



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA17/02597

Date and time of decision: 30 June 2017 13:12:00
Alison Nesbitt, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Pashtun Shia from the Turi tribe from Pakistan. In February 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. [In] May 2017 a delegate of the Minister for Immigration and Border Protection refused to grant the visa.

Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's representative provided a submission to the IAA [in] June 2017. It contains the following new claims and information which were not before the delegate:
 - The applicant has been recently diagnosed with [a medical condition], a condition which affects sufferers' memory. Attached to the submission are letters from a general practitioner, a psychologist and a clinical psychologist, and two academic articles relating to [the medical condition].¹
 - There has been a recent surge in violence in Pakistan, including attacks on Shia Muslims and Turis. There have been [attacks] in the applicant's home town, [City 1], in 2017. [Media reports] referring to these attacks were attached.²
 - Sunni extremist groups the Tehreek-e Taliban Pakistan (TTP) and Lashkar-e Jhangvi (LeJ) are aligned and committed to continuing attacks against religious minorities throughout the country. It is therefore plausible that the applicant would be at risk of harm wherever he resides. Two media reports in support of this claim were attached.³
 - Authorities in Punjab province have been racially profiling Pashtuns following recent security incidents. As a Pashtun from FATA, the applicant may be perceived to be a terrorist and may experience racism, stereotyping and bias. Also, the applicant is more likely to have his identity card checked in the current environment and this increases the risk that he will be identified as a Shia, and / or a Shia Turi from [City 1], and harmed on this basis. Five media items were attached in support of this claim.⁴
 - It would not be reasonable for the applicant to relocate to another area of Pakistan because: of the tribal structure of society; he would be easily identified in the FATA as a returnee from the west and targeted by the Taliban or other Sunni extremists on this basis; he would find it difficult to secure employment because of his age and limited skill set; and he may not be able to rent property due to restrictions on renting to Pashtuns.

¹ [information deleted].

² [information deleted].

³ Boone, J, Lahore blast: several killed as suicide bomb hits Pakistan rally, The Guardian, 14 February 2017; BBC News, 'Pakistan 'kills 100 militants' after Sufi shrine attack', 17 February 2017.

⁴ <https://www.pakistantoday.com.pk/2017/02/21/punjab-polices-blattant-racial-profiling/>;
<https://www.dawn.com/news/1317344>; <http://nation.com.pk/columns/25-Feb-2017/pashtun-profiling>;
<https://www.pakistantoday.com.pk/2017/02/25/racial-profiling-continues-despite-denials-by-the-punjab-govt/>;
<https://www.linkedin.com/pulse/pakistans-pashtun-profiling-farooq-yousaf-farooq-yousaf>.

5. Section 437DD requires that the IAA must not consider any new information unless it is satisfied that there are exceptional circumstances to justify considering the new information. In relation to information provided by the applicant, there is a further requirement that the applicant must satisfy the IAA that the new information was not, and could not have been, provided to the delegate before the delegate made her decision, or that the new information is credible personal information that was not previously known and, had it been known, may have affected the outcome of the applicant's claims.

Psychological health

6. The applicant's representative submits that the applicant's psychological health, in particular his experience of [a medical condition], may explain the inconsistencies in the applicant's evidence. He submits that the applicant had refused in the past to be treated by a psychologist and/or counsellor because of his cultural background, age and the stigma surrounding mental health issues. Following the delegate's decision, the applicant was referred for psychological assessment and became receptive to treatment.
7. The letters from the [various medical practitioners] relating to the applicant's mental health submitted to the IAA post-date the delegate's decision and could not therefore be provided to the delegate prior to her decision. The representative also provided two academic articles relating to [the medical condition] and its effects on sufferers' memory. These items date from 2009 and 2006.
8. In a post-SHEV interview submission to the delegate, the applicant's representative claimed that [health issues] were among a number of factors that could account for inconsistencies in the applicant's evidence. This suggests the applicant was not unwilling to raise matters related to his state of mind, including his experience of traumatic events, as an explanation for inconsistencies in his evidence. No evidence relating to his psychological health was provided to the delegate before she made her decision. I do not accept that the applicant's cultural background, age and the stigma surrounding mental health issues prevented him from providing evidence of his mental health issues at an earlier point. The applicant was clearly on notice during the SHEV interview that inconsistencies in his evidence were of concern to the delegate. In the circumstances, I am not satisfied that there are exceptional circumstances to justify the consideration of this new information.

Attacks in Kurram Agency and links between Sunni extremist groups

9. The applicant's representative submits that there have been [attacks] in the applicant's home area in 2017. He provided [media reports] relating to these [incidents].⁵ The reports are publically available and pre-date the delegate's decision [of] May 2017. The applicant's representative claims that Sunni extremist groups the TTP and LeJ are aligned and committed to attacks against religious minorities throughout the country, and it is therefore plausible that the applicant would be at risk of harm wherever he resides. [Media reports] in support of this claim, both of which pre-date the delegate's decision, were attached to the submission. I note that there is other information before me concerning the links between the TTP and LeJ and their presence in different areas of Pakistan.⁶ I am not satisfied there are exceptional circumstances to justify the consideration of this new information.

⁵ [information deleted].

⁶ European Asylum Support Office (EASO), "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

Racial profiling

10. The applicant's representative has provided a number of media reports relating to the racial profiling of Pashtuns by authorities in Punjab province. He submits that the information concerning racial profiling suggests that in the current environment, as a Pashtun from FATA, the applicant will be perceived to be a terrorist, and will experience racism, stereotyping, suffer significant harm. The applicant's representative also advances the new claim that the applicant is more likely to have his identity card checked in the current environment and this increases the risk that he will be identified as a Shia, and / or a Shia Turi from [City 1], and harmed on this basis.
11. The applicant's representative submits that these new claims could not have been provided to the delegate prior to her decision because they could not be supported by accurate country information or media reports. He states that country information relating to the issue has been released in recent months. The reports provided were published in February 2017 and pre-date the delegate's decision [in] May 2017 by some months. I am not satisfied that exceptional circumstances exist to justify the consideration of this new information.

Relocation and return

12. The applicant's representative submits that the applicant could not relocate to another location in Pakistan because it would be unreasonable for him to relocate to a location other than his home tribal area, his age and limited skill set, and restrictions on renting to Pashtuns. If he returned to the FATA he would be easily identified as a returnee from the west and targeted by the Taliban or other Sunni extremists.
13. No explanation has been provided as to why these claims were not advanced prior to the delegate's decision. I note that the issue of relocation was discussed in the SHEV interview and addressed in the submission provided to the delegate by following the SHEV interview. In the circumstances, I am not satisfied that there are exceptional circumstances to justify the consideration of these new claims.

New information obtained

14. I have obtained new information in relation to recent incidents in the applicant's home city, [City 1], in the Federally Administered Tribal Areas (FATA) of Pakistan.⁷ This information post-dates the delegate's decision and provides more current information than was before the delegate regarding the changing situation in some parts of Pakistan. In view of its currency and direct relevance to the assessment of the chance of harm to the applicant in Kurram Agency, I am satisfied that exceptional circumstances exist to justify the consideration of this new information.

Applicant's claims for protection

15. The applicant's claims can be summarised as follows:
 - He is a Shia Muslim member of the Pashtun Turi tribe. He lived all of his life in Pakistan close to and in [City 1], in [Kurram Agency] in the Federally Administered Tribal Areas (FATA) of Pakistan. His wife and [children] currently live with his [relative 1] in [City 1].

⁷ [information deleted].

- He attended school until year [number] and is illiterate. He left school early to help his father in his [business]. After his father's death, he operated the business in his own right. He employed drivers to bring [products] across the border from [Country 1] for sale in Pakistan. He regularly transported [products] to Islamabad himself.
- In 2007, his [relative 1] was killed by the Taliban in Kurram Agency, while travelling in a passenger vehicle from [City 1] to Peshawar. The Taliban stopped the vehicle, checked the identity of all the passengers and killed all of the Shia passengers other than a child.
- In 2007, the Taliban started to threaten him by telephone daily. They demanded [products] and money, referring to his Shia faith and threatening to kill him and members of his family if he did not comply with their demands. He changed his telephone number several times but the Taliban continued to threaten him via his new telephone numbers. He did not comply with the Taliban's demands. He reported the threats to the local paramilitary force but was told that they could not help.
- Also in 2007, the Taliban threatened his employees not to transport [products] from [Country 1] to Pakistan. They told his employees to bring him with them on their trips to [Country 1] so that they could capture him. Three of his employees were killed by the Taliban while transporting [products] from [Country 1]. The Taliban telephoned him after this to tell him they had killed his employees and taken his [products].
- The Taliban continued to threaten him after this incident. He decided to close his business in 2007 because he was afraid that he and his family would be killed. He then remained at home in hiding.
- His wife was a [occupation 1]. She started to receive threatening telephone calls from the Taliban at home and at work. She also received threatening letters from the Taliban at work. The Taliban threatened to kill her because she was [occupation 1], was a Shia, and was married to the applicant, a wealthy Shia. She resigned because of these threats in 2008.
- In 2008, his [relative 2] was kidnapped by the Taliban while travelling by bus to Islamabad. The Taliban telephoned the applicant and demanded a ransom. He agreed to pay and was making arrangements to gather the money when the Taliban contacted him 20 days later to advise him they had killed his [relative 2].
- He continued to receive death threats from the Taliban. In 2010 a bomb was thrown at his house. The following day, the Taliban contacted him to say that they would continue with the attacks. He reported the bombing of his house to the authorities and was told that they could not act as they feared for their own lives. Six months later he sold his house and he went to live with his [relative 3].
- He fears that if he returned to Pakistan he would be killed because he is Shia. He cannot move to another area of Pakistan because he would be readily identified as a Shia and / or a Turi Shia from [City 1] wherever he went by his address in [City 1], which is recorded on his national identity card, his identifiable Shia name, his physical features, his dress, his dialect and his Shia religious practices.
- If he was to return he could not reach [City 1] because all the roads are controlled by the Taliban.
- He faces an increased risk of harm from the Taliban due to his profile as a wealthy Turi Shia man, the operator of a well-known business, and the husband of a former [occupation 1]. He may be perceived as 'pro-western' by the Taliban due to his wife's former employment.

- He has no family or other support in other areas of Pakistan.
- He would not be able to support himself and his family if he returned to Pakistan. He has little education and would find it hard to find employment.

Factual findings

Nationality and identity

16. The applicant provided his original Pakistani passport and National Identity Card during the SHEV interview conducted [in] July 2016. The passport is in English and indicates that the applicant was born on Kurram Agency. The National Identity Card indicates that the applicant's permanent address is in [City 1], in [Kurram Agency] in the FATA. I accept that the applicant is a citizen of Pakistan who was born and resided in and near [City 1] in [Kurram Agency].
17. The applicant claims to be a Shia Muslim member of the Pashtun Turi tribe. During the SHEV interview, he demonstrated a familiarity with Shia Islam and could identify religious practices peculiar to Shia Muslims. I accept that the applicant is a Shia Muslim. The applicant has consistently claimed to be Pashtun and relied on a Pashto interpreter in his entry and SHEV interviews. I accept that he is Pashtun. The applicant's tribal identity was not explored during the SHEV interview. Most of the Shias in the applicant's home district of [Kurram Agency] are reported to be from the Turi tribe. The Turi tribe is reported to be the only Shia Pashtun tribe.⁸ I am willing to accept that the applicant is a member of the Turi Pashtun tribe.

Inconsistencies in applicant's evidence

18. The applicant claims that discrepancies in the evidence he has provided to the Department, and his inability to recall information such as dates of events, may be attributed to issues with the interpretation provided in the entry interview, to the passage of time, to anxiety and his experience of past traumatic events, and to his lack of familiarity with his environment during the entry interview, including a lack of understanding of the process in which he was involved.
19. In a post-SHEV interview submission to the delegate, the applicant claimed that the interpreter used in the entry interview was from Kandahar and as such, spoke a different Pashto dialect to the applicant. The applicant claimed that the interpreter was a native Dari speaker and this may have resulted in misinterpretations of his evidence during the entry interview. This issue was not raised in the applicant's invalid protection visa or SHEV applications, or in the SHEV interview.
20. I have reviewed the recording of the entry interview. The applicant was asked at the beginning of the interview whether he understood the interpreter and indicated that he did so. The interpreter sought to clarify the applicant's responses on a number of occasions during the interview, apparently checking he had understood the applicant correctly. While I am willing to accept that the interpreter had a different accent to the applicant, and that this gave rise to some difficulty in understanding the applicant's answers on the interpreter's part, I am satisfied that the interpreter effectively addressed this by checking he had understood the applicant's responses correctly where uncertainties arose. I am not satisfied that the interpreter's accent prevented the applicant from participating effectively in the entry interview. I do not accept that the interpreter's accent represents an adequate explanation for

⁸ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

the inconsistencies in the applicant's evidence, which are discussed in detail below. I note that there also inconsistencies in the evidence provided by the applicant in the context of the earlier bio data interview.

21. In response to concerns raised by the delegate during the SHEV interview, the applicant's representative submitted that limited weight should be placed on the evidence provided by the applicant in the entry interview, in accordance with guidance included in the Department's Procedures Advice Manual 3, which suggests that applicants may be in a state of shock or anxiety in entry interviews and may not understand the significance of providing information regarding their asylum claims. The applicant's representative also submitted that the applicant's lack of familiarity with his environment in the entry interview should be considered when assessing any inconsistencies in the applicant's evidence. She referred to asylum seekers' traumatic journeys to Australia, their culture shock on arrival, their concerns for their family and friends in their home countries, and the possibility that participants may not understand the nature of the process in which they are involved. Further, she suggested that the trauma caused by the incidents raised in the applicant's claims may explain the applicant's inability to recall such incidents.
22. The applicant's entry interview took place [in] November 2012, six to eight weeks after his arrival in Australia. It is not apparent, on reviewing the recording of the interview, that the applicant was distressed during the interview. He appeared to respond to the questions asked appropriately and without hesitation. The applicant was advised at the start of the entry interview that the interviewing officer needed information about him and his arrival in Australia. The applicant was advised that the interview was his opportunity to provide reasons why he should not be removed from Australia. He was advised that if he did not answer any questions, the decision may be made on the basis of the information the Department had. I accept that the applicant may not have had a complete understanding of the process of which the entry interview formed a part, however I do not accept that such an understanding was required for the applicant to participate effectively in the entry interview. I consider that the applicant was aware of the need to provide accurate and complete answers to the questions asked during the interview.
23. I accept that the applicant, as a person who had recently arrived in Australia, was immigration detention, and was separated from his family, would have experienced a degree of stress and anxiety during the entry interview. I accept that the applicant may also have been nervous during the SHEV interview and may have been experiencing a level of anxiety as a result of the uncertainty regarding his future. For the reasons discussed below, I have not accepted all of the applicant's claims, however I accept that the applicant experienced some traumatic incidents in Pakistan, including the deaths of his [relative 1] and [relative 2] in 2007 and 2008, events he does not claim to have witnessed. To the extent that the inconsistencies in the applicant's evidence relate to minor matters such as small differences in dates or the wording of claimed threats, I am willing to accept that the matters raised by the applicant's representative may provide reasonable explanations. However, I do not accept that these factors adequately account for the more significant differences in the applicant's evidence, which are discussed below.

Interaction with Taliban

24. The applicant claims that he and members of his family have had a series of interactions with the Taliban in [City 1] over a number of years, beginning in approximately 2007. The applicant claims to have received numerous threats by telephone demanding that he pay money and provide [products] to the Taliban. These threats have referred to his Shia faith. He claims that

his [relative 1] and [relative 2] on were killed by the Taliban in separate incidents in 2007 and 2008 respectively. He claims that three of his employees were killed by the Taliban in 2007. He further claims that his wife received threatening telephone calls and letters from the Taliban related to her employment as a [occupation 1] and the applicant's profile as a successful Shia businessman.

25. The applicant has consistently claimed that his [relative 1] was killed by the Taliban, with all other adult Shia passengers who were travelling in a bus or van in Kurram Agency in 2007 or 2008. Country information before me suggests that Kurram Agency experienced a period of intense sectarian violence between approximately 2007 and 2012.⁹ I find the applicant's claims in relation to his [relative 1]'s death plausible and accept that he was killed by the Taliban in an attack targeting Shia residents of Kurram Agency in 2007.
26. I have some reservations in relation to the applicant's evidence regarding the death of his [relative 2]. In the biodata interview conducted [in] October 2012, the applicant said that the Taliban beheaded his [relative 2]. He said that the Taliban were 'after me for taking my [relative 2] in after [relative 1] was killed'. In the entry interview [in] November 2012, the applicant indicated that the Taliban killed his [number]-year-old [relative 2] who was studying in Islamabad. He said the Taliban [killed him using a different method]. While he did refer to the Taliban demanding a 'ransom' in this interview, he said that he this was a threat from the Taliban that they would kill him, i.e. the applicant, if he did not pay the Taliban money. He did not mention that his [relative 2] was kidnapped.
27. In his subsequent invalid protection visa application and SHEV application, the applicant claimed that his [relative 2] was kidnapped by the Taliban and that he was asked to pay a ransom of [number] Pakistani Rupees to the Taliban for his [relative 2]'s release. He said that although he agreed to pay the ransom, his [relative 2] was killed by the Taliban before he could pay it. He said that his [relative 2] was on a bus on his way to Islamabad to study at the time he was kidnapped. During the SHEV interview the applicant indicated that his [relative 2] was [several years older] at the time he was killed by the Taliban. He said that his [relative 2] was living in [City 1] at the time he was kidnapped, but they were trying to send him to Islamabad to live in order to study there.
28. The delegate put these inconsistencies to the applicant during the SHEV interview. A written submission from the applicant's representative addressing these matters was provided to the delegate following the interview. The applicant claimed that he had difficulty recalling his [relative 2]'s age and had never known it exactly. I accept that this is a reasonable explanation for the variation in this aspect of the applicant's evidence. The applicant claimed that the discrepancies relating to the precise manner of his [relative 2]'s death could be attributed to issues arising from the interpretation during the entry interview discussed above.
29. As discussed, while I accept that the interpreter and the applicant had different accents, I do not accept that this adequately accounts for the significant difference between his evidence in the entry interview that his [relative 2] was [killed in a specific way] by the Taliban and his subsequent evidence that his [relative 2] was [tortured] and his body, which the applicant later viewed, left by the side of the road. The omission of any reference to the applicant's [relative 2] being kidnapped by the Taliban and to the applicant being asked to pay a ransom for his release from the entry interview is also of concern.

⁹ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

30. I note that when discussing the applicant's reasons for leaving Pakistan, the interviewing officer in the entry interview asked the applicant three times if there was anything else he wished to say. The applicant did not mention that his [relative 2] was kidnapped and he was asked to pay a ransom. I do not accept that the applicant's anxiety, experience of trauma, lack of familiarity with his environment, the passage of time, or any issues of interpretation adequately account for the discrepancies in the applicant's evidence relating to his [relative 2]'s death, particularly given that he provided equally confronting, but different, information regarding the nature of the harm inflicted on his [relative 2]'s body in the entry interview and the SHEV interview.
31. As discussed, from approximately 2007 to 2012 Kurram Agency was reported to have experienced considerable violence. Having regard to the evidence before me, while I am willing to accept that the applicant's [relative 2] was killed by the Taliban while travelling from [City 1] to Islamabad and that his body was left by the side of the road, I do not accept that he was kidnapped or tortured, that the Taliban attempted to extort the payment of a ransom from the applicant, or that the applicant was contacted by the Taliban in other way in relation to the death of his [relative 2].
32. The applicant's evidence in relation to the threatening telephone calls that he received from the Taliban has been vague and somewhat inconsistent. In the entry interview he indicated that he received threats and a demand for money from the Taliban beginning in 2007 and 2008 but said that after changing his telephone number the Taliban were not able to call him. He said that they had started threatening him and asking for money again about one and a half years ago. He said he then received three or four calls before he blocked his telephone number. In the applicant's invalid protection visa application and SHEV application he indicated that the Taliban started to demand money and [products] and threaten him in daily phone calls starting in 2007, and the threatening telephone calls continued even after he changed telephone numbers on numerous occasions.
33. As the applicant's business involved importing [products] from [Country 1], I consider it plausible that in the course of his business the applicant or his employees may have been exposed to interaction with the Taliban. There is information before me indicating that the Taliban are known to raise funds from extortion.¹⁰ I consider it plausible that the Taliban may have sought to extort money from the applicant. I am willing to accept that the applicant received one or more threatening telephone calls from the Taliban while operating his business, however in view of the vague and inconsistent nature of the applicant's evidence regarding the calls, I consider it very likely that he has exaggerated the number of calls received.
34. The applicant claims that he closed his business in 2007. While I have some reservations as to the veracity of this claim in view of the nature of the applicant's evidence regarding his employment in the entry interview, I am willing to accept that the applicant closed his business in 2007. I am willing to accept that his decision was partially based on a fear of the Taliban due to a threatening phone call or phone calls in which the Taliban demanded money and / or [products]. I do not consider it plausible, however, that the threats to the applicant, which appear to have been primarily financially motivated, continued after the claimed closure of his business in 2007. I note that the applicant claimed he continued to reside in his home and former place of business after the closure of the business in 2007, until the move to his [relative 3]'s home in 2010, suggesting that during this period the applicant's fear of the

¹⁰ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

Taliban was not such that he felt the need to change his place of residence. I do not accept that the applicant received any threats after the closure of his business in 2007.

35. The applicant's claims in relation to the deaths of his employees in the course of their employment have varied. In the entry interview, he referred to someone who brought [products] for him being killed by Taliban in 2010. In his invalid protection visa application and SHEV application he claimed three of his employees were killed by the Taliban while transporting [products] from [Country 1] to Pakistan in 2007. There is a significant difference between a single employee being killed in 2010 and three employees being killed in 2007. I do not accept that any issues with interpretation, the passage of time, the applicant's lack of familiarity with his environment, or stress or trauma experienced by the applicant can adequately account for these differences. I note that the applicant provided information during the interview in relation to other incidents that I would expect to be equally or more traumatic, including the deaths of his [relative 1] and [relative 2].
36. I have considered whether the applicant's later evidence regarding his employees' deaths may represent an exaggeration of an incident that did occur, for example, the death of only one employee as claimed in his entry interview. However, the difference in the claimed date of the event suggests to me that the issues with the applicant's evidence extend beyond mere exaggeration of an event that occurred. On the evidence before me, I do not accept that any of the applicant's employees were killed by the Taliban as claimed. Neither do I accept that the Taliban asked the applicant's employees to take the applicant with them on their trips to [Country 1] so that they could capture him, or that the Taliban telephoned the applicant to tell him they had killed his employee or employees.
37. The applicant claims his home was bombed in 2010, leading him to move, with his family, to his [relative 3]'s home. This claim was not mentioned in his bio data or entry interviews. As discussed, the applicant was asked three times during the entry interview whether there was anything else he wished to say about his reasons for leaving Pakistan and therefore had ample opportunity to mention this incident. The applicant mentioned a number of other incidents he claimed had occurred in 2007 and 2008 during the interview. I do not accept that the applicant's anxiety, experience of trauma, lack of familiarity with his environment, the passage of time, or any issues of interpretation adequately account for this omission, particularly given that he was able to refer to other traumatic events, such as the deaths of his [relative 1] and [relative 2] in 2007 and 2008, during the entry interview. I note that in the entry interview, the applicant claimed that he lived with his family in the house in [City 1], which he built in 2001, until his departure from Pakistan. He said that his wife was still living in that home.
38. Having regard to the evidence before me, I do not accept that the applicant's home was bombed, that the Taliban called him to claim responsibility and to threaten further attacks, or that the applicant reported this incident to the authorities. I do not accept that the applicant sold his home and moved to his [relative 3]'s home in approximately 2011. I find that the applicant still owns a house in [City 1] and his wife and children continue to live there, as indicated in the entry interview.
39. The applicant claims the Taliban threatened his wife because of her employment as a [occupation 1], ultimately causing her to resign in 2008. His evidence regarding the threats she received varied. In his invalid protection visa application, the applicant claimed his wife was threatened by the Taliban in telephone calls made to her at the [workplace]. He said they threatened her because the applicant would not pay them, but also because they considered her employment to be an offence to their religion. In his SHEV application, he said that his wife received threatening phone calls from the Taliban both on her own mobile phone and at the

[workplace] telephone number after he shut down his business. He said they also sent threatening letters to the [workplace].

40. The applicant did not mention any threats to his wife in his bio data or entry interviews. I have considered whether the timing of the claimed threats in 2008, approximately four years prior to the applicant's entry interview, and the fact that the threats were made to his wife rather than to the applicant, may account for his omission of any reference to threats to his wife from the reasons he gave for leaving Pakistan in the entry interview. However, the applicant referred to events involving his [relative 1] and [relative 2] 2007 and 2008 during the entry interview, suggesting that he considered events affecting other family members in 2008 were relevant to his claims for protection. As discussed, the applicant was asked several times during the entry interview whether there was anything else he wished to say about his reasons for leaving Pakistan. He did not refer to any threats to his wife. I do not accept that any of the other factors said to have affected the applicant's evidence in the entry interview adequately explains the omission of any reference to these claims from the applicant's evidence in the entry interview.
41. Having regard to the inconsistency in the applicant's evidence in this respect, and in particular to the omission of any reference to these threats in the entry interview, I do not accept that the applicant's wife was threatened by, or was of any particular adverse interest to, the Taliban for any reason. I am willing to accept that she left her employment as [occupation 1], but I do not accept that it was for the reasons claimed. I note that the applicant's [last] child was born in approximately 2008.
42. The applicant claims his profile as the husband of a former [occupation 1] would increase the risk that he would be harmed on his return to Pakistan. I have accepted that the applicant's wife has not been employed as a [occupation 1] since 2008. Having regard to the length of time since her employment, and to my finding that the applicant and his wife were not threatened in relation to her employment, I do not accept that the applicant, even if it were known that his wife was once a [occupation 1], was of any adverse interest to the Taliban, or any other armed group, on this basis at the time of his departure from Pakistan.
43. The applicant claims that he remained at home in hiding in [City 1] after the closure of his business and was unemployed until his departure from Pakistan. He claims that after his wife left her employment, they lived from savings from his business and her employment, and after the sale of their home, from the proceeds of that sale. I have accepted that the applicant closed his business in 2007. I have not accepted that the applicant sold his home. With some reservation, I am willing to accept that the applicant remained unemployed following the closure of his business in 2007 until he left Pakistan. As I have found that the Taliban did not threaten or harm the applicant or his wife following the closure of his business in 2007, I do not accept that he remained in his home in hiding, unemployed, during this period of approximately five years due to a fear of the Taliban.

Profile as a wealthy Shia man and successful Shia businessman

44. The applicant claims that he has a profile as a successful Shia businessman and this increases the risk that he would be targeted by the Taliban on his return to Pakistan. He has consistently claimed that he operated a [business], originally established by his father, until 2007. He claimed that he operated the business from his home and employed [number] people. He said he regularly had [products] for sale at his home, and before 2007, he often [transported the products] that were sold or for sale to Islamabad himself. He claims his business was successful and he had a large and valuable home in [City 1] until 2010, when he and his family moved to

his [relative 3]'s home. I note that I have not accepted that he sold or moved from his home and have found that his wife and children still live in that home.

45. I accept that the applicant operated, and was known to operate, a successful [small business] in [City 1]. I accept that he was also known to be Shia. I have accepted that the applicant closed his business in 2007 and was unemployed until his departure from Pakistan in 2012. I have not accepted that the applicant or his wife received any threats, or experienced any other harm from the Taliban in the period following the closure of his business.
46. Having regard to the period of time in which the applicant remained unemployed in Pakistan, and to the further four and half years the applicant has spent in Australia, I do not accept that he now has a profile as a successful Shia businessman. The applicant claims, and I accept, that he and his wife now have very few savings left. On the applicant's evidence, the threats made by the Taliban prior to the closure of his business in 2007 involved demands for money and [products] as well as references to his Shia faith. While I accept that the applicant was of some adverse interest to the Taliban as the successful operator of a [business] and / or a wealthy Shia man, I do not accept that he continued to be of any particular adverse interest to the Taliban following the closure of his business in 2007. I find that he was of no particular adverse interest to the Taliban, or any other Sunni extremist group, other than as a Shia Muslim from Kurram Agency, at the time of his departure from Pakistan. I do not accept that at the time of his departure, the applicant had a profile as a wealthy Shia man, a successful Shia businessman, the Shia husband of a former [occupation 1], or any combination of these matters.

Identification as a Shia

47. The applicant claims that he could be readily identified as a Shia, or as a Turi Shia from [City 1], in other places in Pakistan because of his accent, the dialect he speaks, his 'Shia' name, the [City 1] address that is recorded on his national identity card, his physical features, his dress, and his Shia religious practices. I accept that the applicant's national identity card, which he would be required to use in a range of everyday transactions, includes his permanent address in [City 1], and that his accent may enable him to be identified as a member of the Shia Pashtun Turi tribe from Kurram Agency.¹¹ I further accept that he may be identified as a Shia by his name and his Shia religious practices, such as attending a Shia mosque. Other than the applicant's claims described, there is no evidence before me regarding the applicant's appearance, dress, or dialect. Nevertheless, I accept that one or more of the matters discussed may enable the identification of the applicant as a Shia Muslim and / or a Turi Shia Muslim from [City 1].

Refugee assessment

48. 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.

¹¹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

Well-founded fear of persecution

49. 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.

50. I have not accepted that the applicant was of any particular adverse interest to the Taliban, or any other extremist Sunni group, on the basis of his past operation of a successful [business], or his wife's former employment as a [occupation 1], at the time of his departure from Pakistan. I accept, however, that the applicant is a Shia Turi from [Kurram Agency] in the Federally Administered Tribal Areas (FATA) of Pakistan.

51. The Department of Foreign Affairs and Trade (DFAT) reported in 2016 that Pakistan continues to face security threats from terrorist, militant and sectarian groups.¹² The European Asylum Support Office (EASO), citing data provided by the Pakistan Institute for Peace Studies, reported that 625 terrorist attacks were carried out by militant, nationalist/insurgent and violent sectarian groups in Pakistan in 2015.¹³ This was a decrease of 48 per cent compared to 2014. Approximately ten per cent of the terrorist attacks reported in 2015 had sectarian targets, mainly members of the Shia and Sunni communities and places of worship.¹⁴ DFAT reports that sectarian attacks have historically targeted individuals, places of worship, shrines and religious schools.

52. While sectarian violence has affected all religious and sectarian groups, Shias represent a higher proportion of those attacked and killed.¹⁵ Most casualties are reported to result from large-scale attacks rather than targeted killings of Shia individuals. DFAT reports that some Shias have been individually targeted in sectarian attacks, particularly in Sindh province, including political leaders and professionals such as doctors, academics, lawyers and teachers.¹⁶

53. Kurram Agency is the only tribal agency in the FATA to have a significant Shia population. As discussed, [Kurram Agency], where the applicant's home town of [City 1] is located, is predominantly Shia.¹⁷ While the information before me includes discussion of the different tribes present in Kurram Agency, the conflict and violence in the Agency is characterised as

¹² DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

¹³ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

¹⁴ Ibid.

¹⁵ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

¹⁶ Ibid.

¹⁷ Ibid.

sectarian rather than tribal in nature. As discussed, a period of intensive fighting between Sunni and Shia Muslims in the region was reported to have occurred from 2007 to 2012.¹⁸ A number of militant groups are reported to be active in the FATA, including the TTP, Mehsud Taliban, Lashkar-e-Islam, Jamaat-ul-Ahrar, Al Qaeda and Lashkar-e-Jhangvi (LeJ).¹⁹

54. On 15 June 2014 the Pakistani army launched a major offensive to eradicate terrorists codenamed operation Zarb-e-Azb. While the main targets were militant strongholds in the North Waziristan tribal region, anti-militant activities associated with operation Zarb-e-Azb have also been undertaken in FATA.²⁰ On 25 December 2014, the Pakistani Government announced a National Action Plan (NAP), to address terrorism in Pakistan.
55. DFAT reported in January 2016 that there had been a substantial reduction in the level of generalised and sectarian violence throughout the country since the commencement of operation Zarb-e-Azb in June 2014 and associated Pakistan military operations against terrorist and militant groups in FATA and Karachi.²¹ The implementation of the NAP was also reported to have contributed to the decline in violence.²² According to DFAT, credible sources have reported a 75 per cent reduction in the number of sectarian and terrorist attacks throughout Pakistan from September 2014 – September 2015.²³ The Center for Research and Security Studies (CRSS) and others attribute this decline to operation Zarb-e-Azb and the NAP.²⁴
56. The South Asia Terrorism Portal (SATP) reported a 50 per cent reduction in the number of civilians killed in violent incidents in Pakistan in 2015 compared to 2014, while a number of other reputable sources reported similar significant reductions in the number of civilians killed in violent incidents in 2015 compared to 2014.²⁵ DFAT reported that serious crime had also substantially reduced throughout Pakistan as a result of operation Zarb-e-Azb.²⁶
57. A range of information before me suggests there was also an improvement in the security situation in FATA. For example, the Pakistan Institute for Peace Studies (PIPS) reported that 149 terrorist attacks were carried out in FATA in 2015, a decline of 36 per cent compared to 2014.²⁷ The FATA Research Centre (FRC) reported that there was a decline of 40 per cent in militant violence in the FATA region in 2015 compared to 2014.²⁸ EASO reported in July 2016 that an Austrian Fact Finding Mission found that the situation in the FATA had improved significantly since the start of operation Zarb-e-Azb.²⁹
58. In 2015 the regions of FATA reported to be most affected by terrorist attacks were North Waziristan, South Waziristan and Khyber Agency, mainly due to activities associated with operation Zarb-e-Azb in these areas.³⁰
59. DFAT assessed in January 2016 that there was a low level of sectarian violence overall in the FATA, although the level of generalised violence was reported to vary throughout the FATA,

¹⁸ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

¹⁹ Ibid; <https://www.nytimes.com/2015/12/14/world/asia/sunni-militants-claim-deadly-attack-at-market-in-pakistan.html>.

²⁰ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

²¹ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

²² Ibid.

²³ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

²⁴ Ibid.

²⁵ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

²⁶ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

²⁷ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

²⁸ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

²⁹ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

³⁰ Ibid.

with violence greatest in North Waziristan and Khyber Agencies because of ongoing military activity associated with operation Zarb-e-Azb. DFAT assessed there was a low level of generalised violence in Kurram and Orakzai Agencies.³¹

60. Despite the improvements in the security situation discussed above, the FRC reported in August 2016 that militant activities in the FATA in the first half of 2016 increased compared to the previous six months.³² In an FRC report cited by EASO, the FRC reported five militant attacks had occurred in Kurram Agency in the first three months of 2016, with three people were killed and two injured (including militants, civilians and members of security forces).³³ In 2017, attacks by Sunni extremist groups in Parachinar have occurred in January, killing 24 people, in March, killing 22, and in June, killing more than 70.³⁴
61. Having regard to the range of information before me, and in particular, to the recent reports of violence in [Kurram Agency], I am satisfied that there is a small, but nevertheless real, chance of serious harm to the applicant as a result of sectarian violence in [Kurram Agency].
62. Pursuant to s.5J(1)(c), in order for the applicant to be found to have a well-founded fear of persecution, the real chance of harm must relate to all areas of Pakistan. DFAT reports that sectarian violence occurs in all parts of Pakistan, however the type and intensity of sectarian violence varies between and within provinces. Notwithstanding this variation, the downward trend of violence since 2013, particularly following the commencement of operation Zarb-e-Azb in 2014, is reported to be evident across all provinces.³⁵
63. DFAT reports that levels of generalised and sectarian violence are lower in Punjab province than other parts of Pakistan. In 2014, 18 sectarian attacks were reported across Punjab province and in the Islamabad Capital Territory, resulting in 21 deaths. According to SATP, a total of 16 Shias died in three attacks across Punjab and the Islamabad Capital Territory in 2015.³⁶
64. Shia Muslims are reported to be dispersed throughout Punjab province.³⁷ Within the province, militant attacks and sectarian tensions in are reported to be higher in areas where madrassa and militant networks are strongest, and the levels of segregation between Shia and Sunni communities are greater. These areas are reported to include Jhang, Multan and Rahim Yar Khan in southern Punjab, as well as Gujranwala and parts of Rawalpindi in northern Punjab. Sunnis and Shia communities are reported to be generally more integrated in the larger cities.³⁸
65. Islamabad was reported to be a city of almost two million in 2011, including a large Shia community.³⁹ DFAT reported in 2016 that Islamabad remained relatively safe for migrant Shia communities.⁴⁰ According to SATP, no Shia Muslims were killed as a result of sectarian violence in Islamabad in 2015 or in 2016 to 23 October 2016.⁴¹ DFAT reported that an attempted suicide

³¹ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

³² FATA Research Centre, "Pakistan Security Report: First Half 2016", 4 August 2016, CIS38A80121730.

³³ Ibid.

³⁴ <https://en.dailypakistan.com.pk/headline/parachinar-mourns-twin-blasts-victims-while-awaiting-pm-coas/>.

³⁵ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

⁴⁰ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴¹ South Asia Terrorism Portal (SATP), "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539.

bomb attack on a Shia imambargah in Islamabad in 2015 was thwarted and several of the would-be perpetrators were prosecuted.⁴²

66. A number of sectarian attacks were reported in Rawalpindi, a city that closely neighbours Islamabad, in 2015.⁴³ While Rawalpindi is very close to Islamabad, the information before me suggests that the security situations in the two cities are different, with Islamabad experiencing lower levels of sectarian and other forms of violence.⁴⁴ DFAT reports that there are numerous police checkpoints along highways leading into Islamabad, and at major intersections and prominent buildings within Islamabad, providing a strong deterrent to militant groups planning attacks in the city. Paramilitary Rangers also continue to patrol streets throughout Islamabad, having been deployed throughout the city in April 2014.⁴⁵
67. As discussed, DFAT reports that 'high-profile' Shias, including high-profile professionals and political and religious leaders, have been targeted in fatal attacks by Sunni extremist groups.⁴⁶ I have not accepted that the applicant was of any particular adverse interest to the Taliban, or any other Sunni extremist group, at the time of his departure from Pakistan on the basis of his past operation of his successful [business], or his wife's former employment. Neither have I accepted that he had a profile as a wealthy Shia man who was a successful businessman and the husband of a woman who was formerly a [occupation 1] at the time of his departure. There is no evidence, other than the applicant's claims, to suggest that he would be of any future interest to the Taliban, any other Sunni extremist group, or any other group or person on any these bases, or as a result of the combination of these matters.
68. I have accepted that the applicant could be readily identified as a Shia Muslim and /or a Turi Shia Muslim from [City 1] anywhere in Pakistan due to his accent, the dialect he speaks, his 'Shia' name, the [City 1] address that is recorded on his national identity card, his physical features, his dress, and his Shia religious practices. However, as discussed, sectarian attacks on Shia Muslims in Islamabad are rare.
69. There is little evidence before me to suggest that Shia Turis in Islamabad have been targeted in attacks in Islamabad. DFAT advises that the Turi community in Islamabad has reported only one attack on Turi migrants in Islamabad in the past four years, an attempted suicide IED attack on a Shia imambargah on 10 August 2013.⁴⁷ The would-be suicide bomber in that incident was killed, while the other four perpetrators from Sadda, Kurram Agency were prosecuted. Some Turi migrants in Islamabad have reportedly received unspecified threats from sectarian elements. DFAT reports that kidnappers have historically targeted Ahmadis and, to a lesser extent, wealthy migrants from tribal areas, however, according to Islamabad-based think tanks, there is a declining incidence of kidnapping for ransom incidents in Islamabad.⁴⁸ As noted, SATP reported no deaths of Shias as a result of sectarian violence in Islamabad in 2015 or in 2016 to 28 August 2016.
70. In terms of the general security situation in Islamabad, the Pakistani Institute for Peace Studies reported three terrorist incidents, resulting in four deaths, in Islamabad in 2015, all of which

⁴² DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴³ SATP, "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴⁴ SATP, "Shias killed in Pakistan since 2001", 23 October 2016, CIS38A80122539; DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴⁵ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

⁴⁶ Ibid.

⁴⁷ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁴⁸ Ibid.

were said to be sectarian in nature.⁴⁹ The Center for Research and Security Studies reported ten deaths as a result of violence in Islamabad in 2015.⁵⁰ The SATP reported only one casualty as a result of terrorism in Islamabad in the first quarter of 2016, the death of a member of the security forces.⁵¹

71. Having carefully considered the range of information before me, I am not satisfied that there is a real chance of harm to the applicant, now or in the foreseeable future, on the basis of his Turi ethnicity, [City 1] origins and Shia faith in Islamabad, or as a result of the security situation in Islamabad. I am therefore not satisfied that the real chance of serious harm to the applicant on this basis relates to all parts of Pakistan. I am satisfied that the applicant could safely return to Islamabad.

Returnee from a western country

72. I have considered the risks that may be faced by the applicant as a person returning to Pakistan having unsuccessfully sought asylum and lived in Australia for more than four years.
73. There is no independent evidence before me to suggest that extremist Sunni groups or any other armed groups target unsuccessful asylum seekers who have lived in western countries in violent attacks for any reason. Nor is there any evidence before me that the Pakistani Government subjects unsuccessful asylum seekers returning to Pakistan to any form of ill treatment. DFAT reports that western influences are pervasive in Pakistan and many Pakistanis live abroad and return to Pakistan, or have relatives who do so.⁵² DFAT assesses that people who have spent time living in western countries are not subject to discrimination or violence on this basis.
74. DFAT reports that unlawful emigration is an offence in Pakistan, usually punishable by a small fine.⁵³ The applicant claims that he departed Pakistan legally, using his own genuine Pakistani passport, which he still holds, although it is now expired. There is no evidence before me to suggest that the applicant has committed, or would be suspected to have committed, the offence of illegal emigration. DFAT advises that while there is no evidence that unsuccessful asylum seekers returning to Pakistan are punished on return, returnees may come to the attention of Pakistani authorities at airports and may be questioned by the Federal Investigating Agency (FIA) or other authorities to check whether they are wanted for committing crimes in Pakistan.⁵⁴ There is no evidence before me indicating that the applicant has committed, or would be suspected of having committed, any crime in Pakistan. While I accept that if he returns to Pakistan he may be questioned by the FIA, I am not satisfied that any brief period of detention for questioning of this type would amount to serious harm.
75. I am not satisfied that there is a real chance of harm to the applicant now or in the foreseeable future, including from Sunni extremist groups or the Pakistani authorities, as a person who has unsuccessfully sought asylum and would be returning to Pakistan after living in Australia, a western country, for more than four years.

⁴⁹ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

⁵⁰ Center for Research and Security Studies, (CRSS), "Annual Security Report 2015", 18 February 2016, CIS38A8012307; EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

⁵¹ EASO, "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710

⁵² DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

⁵³ Ibid.

⁵⁴ Ibid.

76. I have considered whether the applicant, a Turi Shia from [City 1] in [Kurram Agency] who previously ran a successful [business], is married to a former [occupation 1], and will be returning to Pakistan as an unsuccessful asylum seeker after living in Australia for more than four years, faces a real chance of harm, including as a result of the security situation in Islamabad. I am not satisfied that any combination of the applicant's circumstances would combine to expose the applicant to a real chance of harm in Islamabad.

Refugee: conclusion

77. 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

78. 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

79. 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.

80. I have accepted that the applicant faces a real chance of serious harm in [Kurram Agency] in the form of significant ill treatment and possible loss of life. As 'real chance' and 'real risk' involve the same standard, I am satisfied that there is a real risk that he will suffer such harm and that it amounts to significant harm, in [Kurram Agency].

81. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm. I have concluded that there would not be a real chance of harm to the applicant in Islamabad as a person of his profile and background, or as a result of the general security situation. As 'real risk' and 'real chance' involve the application of the same standard,⁵⁵ I am also satisfied that the applicant would not face a real risk of significant harm in Islamabad for these reasons.

82. The applicant claims that it would be difficult for him, and his family, to relocate to another place in Pakistan because he would face difficulties accessing employment due to his limited education and because he has no family or other support outside [City 1].

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

83. DFAT reports that large urban centres such as Islamabad offer better opportunities for employment, access to services such as health care and education, and state protection than rural or smaller urban areas.⁵⁶ Turi migrants in Islamabad are reported to have told DFAT that these factors were central to their decision to relocate to Islamabad from Kurram Agency.⁵⁷ Turi Shias in Islamabad are reported to often own or work for small businesses.⁵⁸
84. DFAT advises that while transportation costs and higher costs of living can operate as a barrier to internal relocation in larger cities, these costs can be offset by the higher wages typically received in these cities, particularly for those with relevant skills, including foreign language and computer skills. According to DFAT, there is a range of accommodation options available in cities like Islamabad and no evidence to indicate there are any accommodation shortages.⁵⁹ DFAT reports that migrant communities also provide a support network which can help alleviate higher living costs in these areas. For example, it is common for Turi migrant families to jointly purchase and occupy a house, while other Turis choose to live independently in Islamabad.
85. The applicant has consistently claimed that he has no family or other connections that could support him and his family outside [City 1]. During the SHEV interview, the delegate put to the applicant information showing that he had on several occasions transferred money from Australia to a person in Rawalpindi, Pakistan. The applicant claimed that the individual named as the recipient of the money transfer was his [relative 4] and insisted that his [relative 4] lived in [City 1]. In a post-interview submission, he explained that as he is illiterate, he was not aware of the precise destination of the funds he sent. His family had explained to him that they had asked him to send the money to a location in Rawalpindi because it was no longer possible to collect the transferred funds in [City 1] due to restrictions on the transport of cash into [City 1]. His family explained that his [relative 4] travels from [TCity 1] to Rawalpindi to collect the money. I am willing to accept that the applicant has no relatives or other connections that could provide support to him outside [City 1].
86. While I recognise that the informal support provided by family members or other connections may assist individuals relocating to a new city, the applicant has demonstrated a degree of resourcefulness and adaptability in traveling to, and living and working in, Australia. DFAT reports that there is a large Shia community in Islamabad, including Turi Shias.⁶⁰ I consider that the presence of a Turi community, including migrants from Kurram Agency, in Islamabad mitigates the risk that the applicant will feel socially isolated there. Further, the applicant was a frequent traveller to Islamabad on business in the past, and therefore has a degree of familiarity with the city, albeit as it was some ten years ago.
87. The applicant claims, and I accept, that he received a limited education and is illiterate. Although he is illiterate, I accept that the applicant speaks a number of languages. In the bio data interview conducted [in] October 2012, the applicant indicated that his preferred language was Pashto but he also spoke Urdu, Arabic, and Farsi, while in his SHEV application, the applicant indicated that he spoke Pashto, Urdu and some Farsi. The applicant operated a successful [business] for many years, including making numerous trips to Islamabad. He indicated that his duties in the business included managing the banking and the payment of wages. In Australia, the applicant has found employment as a stacker in a fresh produce retailer. Despite his illiteracy, the applicant appears to be a resourceful and adaptable

⁵⁶ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

⁵⁷ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

⁵⁸ Ibid.

⁵⁹ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

⁶⁰ DFAT, "DFAT Thematic Report - Shias in Pakistan January 2016", 15 January 2016, CIS38A801265.

individual who is capable of finding and engaging in employment, and conducting business, in different locations. I am not satisfied that the applicant's limited literacy or education would be a barrier to his employment in Islamabad.

88. The applicant is approximately [years] of age. I have accepted that he has experienced, and may still be experiencing, a degree of anxiety and stress, in particular associated with the uncertainty regarding the outcome of his protection visa application, his separation from his family and trauma associated with past events in Pakistan. However, the applicant has displayed considerable resilience in adapting to a new life in Australia, including securing employment. I am not satisfied that his psychological health problems or his age would prevent him from finding and engaging in employment in Islamabad, or from otherwise successfully establishing himself in Islamabad.
89. In terms of his family, who currently reside in Kurram Agency, I note that the practice of men from Kurram Agency leaving their homes to live and work in other locations while their families remain in FATA, is very common.⁶¹ Remittance income is reported to account for 95 per cent of household incomes in the Agency. The applicant has demonstrated an ability to live independently from his family for an extended period of time and a willingness to continue to live apart from his family in Australia if he was successful in obtaining a Safe Haven Enterprise Visa. I am satisfied that the applicant will continue to live apart from his family in Islamabad.
90. As discussed, information before me concerning the security situation in Islamabad suggests that ten deaths occurred as a result of violent incidents in Islamabad in 2015, while no civilian casualties as a result of terrorist incidents were reported in the first quarter of 2016.
91. I Having regard to the applicant's individual circumstances as discussed above, and to the situation in Islamabad, including the security situation, I am satisfied that it is reasonable for the applicant to relocate to Islamabad, where I have found that he would face no real risk of significant harm.

Complementary protection: conclusion

92. 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.

⁶¹ Office for the Coordination of Humanitarian Affairs (OCHA), "Inter-Cluster Mission to Kurram Agency 8-13 April 2016", 27 April 2016, CIS38A8012732.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.

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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.

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36 Protection visas – criteria provided for by this Act

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- (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.

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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.