that the applicant made only a very brief submission to the Authority, and without the apparent assistance of a migration agent. Notwithstanding, he did not indicate that the pandemic was currently causing issues for his family.

38. The applicant has been able to support himself in Australia and find employment and accommodation in a culture that must initially have been much less familiar to him than the one he will return to in Kurram. The applicant's agent has asserted that he will be competing for work as a "relative stranger". Even if that were true, the nexus to any of the reasons set out in s.5J(1)(a) is not evident nor has the agent expanded further on this assertion. In any case, the applicant's family are settled in the area. His father carried out a business which he later sold and wife continues to work. The applicant will have the advantage of an established personal network when he returns to Kurram. Kurram and KP province are also receiving some attention from the Government with plans to develop the tourist potential of the region and 100 billion RS earmarked for development projects<sup>38</sup>. Given his work history in Australia, his resilience and general adaptability, and his demonstrated capacity to support himself and live independently here, I am not satisfied that there is a real chance his capacity to subsist in Kurram Agency will be threatened, or that he would otherwise suffer any harm in this regard.
39. The applicant will be returning to Pakistan after seven years away from the country. It is possible that he may be identified as a former asylum seeker or returnee from a western country. The applicant has also raised concerns that he will be targeted by militant groups on return to Pakistan. He also claimed that the Taliban will punish him for fleeing their "shadow rule" and that they murder him to make him an example. At interview, the applicant indicated that he was also concerned that the ISI<sup>39</sup> would target him because his personal information had 'leaked' and they would consider that he had dishonoured the country.
40. I do not accept that any militant or extremist group had or has any personal ongoing interest in the applicant. The applicant's SHEV application confirms that he departed Pakistan legally via Islamabad. DFAT notes that 'genuine returnees' are issued temporary documents on arrival in Pakistan and specifically notes that "a genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered their destination country"<sup>40</sup>. DFAT notes that even those who return to Pakistan involuntarily, while usually questioned on arrival regarding the circumstances of their departure and whether they committed crimes in Pakistan or abroad, "are typically released within a couple of hours"<sup>41</sup>. The applicant's SHEV application confirmed that the applicant has never been charged with or convicted of any offence. The applicant confirmed at interview that he had never committed any crime and there is nothing before me to indicate that he would be of any interest to the Pakistani authorities for any other reason. Although the applicant may be questioned on return, there is no suggestion from DFAT, or in the other country information before me, to suggest that returnees suffer mistreatment during the

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<sup>38</sup> Dawn (Pakistan), "Tribal districts fetch Rs162bn in next budget", 16 June 2019; Dawn (Pakistan), "Govt plans to explore tourism potential in Kurram, Orakzai", 7 January 2019, 20190110141300

<sup>39</sup> Presumably a reference to Inter-Services Intelligence, Pakistan's civilian intelligence service (see DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409)

<sup>40</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

<sup>41</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

arrival process or that the situation for Turi/Bangash Shia Pashtuns or former asylum seekers returning from abroad is any different to the situation for returnees generally.

41. The delegate noted that the applicant had been provided a copy of a letter from the then Department of Immigration and Border Protection advising him that some of his personal details were unintentionally made available on the internet by the Department. This is presumably the leak to which the applicant briefly referred at interview.
42. I accept that the applicant was subject to unauthorised disclosure of his personal details by the (then) Department of Immigration and Border Protection. I also accept that it is possible this information may have been accessed and viewed by the Pakistani government, anti-government or extremist elements, or others, although there is no evidence of such. As noted above, the applicant has not committed an immigration offence, having departed Pakistan legally on a passport in his own name. There is nothing in the available country information to indicate that the applicant would be subject to undue attention from the Pakistani Government on account of seeking protection in Australia. The applicant has not supplied any evidence in support of his claim that he would be targeted by the ISI on return and the issue is not taken up in his email to the IAA.
43. I accept that it is possible that the information disclosed by the Department in the internet was viewed by the Sunni militant groups or other extremist elements. However, even if the data regarding his detention was somehow in the hands of such persons, there is nothing to indicate that they would have any interest in targeting the applicant on that account, any way of relating that data back to a specific individual on their return, or any way of knowing if and when the applicant had re-entered the country. The delegate indicates that the unauthorised disclosure of personal information on the internet did not include any details of protection claims and the applicant has not disputed this. In any case, the delegate notes that the data breach occurred sometime in early 2014, almost three years before the applicant made his SHEV application in December 2016. It has now been over six years since the applicant's information was inadvertently made available on the internet. The information before me does not suggest that any individuals returning to Pakistan have been targeted for reasons relating to the data breach. As set out above, I do not accept that the applicant ever came to the personal attention of extremist groups while in Pakistan and I do not consider that the unauthorised disclosure some years ago of his personal information in the manner described above does anything to change that, or that there is a real chance it would lead to any harm.
44. DFAT currently assesses that returnees are typically able to reintegrate "without repercussions from their migration attempt"<sup>42</sup>. I do not accept that the applicant ever came to the personal attention of any extremist group in Pakistan. The information before me does not support the view that returnees, including Turi/Bangash Shia Pashtun asylum seekers or former asylum seekers more generally, are targeted by militant or extremist elements on return to Pakistan due to their having spent time or sought asylum abroad. DFAT notes NGOs as reporting that just 0.5% of returnees do not reintegrate and seek to go abroad again to seek asylum<sup>43</sup>.
45. DFAT notes that the constitution guarantees freedom of movement throughout Pakistan and states that "internal migration is widespread and common"<sup>44</sup>. The applicant departed Pakistan

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<sup>42</sup> Ibid

<sup>43</sup> DFAT, "DFAT Country Information Report Pakistan", 20 February 2019, 20190220093409

<sup>44</sup> Ibid

from Lahore. There is no evident reason why the applicant would not fly back to Lahore, or another major airport such as Islamabad<sup>45</sup>, on return to Pakistan.

46. The applicant has claimed that the roads in his area were unsafe. It is true that for a period of some years up until 2014 the roads in and around Parachinar and Kurram Agency generally were unsafe. However, I do not accept that this is still the case. DFAT notes that Turis have reported significantly fewer road attacks in 2018<sup>46</sup>. Military operations have forced militants into the mountains and restored confidence for individuals to travel even on KP's once disputed Tall-Parachinar road, albeit in daylight hours.<sup>47</sup> I consider the risk of harm to the applicant is travelling to Kurram Agency does not rise beyond remote.
47. The applicant's agent has asserted that the applicant's claims and profile must be considered as a whole. However, I am not satisfied, even when considering the totality of the applicant's profile and personal circumstances, that there is a real chance the applicant would face any harm whether from the Taliban or other extremist elements, on account of his religion, ethnicity, tribal affiliation, the general security situation, imputed opposition to the Taliban or other extremist groups, or that he would be unable to subsist. I am also not satisfied that there is a real chance the applicant, with his profile and background would face any harm as a returnee from a western country or former asylum seeker, whether from the Pakistani authorities, extremist groups such as the Taliban, or on any other account.
48. The applicant does not have 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**

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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 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.

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<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

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. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
  - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
  - the real risk is one faced by the population of the country generally and is not faced by the person personally.
54. The applicant has put forward information relating to the coronavirus. The situation with the coronavirus is currently very fluid and the contention that the coronavirus would affect the applicant's health adversely is speculative. The applicant and his agent contend that the pandemic would place significant pressure on Pakistan's health system. However, the applicant has not put forward any evidence to suggest that even if he needed medical care and was unable to obtain treatment that there is any intention to inflict pain or suffering that could reasonably be regarded as cruel or inhuman in nature, severe pain or suffering or any intention to cause extreme humiliation. Nor am I satisfied in this context that there is a real risk of the death penalty, arbitrarily deprivation of life, as that term is properly understood in the context of s.36(2A) or torture. Further, to the extent that the coronavirus will have an impact on Pakistan's citizens, economically or in regard to their health outcomes, it is a risk faced by the population of the country generally and not by the applicant personally.
55. I have otherwise concluded that there is no real chance the applicant would face any harm for any of the reasons put forward. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm on return to Pakistan in connection with those claims.

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

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

#### **Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
  - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
  - (c) for the purpose of intimidating or coercing the person or a third person; or
  - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
  - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.  
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.  
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or



- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

#### *Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

#### *Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.