



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN

IAA reference: IAA21/10172

Date and time of decision: 28 February 2022 09:29:00

S McNeill, 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 citizen of Pakistan. He arrived in Australia [in] April 2013 and on 13 April 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. He claims to fear serious harm from the Taliban and other extremist groups as a Shia Muslim from Parachinar, Kurram District and as a returnee from a Western country.
3. On 24 November 2021 a delegate of the Minister for Immigration refused to grant the visa. The delegate did not accept the applicant faced a real chance of persecution or a real chance of significant harm for the reasons claimed.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 20 December 2021 the Immigration Assessment Authority (IAA) received an email from the applicant's representative which contained a statement from the applicant and five letters of support. The IAA received a second email on 22 December 2021 which included six country information articles and reports referenced in the applicant's statement.
6. The applicant's statement contains mostly argument in response to the delegate's decision and findings and which I have considered in reaching my decision. It also reiterates his claims for protection. Neither the applicant nor his representative have identified new information which is a requirement under the Practice Direction for Applicants, Representatives and Authorised Recipients of 1 May 2020, a copy of which was emailed to the applicant on 29 November 2021.
7. As part of the applicant's submission to the IAA he has extracted information from or referred to the following country information articles and reports:
 - 'Shias killed in Pakistan since 2001' an extract from the South Asian Terrorism Portal (SATP) as of 17 June 2018.
 - Jessica Aya Harn, 'More than 23, 000 Shia Muslims in Pakistan killed since 1963, according to new documentary', The Muslim Vibe, 28 October 2019
 - Usman Kabir, '95% of sectarian violence focused on Shias only, reveals report', The Express Tribune, 14 September 2018
 - 'Shi'a become latest target of Pakistan's extremist Islamic factions: murders, hate speech and numerous blasphemy allegation sow seeds of long-term religious tension', Minority Rights, 20 October 2020
 - '2020 Report on International Religious Freedom', US Department of State, 12 May 2021
 - '2020 Country Reports on Human Rights Practices', US Department of State, 30 March 2021

8. These reports are new information. The applicant has referred to these reports/articles to submit that the persecution of Shias continues in Pakistan. All these reports/articles pre-date the delegate's decision. The applicant has not stated why this information could not have been provided prior to the decision being made. He was counselled both in writing prior to his SHEV interview and orally at his interview that it was his responsibility to provide all supporting information and evidence to support his protection application prior to a decision being made. The applicant was represented at his SHEV interview, and his representative was advised he had seven days to provide submissions following his interview. While he was appointed just prior to the applicant's SHEV interview, the delegate told him he could ask for an extension of time if needed. The same representative is assisting him before the IAA and no explanation has been provided as to why this information could not have been provided in the time given. I am not satisfied this information could not have been provided to the delegate prior to the decision being made and s.473DD(b)(i) is not met.
9. While the articles/reports name specific individuals, having regard to their context and nature, it is best described as general country information and not personal information in the relevant sense. The last attachment from the US State Department appears to be the wrong attachment as the extract quoted from it is not contained within it. Given the nature and context of the material, I am not satisfied it is 'credible personal information' as intended by s.473DD(b)(ii) and I am not satisfied these reports and articles meet the requirements of that provision. Neither the applicant or his representative have identified any exceptional circumstances as to why this information should now be considered and none is apparent to me. I have also obtained country information of a more recent publication date as discussed below. Taking all this into account, I am not satisfied there are exceptional circumstances to justify consideration of this information.
10. The five letters of support as are follows:
 - Undated letter from [Doctor A], [a specialist] at [Hospital 1] (Attachment 1) addressed to the Department of Immigration
 - Letter from [Organisation 1] dated 13 December 2021 (Attachment 2)
 - Letter from [Organisation 2] dated 12 December 2021 (Attachment 3)
 - Letter from [Organisation 3] dated 6 December 2021 (Attachment 4)
 - Letter from [Organisation 4] dated 8 December 2021 (Attachment 5)
11. These letters of support are new information. Other than Attachment 1 which has no date, they all post-date the delegate's decision. I note however, the information contained within them refers generally to events that occurred prior to the decision. Attachment 1 is a general request that the applicant be granted a permanent visa in Australia, that the situation in Parachinar is very bad because of the Taliban and terrorism.
12. Attachment 2 is the letter from [Organisation 1]. It is not clear what this organisation represents but it states the applicant was a volunteer and hard worker for them between 2009 and 2012. It talks about the terrorist groups operating in the area, the main Thall-Parachinar Road being closed between May 2007 and July 2011, hospitals being destroyed, attacks and suicide bombs and more recently there being a sectarian clash in Pekar village where 14 people were killed on 22 November 2021. At the end, its writer requests shelter be given to the applicant. Again, all these events precede the delegate's decision.
13. Attachment 3 is the letter from [Organisation 2] and it is similar in nature to Attachments 1 and 2. It provides the applicant's details and then refers to the Upper Kurram being situated

in the remotest corner near the Afghan border, the conflict with the Taliban who attacked in 2007, the main road being closed for five years and there being a shortage of commodities. It refers to the applicant being injured in a suicide attack, that it was unsafe for him to remain and to give him shelter. While the letter is new, the information was already known and the events all pre-date the delegate's decision.

14. Attachment 4 is a letter from [Organisation 3]. Again, it refers to the applicant being a bona-fide resident of [Town 1], Parachinar. It states the applicant is an active member who participates voluntarily in community activities, functions, festivals, and other events since the foundation of their organisation. Their organisation is a registered charitable and not for profit community organisation of Shia Muslim Australian residents who come from Parachinar. The applicant's association with this organisation would appear to pre-date the delegate's decision.
15. Attachment 5 is from [Organisation 4] which was formed in 2011 and the applicant has been a member since 2014 and his work towards the community has been 'phenomenal'. He is part of the event program and engages in weekly activities such as Thursday nights when he helps youth with activities; they are satisfied with his work and character. Again, given the applicant has been part of this organisation since 2014, his association with them pre-dates the delegate's decision.
16. The applicant was told prior to his SHEV interview in writing and orally at his interview, that it was his responsibility to provide all supporting information and evidence to support his claims for protection prior to a decision being made or he might not get the opportunity to do so. I am not satisfied these letters of support (Attachments 1 to 5) could not have provided to the delegate prior to his decision being made and s.473DD(b)(i) is not met.
17. These support letters relate personally to the applicant, they describe some of the background events which occurred to him in Pakistan but also his life in Australia and presents as personal information capable of being believed. The information contained within Attachments 1 to 3 concerns the applicant and historic events in Parachinar, the attacks by the Taliban, the blockade of the Thall-Parachinar highway, the applicant being himself involved in a suicide bomb attack and being injured and this information was already in his claims for protection and review material. The delegate accepted these events as claimed and so have I. Only the sectarian attack where 14 people were killed on 22 November 2021 in Pekar village appears to have been unknown; however, this information lacks detail and no corroborative evidence from external reputable sources has been provided to substantiate its occurrence. Furthermore, Attachment 4 and 5 though relating to the applicant are about his community involvement in Australia and other than confirm his origins do not otherwise corroborate his claims for protection. Overall, while I accept these letters contain credible personal information, I am not satisfied that had they been known they may have affected the consideration of the applicant's claims. Section 473DD(b)(ii) is not met in relation to Attachments 1 to 5. Furthermore, the applicant has not identified any exceptional circumstances why these letters should now be considered, and none are apparent to me. Looking at everything in its totality, I am not satisfied there are exceptional circumstances to justify consideration of this information.
18. I have obtained two new country information reports. The first is the most recent Department of Foreign Affairs and Trade (DFAT) country report for Pakistan published on 25 January 2022. ¹ This report updates the 2019 DFAT country report for Pakistan published on

¹ 'DFAT Country Report: Pakistan', Department of Foreign Affairs and Trade (DFAT), 25 January 2022, 20220125094359.

20 February 2019 and which is now three years old.² I have also obtained the Pakistan Security Report 2021 from the Pakistan Institute for Peace Studies (PIPS) published in January 2022.³ This report provides the most recent information on the security situation in Pakistan include the applicant home district of Kurram and covers 2021. Other reports before the delegate were older dating back to January 2021. I am satisfied there are exceptional circumstances to justify consideration of these two reports.

19. On 10 February 2022 the IAA wrote to the applicant by way of email and provided him with a copy of these two new reports, DFAT's 2022 country information report for Pakistan and PIPS Pakistan Security Report 2021. The IAA invited him to provide new information in writing pursuant to s.473DC(3)(a). The applicant was given 14 calendar days to do so; however, the IAA has not received anything from the applicant to date.

Applicant's claims for protection

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

- He was born in [year] in Parachinar, Kurram Agency, Pakistan.
- He has [specified family members] and his parents. His father used to be a labourer but now runs a [shop].
- He is a Shia Muslim, and his family are Sayed. Sayed are a minority among the Shia Muslims.
- In 2007 more attacks and suicide bombings were happening in Parachinar. The Taliban and other extremist groups who were targeting Shia Muslims were behind these attacks.
- In 2008, when he was [age] years old, he was working as a labourer in [Location 1], moving goods between shops. It was an election day and a bomb exploded in a car on the main road near the bazaar. He saw a lot of people injured or killed. He could see that his skin on arms and elsewhere on his body was on fire and he could feel it burning.
- He woke up later in the [named] hospital. After two days he was transferred to Peshawar for more treatment. He had treatment for his burns; he had also hurt his back after being thrown by the blast. He remained in hospital for one month.
- He returned to school although school was often closed for long periods because of the dangers, and he felt constant fear. There were many attacks and suicide bombings. He heard the Taliban or other extremist groups were stopping buses and cars on the road, checking ID cards, and taking Shia Muslims out of their vehicles and shooting them.
- In 2013 because he was living in constant fear of these attacks, it was hard to go to school or work, he decided he needed to leave Pakistan.
- He cannot return to Pakistan because he will be targeted as a Shia Muslim and as a returnee from a Western country. He has heard from other members of his community, that Pakistanis who return from Western countries are labelled as infidels and targeted.

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

³ Pakistan Security Report 2021', Pakistan Institute for Peace Studies (PIPS), January - June 2022, 20220201113110

Refugee assessment

21. 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

22. 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.
23. The applicant has consistently claimed to be a national of Pakistan since his arrival in Australia and through the protection application process. He has also provided documentary evidence of this. I am satisfied there is no issue as to the applicant’s nationality. I accept the applicant is a citizen of Pakistan and that Pakistan is the receiving country for the purpose of this review.
24. The applicant participated in an arrival interview on 19 June 2013. The applicant stated his date of birth was [DOB 1] and it is recorded so on the transcript for this interview. In his SHEV application form and statutory declaration of 4 April 2017 he claimed to have been born on [DOB 1]. The delegate noted copies of his Pakistani identity documents including an uncertified birth certificate in English recorded his date of birth as [DOB 2]. A copy of ‘B-Form’ in Urdu included the same National Identity Card (numbers) for the applicant and his mother as per his birth certificate.
25. At his SHEV interview when questioned about the discrepancy of the different dates, the applicant stated there was a ‘maximum age’ ceiling for enrolment in school in his home region and he needed to be younger than his actual age to get into school. While noting the applicant has consistently claimed to have been born in [earlier year], the delegate preferred to rely on his birth certificate and ‘B-form’ to find the applicant was born in [later year]. I do not share the delegate’s concerns and consider the applicant’s explanation as plausible, there being nothing to gain in terms of his claims for protection in providing a different date of birth. I find the applicant was born on [DOB 1] as he has consistently claimed.

26. The applicant has consistently claimed to have been born in [Town 1 in] Parachinar city in Kurram District, to be a Shia Muslim and of Sayed ethnicity. At his SHEV interview he confirmed he was a Sadat or Sayed. Asked whether he had anything to do with the Turi (ethnic group), the applicant stated 'no'. In Parachinar there were a lot of Sayed who are Shia Muslims with lineage to the family of Prophet Mohammad. Under Sadat there were five or six sections, of which one is 'Kushi' which includes Turi and Mangal tribes but the Sayed had nothing to do with them.
27. According to country information Parachinar is in Upper Kurram District, one of the three administrative units of Kurram which has a population of almost 620,000.⁴ The other two are Lower Kurram and Central Kurram. Kurram is one of seven agencies (now districts) that make up the former Federally Administered Tribal Areas (FATA) but which since 2018 is now part of Khyber Pakhtunkhwa Province, one of Pakistan's four Provinces.⁵
28. Pakistan has the world's sixth largest population, with over 207 million citizens. Muslims comprise of 96.47 per cent of the population, Sunnis the majority with 80 to 90 per cent and Shias between 10 to 20 per cent. Pakistan has the world's second largest Shia population.⁶ Kurram District is the only district in the FATA with a significant Shia population. Shia are said to comprise around 40 per cent of the population of the Kurram District. Upper Kurram, from where the applicant originates, is estimated to be about 80 per cent Shia; Central and Lower Kurram have a higher percentage of Sunni residents.⁷
29. Most Shias in the Kurram District are from the Turi tribe, particularly in Parachinar (Kurram's largest city) and the Turi tribe is unique in that it is exclusively Shia Pashtun tribe of around 500, 000. There are small communities in the major cities in other parts of Pakistan including Islamabad. They are generally not distinguishable from other Pashtuns by appearance, but are identifiable by tribal names, accents, and residents in known Turi areas.⁸
30. The applicant whilst a Shia from Parachinar is not part of its Turi Pashtun majority but a Sayed (also spelt Sayyid or Syed) or Sadat. Information in the review material indicates in 2011 there were approximately six million Sayed in Pakistan.⁹ Sayed can be either Sunni or Shias.¹⁰ A June 2018 report stated many sections of Sayed lived among the Turis in Kurram District.¹¹ A US Embassy in Islamabad July 2009 cable published by Wikileaks indicates Sayed stand separately from the tribal system in Kurram.¹² The ethnic Sadat or Sayed is a descendent of the Prophet Mohammad, his uncles and daughter Fatimah.¹³
31. DFAT does not provide specific analysis on the risk profile of the Sayed Shia population of Kurram. I have therefore had regard to country information before me about the treatment and risk profile of the Turi Shias of Upper Kurram. Country information does not indicate any

⁴ European Asylum Support Office (EASO), 'Pakistan Security Situation', 30 October 2019, 20191031160110.

⁵ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁶ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; 'DFAT Country Report: Pakistan', DFAT, 25 January 2022, 20220125094359.

⁷ Ibid.

⁸ Ibid.

⁹ Joshua Project 2011, Federally Administered Tribal Areas: Kohat, 25 November, CISLIB21989

¹⁰ 'DFAT Thematic Report - Shias in Pakistan January 2016', Department of Foreign Affairs and Trade, 15 January 2016, CIS38A801265; Kandahar Provincial Handbook: A Guide to the People and the Province', Dowling, N, Praster, T and Stinson, D, IDS International, December 2008, CIS28175.

¹¹ 'FATA Tribes: Finally out of Colonial Clutches? Past, Present and Future', Center for Research and Security Studies, June 2018, CIS7B839418820.

¹² Ibid.

¹³ 'Pakistan - 20191118164151 - Syeds - Turis - Kurram Agency', Country of Origin Information Service Section (COISS), 27 November 2019, 20191127144046

differential risk between the Shia tribes of Kurram. I am satisfied the Turi Shia share a similar profile to that of the Sadat or Sayed Shia as in the applicant's case, they share a common religion and provenance.

32. Based on the consistent oral and documentary evidence, I accept the applicant was born in [year] in [Town 1], Parachinar, Kurram District, Khyber Pakhtunkhwa Province of Pakistan and that he is a Shia Muslim and a Sayed/Sadat. His parents and [specified family members] continue to reside in Parachinar. His father initially worked as a labourer and their current source of income is a small shop and the applicant also assists with money. In Australia he has worked as [an occupation 1] for [a named employer] [with specified duties] but is now [working for another employer].
33. The applicant essentially claims to fear harm from the Taliban as a Shia Muslim originating from Parachinar. His core claim is that in 2007 the Taliban began targeting Shia Muslims in Parachinar and in 2008, at the age of [age] he was injured in a suicide bombing attack while working as a labourer in [Location 1]. He was hospitalised for a month in Peshawar because of burns to his body. In 2013, he decided to leave Pakistan because of these ongoing attacks, and it was hard to go to school or work. Based on the country information before me and the applicant's consistent claims, I accept he was injured in a suicide bomb attack in 2008 and suffered burns. I accept that he was afraid to go to school and work during this period.
34. According to DFAT the Taliban and Al Qaeda gained significant ground in the former FATA, killing many Shia – especially in Parachinar, rendering Turis and other Shia tribes of the former FATA amongst the most vulnerable in Pakistan. Between 2008 and 2014, Turis faced significant violence. Groups such as the Tehreek-e-Taliban Pakistan (TTP) targeted Turis for their Shia faith. Militants frequently stopped and killed Turis travelling on roads. A significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Tall-Parachinar road, which links Kurram Agency and Peshawar.¹⁴
35. The importance of Upper Kurram is its location so some of its areas protrudes into Afghanistan's Nangarhar and Khost provinces, thus giving it a strategic standing that has been exploited by guerrilla fighters for decades. The Thall-Parachinar road running throughout the length of the Kurram river valley provides the shortest transit route from any point in Pakistan to Afghanistan's capital, Kabul.¹⁵
36. Even though Shia tribes there have periodically clashed with Sunni tribes from Sunni-dominated central and lower Kurram and vice versa, conflicts in the past were usually less intensive and short-lived. The people of Kurram Agency have previously experienced lethal sectarian outbursts in 1986 and 1996, but the deadliest conflicts started in April 2007 and continued till February 2011. Between the year 2007-2009, 1,500 people had died while 5,000 were injured in the infighting between Pashtun tribes belonging to the Sunni and Shia sects. Almost 43 villages were reduced to cinders during this entire phase of constant strife.¹⁶
37. There are a number of armed Sunni extremist groups operating in Pakistan. Including the Pakistani Taliban (TTP), Lashkar-e-Jhangvi (LeJ), Sipah-e-Sahaba (SeS) and the Islamic State (IS). Despite a strong security presence over the last decade, Parachinar is not free of violence.¹⁷ However, country information indicates Pakistan's security situation, including in

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

¹⁵ 'The battle for Kurram', News on Sunday, The, 24 August 2014, CX1B9ECAB10680

¹⁶ Ibid.

¹⁷ 'Pakistan: Security Situation', European Asylum Support Office (EASO), 30 October 2019, 20191031160110.

Kurram District, has improved dramatically since the applicant departed Pakistan almost nine years ago.

38. In 2014 the Pakistani military launched security operations to combat terrorism and sectarian violence. In June 2014 Operation *Zarb-e-Azb* targeted terrorist groups including the TTP and extended into the former FATA and Khyber Pakhtunkhwa. In December 2014, after the deadly attack on the Army school in Peshawar in which 132 children died, the Pakistani authorities introduced the National Action Plan (NAP). The combination of military operations and the NAP formed a civil-military effort to combat terrorism, separatist, and criminal groups across Pakistan.¹⁸
39. Observers credit Operation *Zarb-e-Azb* and the NAP with a significant reduction in the number of violent and terrorism related attacks in Pakistan. Operation *Zarb-e-Azb* and associated antiterrorism activities led to a decrease in the number and severity of attacks on Turis in 2015 and 2016. The Pakistani military launched further military operations in 2017, *Radd-ul-Fassad* and *Khyber IV*. The military's focus was not only the Kurram District but other areas of the former FATA and other provinces including Punjab. Operation *Khyber IV* targeted various groups including ISIL connections across the border in Afghanistan's Nangarhar province.¹⁹
40. However, three large scale attacks carried out by militants occurred in the first six months of 2017 in Parachinar targeting Turis because of their Shia faith. These three bombings killed more than 120 people. On 21 January 2017, militants detonated a remote-controlled improvised explosive device in a marketplace in Parachinar. On 31 March 2017 a suicide bomber attacked an Imambargah in Parachinar; and on 24 June 2017 two devices detonated in a market in Parachinar. DFAT assesses that these attacks targeted Turis because of their Shia affiliation.²⁰
41. Local observers, including officials, in Khyber Pakhtunkhwa reported a trend in increased security, a reduction in reputed killings and reduced fear within the community in 2018. The frequency of sectarian attacks has reduced annually since the launch of Operation *Zarb-e-Azb* and the NAP. DFAT stated in the first quarter of 2018, the Turi community reported two attacks, including one involving an IED that targeted women and children. This compares to community estimates that 200 Turis were killed in and 1000 injured in 2017. Despite the spike in attacks in Kurram in 2017, DFAT noted the nine-year downward trend in terrorist attacks across Pakistan with a 16 per cent decline in 2017, followed by a 29 per cent decline in 2018.²¹
42. DFAT reported in 2019 military operations had improved the confidence of Turis within the community for individuals (although not large groups) to travel on the Thall-Parachinar road. By February 2018, the Turi community estimated 40 per cent of military fencing (with the Afghan border) in Kurram was complete, decreasing border permeability. Continuing security measures and tighter Afghanistan-Pakistan border controls also restrict movement. The military has also implemented a 20 to 30 square kilometre area red zone in Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located.

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

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

Security forces have issued cards to access the red zones, which can be obtained by residents on presentation of identity document.²²

43. In its 2019 Annual Security Assessment Report, the Pakistan Institute for Conflict and Security Studies reported no militant attacks in Kurram District for that year. This report also discussed the fencing of the Pak-Afghan border initiated by the Pakistan army in April 2017 which includes gadgets and surveillance equipment on illegal movement across the border. The project does not only include fencing the Pak-Afghan border, but all the necessary arrangements for its management that includes building forts, check posts, installations of drones and CCTV cameras. Around 70 per cent of the project had been completed including 129 km of a planned 148 km of fencing in Kurram. Sixty two of 109 forts had also been completed in Kurram.²³ According to a media report from January 2021, 83 per cent of the fence along the border had been completed.²⁴
44. The FATA Research Centre (FRC) in its Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020 published in January 2021 observed the security situation remained tense during 2020, partly due to an increase in militancy related incidents and largely as a result of escalation in land disputes in the district. Three militancy related incidents were reported in Kurram district in which one person was killed and 18 injured. Separate to this, it referred to violent clashes erupting between Para Chamkani tribe and Balishkhel tribes in Kurram which continued for several days and resulted in 14 people being killed and 40 injured. There were reports of extremist groups having distributed pamphlets amongst the Sunni community in Kurram to encourage boycotting of social and business relations with the Shia community, and extremists were taking advantage of land disputes to promote sectarianism in the district.²⁵
45. Other media articles in the review material also highlight this decades old unresolved land dispute and clashes. It is also noted security forces moved in after people from both communities were killed. Balishkhel tribe members staged a sit-in in the Samir area of Lower Kurram and the administration and police assured them the problem would be resolved, and five members from both groups would be part of the negotiation process to determine land boundaries.²⁶ This indicates an attempt by the authorities to resolve the problem.
46. The three militant attacks reported in 2020 include a blast at an Imambargah in Lower Kurram's Shoorki area near the Pak-Afghan border in May 2020 where an injured man, reportedly who worked as caretaker had been shifted to the local hospital; the building of the mosque collapsed from the impact of the explosion.²⁷ On 23 June 2020 two people including a cop sustained injuries in a blast at Mazdoor Chowk at Parachinar. District Police Officer Mohammad Quresh said that explosives had been hidden in garbage. Soon after the blast, the security forces and policemen arrived at the spot and cordoned off the area for collecting

²² Ibid.

²³ '2019 Annual Security Assessment Report', Pakistan Institute for Conflict and Security Studies, 09 January 2020, 20200122140652

²⁴ 'Pakistan military: Fence bordering Afghanistan nearly done', Munir Ahmed, Associated Press (AP), 12 January 2021, 20210113113203.

²⁵ 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', Irfan U Din and Mansur Khan Mahsud, Fata Research Centre (FRC), 07 January 2021, 20210113125205.

²⁶ 'Tribes land disputes claim 5 lives in Kurram', Mansoor Ali, Nation, The (Pakistan), 01 July 2020, 20210322144310; 'Land Ownership Disputes Weigh On Pakistan's Pashtun Heartland', Pamir Sahill and Abubakar Siddique, Radio Free Europe/Radio Liberty. Gandhara, 18 October 2020, 20201020105259; 'Land dispute: Balishkhel tribesmen continue sit-in during Eid', Tribal News Network (Pakistan), 05 August 2020, 20200812164428.

²⁷ 'At least 1 injured in explosion at imambargah in Lower Kurram', Dawn (Pakistan), 05 May 2020, 20200506121914; 'Pakistan: Security situation', European Asylum Support Office (EASO), October 2020, 20201102100212.

pieces of evidence.²⁸ On 23 July 2020, 17 people were injured in an explosion at Parachinar's Turi Bazaar when a bomb was placed in a vegetable cart. Police and security personnel cordoned off the area. A team from the Bomb Disposal Squad also reached the scene to comb through the area and check for other IEDs. Although no one took responsibility for the attack, sectarianism was suspected.²⁹

47. This 23 July 2020 incident is confirmed by EASO's report of October 2020, which also noted a downward trend in violence in Kurram District over 2019 and 2020. EASO also comments on internally displaced persons (IDPs). While their location within the Kurram District or their Muslim faith (whether Sunni or Shia) is not apparent, 100 per cent of IDPs or 34 024 people had returned home. EASO observed years of military operations in the former FATA broke the TTP's hold over most of the tribal belt.³⁰ Other incidents occurred in 2020 in Kurram; however, these were not sectarian related but rather motivated by disputes over land or personal enmity.³¹
48. Sixteen labourers were reportedly abducted in Kurram District on 26 June 2021 by unknown people; 10 of them were released the following day while the dead body of another was recovered. The fate of remaining five labourers were unknown at the time of reporting. At least 10 people were killed, and eight others injured when a landmine explosion struck a van in the Gohar area of Kurram District on 29 June 2021. The motivation and identity of the perpetrators is not known. On 13 July 2021, five people including three militants, officer and a soldier of Pakistani army were killed during an 'area sanitisation operation' in Zewa area of Kurram District.³²
49. PIPS reported a group of militants kidnapped five workers of a cellular company in Zaimokhet area of Kurram and the bullet ridden body of one of the workers was later found in the same area. Islamic State Khorasan or IS-K was reportedly involved in the kidnapping.³³ One cross border attack occurred in October 2021, when terrorists from Afghanistan attempted to cross the fence along the Pak-Afghan border in Kurram. Troops engaged the attackers and thwarted their attempt; however, two soldiers died.³⁴ Also in 2021 PIPS reported on an inter-tribal clash in Kurram in which 11 lives were claimed. Armed clashes continued for about three days between the Piwar and Giddo tribesmen near the Afghan border. Clashes erupted over the ownership of forest in the upper division of Kurram.³⁵ While there have been some instances of violence in in Kurram there were no reported attacks against Shia Muslims in Parachinar in 2021. I am not satisfied this is because of any selective journalism or control of the media by the Pakistani authorities.
50. According to DFAT 2022 report, following an improvement over recent years, the security situation in Pakistan has deteriorated since mid-2021. In-country contacts told DFAT that

²⁸ 'Cop among two injured in Parachinar blast', News International -Pakistan, 23 June 2020, 20200812152337

²⁹ 'At least 17 injured in IED blast in Parachinar's Turi Bazar', Javid Hussain, Dawn (Pakistan), 23 July 2020, 20200724103731; '17 injured in bomb blast at open-air market in northwest Pakistan', Hindustan Times, 23 July 2020, 20200724153817.

³⁰ 'Pakistan: Security situation', European Asylum Support Office (EASO), October 2020, 20201102100212

³¹ '5 injured in two firing incidents over land disputes', Tribal News Network (Pakistan), 19 April 2020, 20200420120040; 'Kurram elders fear violence over land disputes', Dawn (Pakistan), 27 May 2020, 20200727105053; 'Cop among two injured in Parachinar blast', News International -Pakistan, 23 June 2020, 20200812152337; 'Two brothers among three killed in Kurram', Dawn (Pakistan), 26 July 2020, 20200727182014; 'Kurram road blocked against lynching of man', Dawn (Pakistan), 27 July 2020, 20200727182220; 'Four killed as vehicle attacked in Kurram', Dawn (Pakistan), 27 October 2020, 20201028094425.

³² CLD2021/29972891- Timeline (Terrorist Activities) July 2020- Sep 2021- SATP.

³³ Pakistan Security Report 2021', PIPS, January - June 2022, 20220201113110

³⁴ Ibid.

³⁵ Ibid.

militants in Pakistan were regrouping (especially under the umbrella of the TTP) and expressed concern that the deteriorating security situation in Afghanistan throughout 2021 would increase violence in Pakistan.³⁶

51. According to PIPS, after a six-year downward trend, terrorism activities increased in 2021. There were 146 terrorist attacks in 2020 in all of Pakistan. PIPS observed an increase of 42 per cent from the year before in 2021 with 207 terrorist attacks including five suicide blasts. The TTP and affiliated local Taliban groups carried out most of these attacks, and most attacks happened in Khyber Pakhtunkhwa (especially North Waziristan) and Balochistan. While the large-scale security operations carried out in 2014-17 have mostly wound down, Pakistan Armed Forces continue to conduct operations against terrorist groups who attack its interests and in response to specific threats and incidents. There has been an uptick in these operations commensurate with the recent increase in terrorist attacks.³⁷
52. DFAT assesses Shias in Kurram still face a moderate risk of sectarian violence from militant groups because of their Shia faith. Moderate risk meaning DFAT is aware of sufficient incidents to suggest a pattern of behaviour.³⁸ The basis of this assessment is however not clear and while I note an increase in violence in the second half of 2021 spurred on by recent events in Afghanistan, the situation in Kurram continues to reflect the continued downward trend in violence and attacks by militants in general. There have only been two incidents in Parachinar city since 2017, one in June 2020 in Mazdoor Chook, and the explosion at the Turi Bazaar in July 2020, and the information before me is that the Pakistani authorities continue to take such incidents and overall security seriously. I am not satisfied DFAT's 'moderate risk of violence' assessment accurately reflects the current reasonably foreseeable situation in Kurram.
53. Most Pakistani Shia are not physically or linguistically distinguishable from Pakistani Sunnis. NAFRA collects sectarian information during the application process for identity documents, but CNICs do not identify a cardholder's religion, and passports do not distinguish between Sunni and Shia Muslims. Shia are generally able to establish places of worship and practise their religion without overt state interference. They are well represented in parliament and regularly contest elections for mainstream political parties.³⁹
54. DFAT reported in 2019 that Shias are represented in the professional community including medical and legal professions. no evidence of systematic discrimination against Shia in gaining employment in the public service, police, military, or the private sector. However, some Shias perceive discrimination against Shia gaining roles at higher levels of some organisations. DFAT assessed Shias do not generally face significant levels of discrimination when seeking employment based on their religious affiliation. Sunni and Shia attend the same public and private education institutions. Shias are well represented in parliament and regularly contest elections for mainstream political parties. DFAT assesses there are no barriers to preventing Shias from actively participating in democratic processes in Pakistan.⁴⁰ The applicant has not claimed he or his family have suffered any such discrimination in relation to employment or education in the past.
55. In 2022 DFAT observed Shia face rising religious intolerance and official discrimination in the form of blasphemy accusations. Over 70 per cent of blasphemy cases are against Shia. In

³⁶ 'DFAT Country Report: Pakistan', DFAT, 25 January 2022, 20220125094359.

³⁷ Ibid; Pakistan Security Report 2021', PIPS, January - June 2022, 20220201113110.

³⁸ 'DFAT Country Report: Pakistan', DFAT, 25 January 2022, 20220125094359.

³⁹ Ibid.

⁴⁰ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

2020 over 40 Shia were charged with blasphemy following Moharram including clerics accused of insulting the Companions of the Prophet during ritual processions. Thousands of Sunni protesters took to the streets in Karachi and Islamabad chanting anti-Shia slogans. There were targeted killings of Shia in multiple cities (although DFAT gives no figure as to the number or circumstances).⁴¹ As observed by the delegate these blasphemy cases were linked to the speeches that were part of religious processions and reported in large urban settings where the Shia are a minority.

56. The applicant has not claimed to have been outspoken about Islam in any public forum and I am not satisfied he has not done so because of any fear of harm. While I accept there is a rise in blasphemy cases against Shias in Pakistan and DFAT confirms blasphemy laws disproportionately affect minorities in Pakistan, the information does not indicate Turis or other groups including Sayeds or Sadats are specifically targeted above other Shia Muslims or that this is occurring in Kurram District from where the applicant originates. Furthermore, the numbers of those arrested must be considered in conjunction with the overall Shia population in Pakistan, approximately 10 to 20 million people.
57. DFAT observes sectarian terrorist groups such as the TP have targeted Shia individuals, places of worship, shrines, and religious schools as well as Shia travelling to Iran or Iraq for religious pilgrimage. The frequency of these attacks has steadily declined since 2013. This is the result of the overall improved security situation in Pakistan. Terrorist attacks targeting Shia killed five in 2020, 32 in 2019 and 471 in 2013. DFAT assesses Shia in Pakistan face a moderate risk of sectarian violence, although the situation has improved considerably in recent years.⁴² The information before me does not indicate Sayeds, who can be both Sunni or Shia, are specifically targeted by any militant or extremist groups because of their 'Sayed' identity or that it creates an additional risk factor in Kurram district different from that of Turi or other ethnic groups.
58. The applicant has lived all his life in Parachinar, Upper Kurram, Kurram District where his family, his parents, [and specified family members] continue to reside and where his father continues to operate a small shop. The applicant has not indicated his family have been recently harmed or otherwise targeted. I am satisfied the applicant would very likely return to his place of origin in Upper Kurram if returned to Pakistan. The applicant has work experience in Australia as [an occupation 1], and this will assist him to find suitable employment on his return.
59. Given security has been established in the applicant's home area and roads including the Thall- Parachinar road remain open, I am satisfied he will be able to return there, and he will also be able to travel freely and without fear of harm to other parts of Khyber Pakhtunkhwa including through Sunni areas, and throughout Pakistan in general. I am also satisfied he will be able to worship freely and without fear at his local mosque and participate in Shia religious festivals.
60. I take into consideration the active involvement of the Pakistani authorities, its various military operations over an extended period, and its engagement in developing long term security in the former FATA, and that there is no information before me to suggest this will not continue for the reasonably foreseeable future. I also consider there is an overall downward trend in violence and attacks by militant groups in general despite the increase in 2021. There have been only a few sectarian attacks in Kurram in the past four years, only two

⁴¹ 'DFAT Country Report: Pakistan', DFAT, 25 January 2022, 20220125094359.

⁴² Ibid.

attacks in Parachinar city occurring over a year and a half ago in 2020 and the first since 2017. The Taliban are no longer operating in Upper Kurram and the applicant's family remains in the area.

61. I am satisfied the risk to the applicant of suffering discrimination or any other harm including being killed by the Taliban or other Sunni militant or extremist groups, or more broadly general violence, because he is a Shia Muslim and ethnic Sayed or Sadat from Parachinar, Upper Kurram, Kurram District, is remote and does not amount to a real chance. I am not satisfied the applicant faces a real chance of any harm on these bases on his return to Pakistan now or in the reasonably foreseeable future.
62. The applicant claimed to fear harm as a returnee from a Western country. He has heard that Pakistanis who return from Western countries are labelled as infidels and targeted. The applicant repeated this claim at his SHEV interview when questioned by the delegate. He feared being targeted by the Taliban who had a lot of spies walking around the city and they were aware of who had gone to Australia or America. They asked questions in a subtle way and bribed people for information. Many people who returned from Dubai were targeted on their way home. They were told to get off the bus and killed before they reached home. This happened many times in Parachinar.
63. According to DFAT, returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistani law. Those who return voluntarily and with valid travel documentation are typically processed like any other citizen returning to Pakistan. The government issues 'genuine' returnees with temporary documents when they arrive. A genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered destination countries. Those who are returned involuntarily or who travel on emergency travel documents are likely to attract attention from the authorities upon arrival. Immigration officials will interview failed returnees and release them if their exit was deemed to be legal but may detain those deemed to have departed illegally.⁴³
64. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return, irrespective of whether they departed legally or not. DFAT understands that people returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. Those found to have contravened Pakistani immigration laws are typically arrested and detained.⁴⁴
65. In 2012 more than 400, 000 FATA (former) residents were living and working in foreign countries. Reports also indicated remittances being sent from overseas into Kurram District by migrant workers overseas.⁴⁵ Returnees are typically able to reintegrate into the Pakistani community without repercussions stemming from their migration attempt, although involuntary returnees who took on debt to fund their migration tend to face a higher risk of financial hardship and familial shame.⁴⁶ DFAT observed in 2017 that many Pakistanis have relatives in western countries and those living abroad return to Pakistan frequently to visit relatives.⁴⁷ Over six million Pakistanis live outside of Pakistan, with significant numbers living

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Remittances soothe the scourge of militancy', Inter Press Service (IPS), 16 December 2012, CX301192

⁴⁶ 'DFAT Country Report: Pakistan', DFAT, 25 January 2022, 20220125094359.

⁴⁷ 'DFAT Country Report: Pakistan', DFAT, 1 September 2017, CISED50AD5515.

in the United States or United Kingdom. Wealthier Pakistani families commonly send their children abroad to study especially to the United States, United Kingdom, Australia, and Sweden. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination because of their attempt to migrate or because of having lived in a western country.⁴⁸

66. The applicant has consistently claimed to have departed Pakistan legally on his own passport through Islamabad airport. The applicant has not claimed to be in debt or to fear financial hardship because of his travel to Australia. He has not claimed to have committed a crime in Pakistan or any offence here in Australia. If he is returned involuntarily, I accept he may be briefly questioned to determine if he departed Pakistan illegally or has committed an offence and then he will be released. I am not satisfied he will be subject to any other interest. The information does not indicate the authorities mistreat or otherwise harm people being questioned in this situation.
67. As observed by the delegate, the applicant has not provided any country information as evidence that returnees are specifically targeted by extremist groups including the Taliban for having lived in a western country and I note the delegate was unable to locate any to support this either.
68. The information before me does not support the view that returnees to Pakistan, including Sayeds who are Shia Muslim originating from Parachinar who have sought asylum in the west, or asylum seekers more generally, are targeted by militant groups or extremist elements including the Taliban for any reason due to their having spent time in a western country or abroad. I am not satisfied the applicant as a Shia and a Sayed from Parachinar faces a real chance of any harm on account of his having lived in for nine and claimed asylum in Australia a western country or as a returnee from the West or returned (failed) asylum seeker from the West.
69. I am not satisfied the applicant has a well-founded fear of persecution in Pakistan.

Refugee: conclusion

70. 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

71. 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

72. Under s.36(2A), a person will suffer 'significant harm' if:

⁴⁸ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; 'DFAT Country Report: Pakistan', DFAT, 25 January 2022, 20220125094359.

- 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.

73. 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.

74. I have found above that the applicant does not face a real chance of any harm in Kurram District in the foreseeable future for any reason. The requirement for there to be a “real risk” of significant harm applies the same standard as the “real chance” test.⁴⁹ As such, for the reasons outlined above, I am not satisfied the applicant faces a real risk of significant harm for any reason arising on the material before me.

Complementary protection: conclusion

75. 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.

⁴⁹ *MIAC v SZQRB (2013) 210 FCR 505.*

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.