



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA22/10350

Date and time of decision: 1 September 2022 11:45:00
J Jennings, 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 Afghanistan. He came to Australia in July 2012 and on 19 February 2013 he lodged an application for a Class XA Protection visa (subclass 866) claiming to fear harm in Afghanistan from the Taliban.
2. On 7 December 2016 the applicant was granted a Class XD Temporary Protection visa (subclass 785). A delegate of the Minister for Immigration (the first delegate) accepted the applicant was a citizen of Afghanistan and a person in respect of whom Australia owed protection obligations.
3. On 9 April 2019 the applicant lodged an application for a Class XD Temporary Protection visa (Subsequent) (subclass 785). On 18 July 2022 a different delegate (the delegate) refused to grant the visa. The delegate was not satisfied the applicant was a citizen of Afghanistan. The delegate found the applicant to be a citizen of Pakistan and that Pakistan was the country of reference. The delegate was not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm in Pakistan.

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 July 2022 the IAA sent the applicant a letter acknowledging his case had been referred by the department and provided him with information about the IAA process and how he could, should he wish to do so, make submissions to explain why he may disagree with the delegate's decision or give any further information to the IAA.
6. An Appointment of Representative form completed by the applicant on 16 August 2022 was received by the IAA on 23 August 2022. On the same day the representative requested the IAA provide a range of material and in response the IAA clarified what material the IAA was able to send and provided the representative a copy of the acknowledgement letter previously sent to the applicant. Under administrative release the IAA provided the representative a number of departmental documents. This material was sent to the representative on 24 August 2022.
7. No submissions or further communication have been received from the applicant or his representative.
8. I have obtained new information.
9. The delegate did not accept the applicant's claim to be a citizen of Afghanistan and found the applicant to be a citizen of Pakistan and Pakistan to be the country of reference. As outlined below I have similarly assessed Pakistan as the receiving country for the purpose of this review and for that reason I have obtained Department of Foreign Affairs and Trade (DFAT) reporting relating to Pakistan.¹ DFAT reports are prepared specifically for the purpose of

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

protection status determinations. I am satisfied the circumstances justify considering this new information.

10. As part of her assessment the delegate had regard to information regarding the ability to open a bank account in Pakistan but the information she considered has been superseded in that restrictions on Afghan refugees opening accounts were eased in 2019. For completeness and accuracy I have obtained new information which advises of the change in this restriction.² Although in essence the easing of restrictions in 2019 does not impact on the situation as money transfers to Pakistan made by the applicant pre-date these changes, I am satisfied that the circumstances justify the consideration of this information. This is open-source material and I note that the applicant has already been given the opportunity to comment on the issue of restrictions on Afghan refugees operating bank accounts in Pakistan.

Applicant's claims for protection

11. The applicant submitted a detailed statement of claims with his 2013 protection visa application. In his 2019 TPV application in response to the question have your reasons for claiming protection changed since you were granted your protection visa he replied no. At the protection visa interview conducted on 9 May 2022 the applicant advised that due to a medical condition his memory was not good. The applicant's claims can be summarised as follows:

- The applicant is a citizen of Afghanistan, born in Paktia Province.
- He is a Pashtun and a Sunni Muslim.
- The applicant's father died when he was young and his mother took the applicant and his siblings to live in the north of Pakistan where they lived as undocumented refugees.
- In or around 1995 the applicant travelled to Afghanistan in the company of an uncle to obtain his taskera. He needed this document to assist in the settlement of some property issues.
- The applicant married another Afghan citizen; they had weddings in both Afghanistan and Pakistan. They lived in Pakistan and their children were born in Pakistan. His wife and children remain living in Pakistan as refugees. His [specified siblings] have obtained Pakistani citizenship through their marriages to Pakistani citizens.
- The applicant's [brother] travelled regularly from Pakistan to Afghanistan where he worked as [an occupation 1] for the US forces based in the country.
- The applicant and his family moved back to Afghanistan around 2010 because they were being poorly treated as refugees.
- Toward the end of 2011 the applicant was threatened by the Taliban and was told he must join them or be killed. He has provided a copy of the threat letter and English language translation.
- In March 2012 the applicant was in the company of his [brother] when they were attacked. The applicant's brother was killed in the attack and the applicant sustained injuries. He has provided photographs of his injuries.

² Tolo News, "Pakistan's Govt Allows Afghan Refugees To Open Bank Accounts", 26 February 2019, 20190227074310

- The applicant feared the Taliban would take further revenge on him and he decided to leave for Australia.
- The applicant fears it is dangerous in Afghanistan and that he would be harmed and that the Taliban, who have returned to power, will target him and take revenge against him.

Factual findings

12. The applicant speaks Pashtu and identified as being of Pashtun ethnicity and a Sunni Muslim. Sunni Muslim Pashtuns who speak Pashtu can be found in both Afghanistan and Pakistan and this profile is not definitive of the applicant's claimed identity or nationality.³ DFAT advises that the border between Afghanistan and Pakistan is "porous" and that it can be difficult to verify whether someone is an Afghan or Pakistani national.⁴
13. The essence of the delegate's decision to refuse the applicant a protection visa was her negative credibility finding on his claim to be a citizen of Afghanistan and her finding he is a citizen of Pakistan. Her decision was based in most part on factors relating the unreliability of identity documents from Afghanistan, Pakistani bank accounts held by the applicant's wife and brother, and the citizenship status of family members.

Identity documents

14. In support of his claim to be a citizen of Afghanistan the applicant provided copies of the following:
 - Afghan Citizen Proof of Registration card for his wife
 - Letter/statement from an education institution
 - Taskera and partial English language translation
 - Driver Licence
 - Marriage certificate
15. The delegate gave no weight to the documentary evidence provided by the applicant, noting the "overwhelming information considering the unreliability of Afghan identity documents".
16. It is the case that documents from Afghanistan can be unreliable, in large part due to the lack of security features, particularly for older documents such as the applicant's taskera.⁵ But the Afghan Citizen Proof of Registration card is not an Afghan document, it was issued by the authorities in Pakistan. DFAT advises that document fraud is widespread in Pakistan other than for documents provided by the National Database and Registration Authority (NADRA); DFAT describes NADRA issued documents as "generally reliable".⁶ The Afghan Citizen Proof of Registration card for the applicant's wife is a NADRA issued document.⁷ It quite clearly contains security features with the biodata details and photograph embedded in the card and

³ DFAT, "Country Information Report Afghanistan", 27 June 2019, 2019062711333; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

⁴ DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

⁵ DFAT, "Country Information Report Afghanistan", 27 June 2019, 2019062711333

⁶ DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

⁷ The card is inscribed along the bottom as being executed under a NADRA project

also evident are various optical security features and a machine readable barcode. Taking this information into account I give this document some weight in my assessment.

17. I have some concerns that at the protection visa interview the applicant referred to his wife as being undocumented yet the Proof of Registration card clearly dates from 2015. The applicant has also claimed he was undocumented in Pakistan, but the DFAT reporting is that Proof of Registration cards have been issued to Afghan refugees since an agreement signed with the UNHCR in 2007 gave Afghan refugees the right to be recognised as eligible for protection and support through the UNHCR under Pakistani refugee laws.⁸ The applicant claimed to have been living in Pakistan at this time and if he was an Afghan refugee, as is his claim, he could have applied for a Proof of Registration card and there is no apparent reason why he did not, or any apparent impediment to him doing so. I find it concerning that he has stated his wife was undocumented but when asked by the delegate for a copy of her identity documents he provided this document which purports to have been issued in 2015. This seemingly contradicts the information he has previously given.
18. On face value the Proof of Registration card supports a finding the applicant's wife is an Afghan refugee resident in Pakistan and not a Pakistani citizen. I have considered to what extent this document may support the applicant's claim to similarly be an Afghan refugee resident in Pakistan and not a Pakistani citizen. But the card clearly states it is valid for the 'holder' only; apart from the identifying feature of 'Father's name' no family members, or their status, are identified and as such does not infer or indicate the applicant is an also Afghan refugee.
19. I have considered the other documents provided by the applicant to support his claims.
20. No English language translation has been provided for what is described as the letter/statement from an education institution and the applicant has not otherwise explained how this document may support his claims. I give this no weight.
21. The document stated to be his driver licence is a document with the letterhead "Ministry of Foreign Affairs – Department of Documentation – Translation Section" and the heading in the text of the document is "Attestation of National Driving License". It is written in the English language and is dated 19 July 2013. The document gives the applicant's year of birth as [year] and place of birth as Paktia and to that extent supports his claims. But I am concerned that this document is not in fact the applicant's driver licence but an 'attestation' of such and that the security features on this document are limited to a signature, wet stamps and an affixed photograph of the applicant. The taskera provided is a poor-quality copy and like the driver licence document the security features are unsophisticated. While these documents provide some support to the applicant's claim he was born in Afghanistan I give them little weight.
22. Another document is the marriage certificate; it is not apparent if this document was issued by the authorities in Afghanistan or Pakistan and I note it is claimed the couple had ceremonies in both countries. Photographs for both the applicant and his wife are affixed to the document. The photograph of the applicant is clearly the same photograph as that on his taskera even though the marriage certificate (2000/2001) post-dates the taskera by some five years (1995). However it is possible the applicant used the same passport sized photograph taken five years earlier for his marriage certificate and I draw no negative inference from this.

⁸ DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

23. No English language translation of the marriage certificate has been provided although in part it has been completed in the English language. In the English language part both the applicant and his wife are recorded as being Afghan nationals and their places of birth and other biodata as recorded on this certificate are consistent with the claims put by the applicant. The marriage is recorded to have taken place in Paktia in 2000 and the date of issue of the certificate is [in] May 2001. Each of the witnesses/attorney are described as being born in Afghanistan.
24. This document is evidently contemporaneous with their marriage and unlike the other two documents includes more comprehensive information. Though like the other documents the security features are limited and lack any level sophistication. Although I acknowledge the paucity of security features on this document I give it some weight.

Bank accounts

25. The delegate noted the applicant's wife and brother each have bank accounts in Pakistan and in her decision stated, "in consideration of the country information that you can only open a bank account in Pakistan with a Pakistani National Identity Card or passport I find it likely the applicant's wife is also a Pakistani national, and not an undocumented Afghan refugee as claimed".
26. The delegate discussed this matter with the applicant at the protection visa interview in some detail. She advised the applicant the department had information that he had sent money to his wife and brother in Pakistan and the applicant confirmed that he had been doing so to support them in Pakistan. The delegate asked how his wife had a bank account if she was an undocumented Afghan refugee and the applicant advised that his Pakistani citizen sister-in-law assisted her by opening a joint account with her and that she had her own card and was able to withdraw funds from the account. The applicant stated his sister-in-law similarly assisted his brother (her husband) to open an account. However the delegate advised the applicant that the information before the department was that the bank accounts were in the names of his wife and brother and not joint accounts. The delegate further advised that in Pakistan a person needed Pakistani identity documents to open a bank account; the applicant did not dispute the information referred to by the delegate that advised bank accounts were only available to people with Pakistani identity documents, his response was simply that his sister-in-law opened the account and that they may have arranged something through the bank.
27. In this matter the delegate had regard to country information from the UK Home Office published in 2020. I have examined this report and at paragraph 2.1.3 it states, "National Identity Cards (CNICs and SNICs) are issued to citizens of Pakistan ... and are required to obtain ... a passport or drivers' licence, engage in formal employment, register as a voter, access services such as bank accounts".⁹ The source for the information cited in the UK Home Office report is the DFAT report for Pakistan published in 2019. This DFAT report and that published in 2022 each provide differing information on this matter; in the 2019 report DFAT clearly stated holders of Proof of Registration cards cannot open bank accounts, whereas the 2022 report stated that they can. No explanation is given in the 2022 report for what is seemingly contradicting advice to that given in 2019.¹⁰ However it is apparent the situation changed in early 2019 when Prime Minister Khan announced changes to policy and that

⁹ UK Home Office, "Country Information Note - Pakistan: Documentation", 27 January 2020, 20200130170323

¹⁰ DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

registered Afghan refugees could “from now onwards” open bank accounts and participate in the formal economy.¹¹

28. Although at the time of the protection visa interview the information put by the delegate had been superseded by the 2019 changes it remains that at the time the applicant transferred money to his wife and brother (before 2019 that is) Afghan refugees who were not Pakistani citizens could not open a bank account. I take into account that the applicant did not dispute the delegate’s comment at the protection visa interview that people needed a Pakistani identity document to open a bank account. I note the applicant’s suggestion his sister-in-law assisted and opened the account jointly with his wife, but the delegate advised at the protection visa interview that the information before the department was that this was not a joint account.
29. That the information before the department advises the applicant sent money to bank accounts in Pakistan that were in the name of his wife and brother significantly damages the claims they are, or were, Afghan refugees. That they had Pakistani bank accounts in their names indicates they are Pakistani citizens.

Citizenship status of family members

30. In his protection visa application completed in 2013 the applicant described each of his siblings and his mother as citizens of Afghanistan. However at the 2022 protection visa interview this account varied. In part the applicant was unsure about some matters questioned by the delegate; he knew his mother and sisters travelled regularly to [Country 1] but was unsure if his sisters had permanent visas or [residence permits] for [Country 1] or if any of his [relatives] were [Country 1] citizens. When asked about his brother he was initially unsure about his status but when asked about his brother’s travel to [Country 2] and [Country 1] he stated that his brother used a Pakistani passport to travel. When asked by the delegate how his brother would be a Pakistani citizen he responded by his wife. At this interview he stated his mother had migrated to [Country 1] but travelled often to Pakistan to be with the family but he was unsure of what travel documents she used to do so. I draw no adverse findings from the applicant’s uncertainty as to some of the details in his recount.
31. The delegate placed significant weight on the account that all the applicant’s siblings are Pakistani citizens. The delegate noted that the sisters could have gained citizenship through marriage but that his brother could not obtain Pakistani citizenship through marriage to a Pakistani citizen and the delegate determined the applicant had not provided a plausible reason for how his brother gained Pakistani citizenship.
32. Similar to the matter of his siblings the delegate had regard to the status of the applicant’s mother and referred to the mother as a dual citizen of [Country 1] and one other country, being either Pakistan or Afghanistan. Based on the Pakistani citizenship of “all her children” the delegate found this lead her to suspect the mother was also a citizen of Pakistan. The delegate noted it was disappointing the applicant failed to provide evidence of his mother’s [Country 1] or other passport/s.
33. The country information supports the applicant’s claim that his sisters may have obtained Pakistani citizenship through marriage.¹² But I am not satisfied that their status as Pakistani

¹¹ Tolo News, “Pakistan’s Govt Allows Afghan Refugees To Open Bank Accounts”, 26 February 2019, 20190227074310

¹² DFAT, “DFAT Country Information Report – Pakistan”, 20 February 2019, 20190220093409; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359; Government of Pakistan, “The Pakistan Citizenship Act, 1951”, CIS38A80123108

citizens damages the credibility of the applicant's claims to be a citizen of Afghanistan or is otherwise determinative of his citizenship.

34. But I consider the stated Pakistani citizenship of his brother to be a significant factor. The country information is unequivocal that a foreign man cannot attain Pakistani citizenship through marriage and there is no other apparent avenue for Afghan refugees to be granted citizenship, nor did the applicant point to any means by which his brother may have attained Pakistani citizenship, other than sustaining the claim it was by marriage which is simply not supported by the country information. The country information also notes a degree of enmity toward to Afghan refugees and that even when Prime Minister Khan declared the children of Afghan refugees born in Pakistan had a constitutional entitlement to citizenship the authorities in practice simply refused to issue them any documentation.¹³ I do not accept that the applicant's brother attained Pakistani citizenship through marriage and I am not satisfied that he could have obtained Pakistani citizenship by other means, nor has the applicant identified any alternate means by which he may have attained citizenship.

Assessment

35. I note the first delegate found there was no evidence before him that disputed the applicant's assertion to be a citizen of Afghanistan, or any evidence indicating the applicant is a citizen of any country other than Afghanistan. But I find the information before me (which was not before the first delegate), particularly that about the bank accounts and the statement at the 2022 protection visa interview that his brother is a Pakistani citizen, significantly damages the applicant's claim regarding his own nationality.
36. I note the applicant's concerns about his memory and in my assessment I take into account he may be unaware of or unable to recall some of the detail of the particular circumstances of his mother and siblings and their spouses. But I find it concerning that in his 2013 protection visa application he described each of his siblings as citizens of Afghanistan whereas as he now advises they are Pakistani citizens. Although not impossible, there is no indication his sisters have all married and changed their citizenship status in the nine/ten years since he provided that information. That all [his] sisters may have done so in this period of time, including [those] older than him, is difficult to accept as plausible. Furthermore, when he completed the 2013 protection visa application he described his brother as then being resident in [Country 2], but he has since stated his brother travelled to [Country 2] on a Pakistani passport which would indicate he was a Pakistani citizen in 2013 at the time the applicant completed the protection visa application, and not an Afghan citizen as the applicant indicated on the application form. Taking these matters into account I am concerned the information given by the applicant in the 2013 protection visa application is not reliable.
37. The delegate very clearly put her concerns in this regard to the applicant at the 2022 protection visa interview and advised him her concerns may lead to her finding he is a citizen of Pakistan and not Afghanistan as claimed. The delegate discussed with the applicant the importance of various documents that might assist him to support his claims and provided him an opportunity to provide these. Amongst the documents the delegate requested the applicant obtain were copies of his mother's and brother's travel documents. In his later email response to the delegate, the applicant stated he was not able to provide his mother's or brother's documents and that he had requested these, but they refused to provide them. The applicant has not explained why his brother and mother have refused his request.

¹³ DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359; Dawn, "View from the Courtroom - Pakistan's citizenship law in the limelight", 19 June 2016, CX6A26A6E26591

There is no indication of a rift in the family that may suggest they would refuse to assist him in this regard; on the contrary the applicant's description of his family circumstances indicates a close-knit and supportive family. He has regular contact with his extended family and visited them when he travelled to Pakistan in 2017, 2018 and 2019; he provides financial support to his brother and his brother's family; his mother regularly visits his children when she visits Pakistan; and he indicated one of his sisters was supporting an application for all the family, including his own children, to migrate to [Country 1]. In these circumstances, particularly noting the ongoing financial assistance the applicant has given his brother, I have difficulty accepting his brother and mother would not assist him by providing him copies of documents that may support his claims. I am concerned that the applicant has not provided the travel documents requested by the delegate because they do not support his claims.

38. Supporting the applicant's claim to be a citizen of Afghanistan are his own claims and I take into account he has consistently maintained this claim since his arrival in Australia. But as I have noted above, the information he gave about the citizenship status of his siblings has changed significantly from that he gave in his 2013 protection visa application and I am concerned this casts some doubt on the reliability of his past account of his and his family's circumstances.
39. I also take into account the documentary evidence he has provided and most notably the Proof of Registration card for his wife and the country information which indicates the general reliability of NADRA issued documents. The UK Home Office noted reporting by the Express Tribune that "some Pakistani Pashtuns pretended to be Afghan refugees and received relief funds" but it is not apparent such fraud points to concerns the issue of Proof of Registration cards is prone to fraud.¹⁴ I find it of concern that throughout the protection visa interview the applicant maintained that his wife was undocumented despite this card being dated in 2015. Also, noting she has this card, I am concerned at the applicant's claim he was undocumented as he claims to have the same Afghan refugee status as his wife and it is apparent that Proof of Registration cards have been issued to Afghan refugees since 2007. However, I note the country information that advises many Afghan refugees remain undocumented in Pakistan.¹⁵ Overall I find this card to weigh in favour of the applicant's claims.
40. Although the Proof of Registration card supports the applicant's wife is an Afghan refugee this needs to be balanced against the conflicting evidence she was receiving funds into a Pakistani bank account in her name before Afghan refugees could open such accounts. This matter points strongly to a finding she is a Pakistani citizen.
41. As noted above I accept some of the documentation provided by the applicant supports his claim. Although I give the driver licence and taskera little weight I have noted the marriage certificate records both the applicant and his wife as Afghan citizens born in Afghanistan and that their witnesses were also born in Afghanistan. However considered overall the documentary evidence, including the Proof of Registration card, does not overcome my concerns about the bank account or other concerns as discussed below.
42. I have significant concerns about the applicant's account of his brother's circumstances. In 2013 he described his brother as being a citizen of Afghanistan, like himself. Initially in the protection visa interview he indicated some uncertainty about his brother's status. In later questioning about his brother's travel to [Country 2] he stated his brother travelled on a

¹⁴ UK Home Office, "Country Information Note - Pakistan: Documentation", 27 January 2020, 20200130170323

¹⁵ DFAT, "DFAT Country Information Report – Pakistan", 20 February 2019, 20190220093409; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

Pakistani passport and he confirmed to the delegate his brother is a citizen of Pakistan. But it is of significant concern that the explanation he gave for his brother's ability to obtain Pakistani citizenship runs counter to the reliable country information before me. The information before me is that the applicant's brother is a citizen of Pakistan, as stated by the applicant at the 2022 protection visa interview. His account is his brother has travelled on a Pakistani passport, which affirms his brother's Pakistani citizenship. The country information does not support the applicant's claim his brother obtained Pakistani citizenship through marriage and I do not accept this.

43. Pashtuns, such as the applicant and his family, make up a significant ethnic group in northwest Pakistan and taking into account my finding above that I do not accept his brother has acquired Pakistani citizenship by marriage and that Afghan refugees have no recourse to Pakistani citizenship I conclude his brother was born in Pakistan as a Pakistani citizen. This significantly damages the applicant's claim he and his siblings were born in Afghanistan, are citizens of Afghanistan and that they moved to Pakistan when he was a child.
44. I am concerned that the travel documents of his family members have not been provided and I have difficulty accepting the applicant's claim his brother and mother have simply refused to provide these. That these have not been provided causes me to doubt they would support his claims about the family background, places of birth and citizenship.
45. Although the applicant continued to maintain his wife's bank account was a joint one with his sister-in-law he has provided no evidence to support this claim. He has provided no evidence to support the claim his brother has married a Pakistani citizen and obtained citizenship by that means. While such documents were not among those specifically requested by the delegate at the protection visa interview she informed the applicant he could provide any other information he thought may support his claims.
46. I have outlined my concerns about the applicant's account of matters relating to his brother's citizenship and that this leads me to doubt his claim he and his siblings were born in Afghanistan as Afghan citizens. This is compounded by my concerns that his wife and brother have bank accounts in Pakistan which further points to them being citizens of Pakistan and casts doubt on the claims he and his wife and family lived in Pakistan as Afghan refugees. I am concerned the applicant has not provided documents requested by the delegate and that he has not done so because they do not support his claims. I have taken into account the applicant's own evidence and the documentary evidence he has provided and that the first delegate was satisfied the applicant had demonstrated sufficient knowledge of the Paktia region in Afghanistan, but these do not overcome my concerns.
47. I do not accept the applicant was born in Afghanistan. I do not accept he is a citizen of Afghanistan. I do not accept that he lived in Pakistan as an Afghan refugee. I find the applicant is a citizen of Pakistan and that Pakistan is the receiving country for the purpose of this review.
48. I accept the applicant's name and date of birth as determined by the delegate.
49. I accept the applicant is of Pashtun ethnicity, noting he speaks the Pashtu language, and I accept he is a Sunni Muslim.
50. As I have not accepted the applicant lived in Pakistan as an Afghan refugee I do not accept the claim he was harassed by the police in Pakistan who were giving trouble to refugees. It follows that I did not accept he travelled to Afghanistan in 2010 to avoid harassment. I do not

accept that he lived in Afghanistan for a period from 2010 and was threatened by the Taliban. I do not accept he was injured in an attack by the Taliban. I accept he may have some injuries and I note the photographs he has provided but I do not accept these were sustained in an attack by the Taliban. I do not accept the Taliban have any interest in the applicant.

Refugee assessment

51. 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

52. 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.
53. I have found the applicant is a citizen of Pakistan and that Pakistan is the receiving country for the purpose of this review.
54. As a citizen of Pakistan the applicant would enjoy the rights and privileges available to all citizens in the country.
55. Pakistan is a Sunni majority country and the 2017 national census estimated 80-90 per cent of the population are Sunnis. There is no indication Sunnis face harm in Pakistan on the basis of their religion.¹⁶
56. Pashtuns are the second largest ethnic group in Pakistan after Punjabis and are estimated to make up 15 percent of the population. DFAT assesses that Pashtuns are represented at all levels of society in Pakistan and are well represented in Pakistan's security forces. DFAT notes that Pashtun-majority areas in Pakistan have historically experienced high levels of tribal, intra-communal and politically motivated violence, but that the overall security situation for all Pakistanis, including Pashtuns, has improved in line with increased security across

¹⁶ DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

Pakistan. DFAT reporting notes that due to counter-terrorism activities in Pakistan to quell extremist groups Pashtuns can be viewed by the Punjabi community as “suspicious” and may face racial profiling in terrorism-related arrests by security forces in areas where they are a minority, particularly in Punjab.¹⁷ However overall Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination.¹⁸

57. I find that there is not a real chance the applicant would experience persecution in Pakistan for reason of being a Pashtun or as a Sunni Muslim.
58. The applicant has travelled to Pakistan to visit his family on three occasions since he was granted a protection visa and has been able to apply for permission to travel. He has not indicated he experienced any problems in doing so or while in the country. From his account his mother travels regularly to Pakistan from [Country 1] and there is no indication she has experienced any harm in doing so.
59. I note the cautions in the 2022 DFAT report that following improvement over recent years, the security situation in Pakistan has deteriorated since mid-2021 and that after a six-year downward trend there has been an upswing in terrorist attacks. But the indications are the focus of attacks are the military and government agents, political and religious leaders and religious minority groups such as the Shia Muslims.¹⁹ Noting the profile of those who have been victims of such attacks I am not satisfied the applicant would experience harm on this basis in Pakistan, nor has he indicated his family members have experienced such harm.
60. I have noted above that as a Pakistani citizen the applicant would have access to the benefits available to citizens and in this regard I note the applicant’s children are in school and as part of his request for permission to travel the applicant provided evidence of his wife’s medical condition and this indicates that she was receiving medical care in [a specified] hospital in Peshawar.
61. Considering the totality of the material before me I am not satisfied that there is a real chance that the applicant would experience persecution on return to Pakistan now or in the reasonably foreseeable future.

Refugee: conclusion

62. 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

63. 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.

¹⁷ DFAT, "DFAT Country Information Report, 20 February 2019, 20190220093409; DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

¹⁸ *ibid*

¹⁹ DFAT Country Information Report - Pakistan, 25 January 2022, 20220125094359

Real risk of significant harm

64. 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.
65. 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.
66. I have found there is not a real chance that the applicant faces harm in Pakistan. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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