



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA17/03527

Date and time of decision: 2 July 2018 14:18:00
A 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 Sunni Muslim Pashtun national of Pakistan. In January 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 30 August 2017, a delegate of the Minister for Immigration and Border Protection refused the application.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 25 September 2017, the applicant's representative provided a submission to the IAA. The submission contains argument addressing the delegate's decision.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Sunni Muslim Pashtun from [a certain] tribe. He was born in a village in the [Town 1] area of Lower Kurram Agency in the Federally Administered Tribal Areas of Pakistan (FATA). He has [specified family members].
 - In approximately 2004, after completing [number] years of school in [Town 1], he moved to Kohat in Khyber Pakhtunkhwa Province, where he completed [further] education. He then moved to Peshawar, where he completed [further studies including] an undergraduate degree in [subject]. He undertook one year of study in the area of [another subject]. He did not return to [Town 1] following his departure in 2004. His family remained in [Town 1].
 - In approximately August 2008, Sunni militant group the Tehreek-e-Taliban Pakistan (TTP) came to his family's home village in [Town 1]. They demanded that each household provide one boy to join them. They burned down the houses of families who refused to comply. The TTP destroyed his family's home because they refused to provide a member of their household to the TTP or support the TTP. His family moved to Peshawar after this, where they joined him. They still reside in Peshawar.
 - In 2009, a [business] in Peshawar in which he was employed was destroyed by a bomb. A number of people were killed in this explosion. He was on his way to work at this time so was unharmed.
 - A couple of days after this attack, the TTP pushed a letter under the door of his home, demanding that he appear at their office within two weeks. He did not comply with this request.
 - In December 2010, he received another similar letter from the TTP. He approached the police for assistance but they advised they could not protect him from the TTP. His [brother] received one or two threatening telephone calls from the TTP about him approximately eight or nine months after this.

- He was employed in Rawalpindi in Punjab Province for approximately one year in 2011 to 2012.
- His employers in Peshawar and Rawalpindi received threatening phone calls about him from the TTP. He lost one or more of his jobs because his employer was afraid they would be attacked by the TTP.
- He did not know why the Taliban were pursuing him until 2015, when his brother told him that a man studying in a madrassa told him that the applicant was suspected of providing information to the government about the location of TTP facilities which was used in shelling attacks targeting TTP. Relatives from his family village in [Town 1] who had joined the TTP told the TTP that the applicant had assisted the government in this way.
- In approximately July 2014, his [other] brother was abducted by the TTP on his way to university in Peshawar. He was held for approximately four weeks and released unharmed after his father paid a ransom.
- His [Relative A] was once a high-profile Afghan [official].
- He fears the TTP may kill him if he returns to Pakistan. They have targeted him in the past because they believe he shared information with the government. They will try to force him to join them. They may also kidnap him for ransom as his family is known to be wealthy and they have targeted him in the past.

Refugee assessment

6. 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

7. 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.

8. The applicant provided his original Pakistani passport and computerised national identity card (CNIC). He provided credible oral evidence during the SHEV interview concerning his tribal identity, ethnicity and place of birth. I accept that he is a Pashtun Sunni Muslim citizen of Pakistan from the [Tribe 1]. I accept that he has no right to return to or reside in any other country, and that Pakistan is the receiving country for the purpose of this assessment. I accept that the applicant was born in a village in the [Town 1] area of Lower Kurram Agency, in the Federally Administered Tribal Areas (FATA) of Pakistan.
9. The applicant claims that after completing [number] years of school he left [Town 1] and moved to Kohat in Khyber Pakhtunkhwa Province, where he lived for a period of approximately [time] during which he completed [further] education. He then moved to Peshawar, also in Khyber Pakhtunkhwa, where he completed [further studies], and an undergraduate degree in [subject]. He undertook some further study in [subject]. I accept the applicant's claims relating to his education and residence during his education. While the information provided by the applicant in relation to the timing of his education is somewhat unclear, it appears that he left [Town 1] in approximately 2002.
10. The applicant frequently described the organisation that had burned his family home, threatened him and kidnapped his brother as 'the Taliban'. He confirmed during the SHEV interview that when he referred to 'the Taliban', he intended to refer to the TTP. I note that the TTP is described as a loose network of Sunni militant groups which, while ideologically aligned with the Afghan Taliban, maintains an identity that is separate and distinct from that of the Afghan Taliban and has frequently pursued different goals. The TTP is sometimes referred to as the 'Pakistani Taliban'.¹
11. The applicant claims that in 2008, his family's home in [Town 1] was burned by the TTP when they refused to contribute a son to, or support, the TTP. He claims that all families in the village refused to contribute a member of their household to the TTP and as a result, all of the houses in [Town 1] were destroyed. He said that every family left [Town 1] at this time and no families have returned to the area. The applicant indicated in his SHEV application that during the entry interview he may have incorrectly given the impression that he was resident in [Town 1] at this time, when he was in fact resident in Peshawar.
12. There is information before me indicating that a period of intensive sectarian conflict occurred in Kurram Agency in 2007 and 2008. The TTP are said to have instigated the conflict after Shia residents of Kurram Agency refused to allow the TTP to access Afghanistan via Kurram Agency. The TTP are said to have entered Lower Kurram in 2007, with more fighters from the TTP and other Sunni militant groups moving into the area in 2008.² In the second half of 2008, Shia elders in Kurram Agency are said to have raised a Lashkar, or militia, to fight the Sunni militants. The Shia lashkar defeated the TTP militants and local Sunni Bangash fighters, and local fighters fled. The Shia offensive is said to have forcibly displaced the [mainly Sunni] population in 52 villages northwest of Alizai and Bagzi, including the applicant's family's home area of [Town 1].³ In 2014, UNHCR indicated that Sunni residents of a number of formerly mixed Shia and Sunni villages in [Town 1] still had not returned to their villages.⁴

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; Taliban Profile", Jane's Intelligence Review, 28 September 2016, CX6A26A6E11188.

² Internal Displacement Monitoring Centre (via website of Dr Farhat Taj, University of Oslo), "Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011", 1 May 2011, CISD9559B12437.

³ [Deleted.]

⁴ [Deleted.]

13. While this information is consistent with the applicant's claim that his family and other Sunni families left [Town 1] in 2008 and have not returned, it suggests that the displacement of Sunni families from villages in [Town 1] occurred as a result of attacks by Shia forces. This leads me to question whether the applicant's family left [Town 1] because of the actions of the TTP or other Sunni militants as he claims. The applicant provided a copy of a photograph of a destroyed structure said to be his former family home in [Town 1]. The image is undated and there is nothing in the image to connect the structure pictured to the applicant, his family, [Town 1], or the relevant point in time. There is nothing to indicate who destroyed the structure. I note also that the image appears to show a building that has been destroyed in an explosion rather than by fire.
14. Information before me concerning the Pakistani Taliban's recruitment activities and strategies indicates that the TTP recruit men by exploiting resentments, through fear and persuasion, by offering better economic opportunities, and by exploiting a desire for adventure or for revenge.⁵ There are no independent reports before me of homes in Kurram Agency or elsewhere being burned where families refused to contribute a man to the TTP's forces.
15. Having regard to the information before me, while I accept that the applicant's family left [Town 1] and moved to Peshawar in 2008, and that their home in [Town 1] was destroyed, I am not satisfied that these events occurred as a result of any action taken by the TTP or any other Sunni militant group. I consider it highly likely that the applicant's family and other Sunni families from their village were displaced by sectarian conflict, and in particular by the actions of Shia militants. I am willing to accept that the TTP encouraged the applicant's family and other Sunni households in their village in [Town 1] to contribute personnel, money, or other support to the TTP, and that the applicant's family did not do so. However, I do not accept that the applicant's family was threatened or harmed by the TTP, or any other Sunni militant group, for this reason. I do not accept that the applicant or his family were of any adverse interest to the TTP or any other Sunni militant group for any reason related to their lack of support for the TTP.
16. The applicant claims that in 2009 a bomb exploded in or near [a business] in Peshawar, killing and injuring a number of people. He was not sure when the attack occurred but thought that it was around the end or middle of 2009. He described [the business] as [a certain type] in his SHEV application. During the SHEV interview he described it as a [more general business type]. He said it was in a [specified] area, access to which required a security pass. He claims that he was employed at [this business] but was not harmed by the explosion because he was on his way to work when it occurred. In his entry interview he indicated that he was employed at the [business] as a [Role 1], while in his SHEV application he describes his role as ['role 2']. The nature of the applicant's claimed employment at [this business] was not explored during the SHEV interview. I note that there is no documentary evidence relating to this employment before me.
17. The applicant said that the [business] was totally destroyed by the explosion. Two of his colleagues were injured in the attack. He said he returned home after the attack and stayed indoors for a couple of days. He said he did not know if other [businesses] were damaged in the attack or whether the attack targeted [his employer]. The police did not question him about the attack. I find it somewhat surprising that the applicant did not know whether other [businesses] were damaged in the attack.

⁵ Qandeel Siddique, Danish Institute for International Studies, "Tehrik-e-Taliban Pakistan: An Attempt to Deconstruct the Umbrella Organization and the Reasons for its Growth in Pakistan's North-west", *Human Security Gateway*, 01 January 2010, CIS19710.

18. The applicant did not provide any independent evidence, such as a news report, relating to the claimed bombing of [his employer]. He indicated during the SHEV interview that he thought the incident was covered in news reports and would attempt to secure one or more of these reports but it does not appear that he did so. The delegate indicated that he could not locate any media reports of this incident but noted that there were reports of a number of other bombings of [businesses] and markets by the TTP and other Sunni militants in Peshawar in 2009.⁶ Information listing terrorist incidents in Khyber Pakhtunkhwa Province in 2009 includes numerous attacks on targets associated with the security forces and government, as well as attacks on some markets. One of the incidents listed is an October 2009 bomb which targeted a building in [a specified area of] provincial capital Peshawar, killing one child and injuring [a number of] others. The delegate referred to footage he located on [a website] which he considered could be footage of the incident.
19. I am willing to accept that a bomb in 2009 damaged or destroyed a [named business] located in a [specified area] in Peshawar. I accept that a number of people were killed and injured in this attack. I am also willing to accept that the applicant was employed by [the named business]. Given the applicant's clear statement during the entry interview that he was employed as a [Role 1], and the unclear meaning of the term '[Role 2]' used in relation to this role in his SHEV application, I find that he was employed as a [Role 1] in [this business].
20. During the entry interview conducted shortly after the applicant's arrival in Australia, the applicant indicated that the [bomb at his employer] was not targeted specifically at him. Having regard to country information indicating that Sunni militant groups have frequently attacked targets associated with [specified areas], and to the reports of other attacks by Sunni militant groups on targets associated with [these areas] and on retail venues in Peshawar in 2009,⁷ I consider it highly likely that the attack was perpetrated by a Sunni militant group and targeted [the particular area], or targeted the [surrounding] area. On the evidence before me, I am not satisfied that that the bomb that damaged [the business] targeted the applicant individually, or that he was of any particular adverse interest to the perpetrators of the attack for any reason related to his employment as a [Role 1] at [the business], including following the bomb attack.
21. The applicant claims that a couple of days after the 2009 [specified] attack, the TTP slid a note under the front door of his home. The applicant claimed that he received a second letter from the TTP approximately one year later, in December 2010. He provided documents purporting to be photocopies of these letters with his SHEV application. The first letter orders the applicant to attend the TTP's centre or office in [Town 2] within two weeks. It says 'We know about your work place' and warns that if the applicant does not comply with the request, the applicant will 'be responsible for loss to his property and life'. The second letter orders the applicant to attend the TTP's centre in [Town 2] within a week. It refers to the previous letter, noting that the applicant had not attended the centre as requested. It states it is the final letter and warns that if the applicant does not comply with the TTP's order, he will be responsible for any loss he sustains.
22. In the entry interview conducted in August 2013, the applicant referred to a threatening letter or threatening letters from the Taliban. He said the letter or letters said that he should join the Taliban and should not work anywhere else. He appeared to indicate that the letter or letters demanded that each family put forward one person to join the TTP and encouraged the applicant to campaign with the TTP for his 'brothers'. This description of the letter or letters'

⁶ "2009 - Year of terrorism", Human Rights Commission of Pakistan (HRCP), 29 December 2009.

⁷ [Deleted.]

content is quite different to the content of the two purported letters from the Taliban provided by the applicant with his SHEV application.

23. During the SHEV interview, the applicant claimed that the TTP also threatened his employers in Peshawar and Rawalpindi by telephone. While he did not indicate when these threats occurred, he claimed that he left his employment after his employers received these calls. He said that that as a result of the TTP's threats, his employer in Rawalpindi told him that he was putting his life at risk and fired him. I note that the applicant states that he ceased his employment in a [Business 2] in Peshawar in 2011 and ceased his employment in Rawalpindi in 2012. The applicant also claimed that one of his brothers received one or two threatening telephone calls about him from the TTP approximately eight or nine months after the applicant received the second threatening letter from the Taliban in December 2010.
24. The applicant's claims relating to these threats were quite vague and some aspects of his claims appeared to vary during the interview. For example, when asked whether any members of his family had been threatened or intimidated by the TTP or others to try to persuade them to bring the applicant to them, the applicant said 'They have threatened my brothers on the phone'. When asked when this occurred, the applicant replied 'After that letter when I disappeared, they threatened my brothers'. Asked how long after he received the second threatening letter his brothers began to receive threats, the applicant said 'Maybe eight or nine months, maybe more'. Asked which of his brothers received threats, the applicant indicated that his [specified] brother was threatened. In response to the delegate's question, he said no other brothers were threatened. Asked how many times [this specified] brother was threatened, he said 'I think one or two times'. His evidence appeared to move from suggesting that a number of his brothers received threats to indicating that only [this specified] brother was threatened, while his evidence as to the number of these threats was vague. He did not describe the content of the threats to his brother. His description during the SHEV interview of the claimed threats to his employers was also vague, lacking information about the timing of these incidents and providing little detail of the content of the threats. He said the TTP called his boss and told him that they knew the applicant was working for him. When asked by the delegate what the TTP said to his employer, the applicant's response did not appear to address the question, appearing instead to describe what his employer told him.
25. The applicant did not refer to any threats to his employers or his brother in his SHEV application or during the entry interview. The delegate indicated during the SHEV interview that the omission of any reference to these matters from the applicant's SHEV application and entry interviews led him to question the veracity of these claims. The applicant's representative submits that the applicant has provided reasonable explanations for the timing of these claims. She notes that it is not a legal requirement for applicants to provide their full claims in writing.
26. The applicant said that he did not mention these matters earlier because he did not consider them to be serious matters. It is difficult to accept that the applicant did not view as serious a matter such as the claimed threat to his employer in Rawalpindi in 2012, which resulted in him losing his employment and indicated that he continued to be of such a level of adverse interest to the TTP in 2012, some two years after the claimed second written threat from the TTP, that the TTP had located his employer in Rawalpindi, in a different province. I find it similarly difficult to accept that the applicant did not consider the threat to his employer in Peshawar and threat or threats to his brother in 2011 to be serious.
27. The applicant said that another reason he did not mention these matters earlier was because he thought he could 'cover everything' in the SHEV interview. It is to be expected that

applicants for protection will provide further details of their claims for protection during interviews conducted in relation to their application. However, the information about the threats to his employers and brother provided by the applicant in the SHEV interview is more than additional detail relating to matters previously raised by him in his application. It is information about events he has not previously mentioned which relate directly to his central claim that the TTP has an adverse interest in him and will harm him on his return to Pakistan. If accepted as true, these claims would suggest a higher and more recent level of adverse interest in the applicant than that suggested by his evidence in his application.

28. The applicant mentioned his family's experiences in [Town 1] in the year 2008 in both the entry interview and the SHEV application. These events are more distant in time than the claimed threats to the applicant's brother and employers, and did not involve the applicant directly, as he was living in Peshawar in 2008. It is hard to understand why the applicant would refer to his family's experiences in 2008 in these contexts but would not refer to more recent threats from the TTP that directly concerned him, even if they were not made to him directly. I note also that the applicant was advised at the beginning of the entry interview that if the information he provided in any future interview was different to that he provided in the entry interview it might raise doubts about the reliability of what he said. I am not persuaded that the applicant did not mention these threats in his SHEV application or entry interview because he planned to raise them in the SHEV interview or because he did not consider them to be serious matters.
29. The applicant claimed that he did not know why the TTP sent him threatening letters until 2015, when his brother told him that a man who was a student in a madrassa told him that the applicant was suspected of providing information to the government about the location of TTP facilities or camps which assisted in shelling attacks targeting TTP facilities. The applicant said that relatives from his family's village in [Town 1] who had joined the TTP had told the TTP that the applicant had assisted the government in this way. He said that these relatives, who were not close relatives, may have joined the TTP after 2005.
30. The delegate expressed his concern that the applicant did not indicate that he had relatives in the TTP prior to the SHEV interview. He also queried the applicant's claim during the interview that these men were relatives from his family's village in [Town 1], given that at an earlier point in the interview the applicant had indicated that no one from the village joined the Taliban and all the homes in the village were destroyed for this reason. The applicant's response, that some of the men who joined the Taliban even destroyed their fathers' homes and did not care about him, did not address the concerns raised by the delegate.
31. The applicant claimed at the end of the interview that he did not mention that he had relatives who were in the TTP earlier because he was afraid this would impact negatively on his application for protection. As discussed, the applicant appeared to deny that any one from his village joined the TTP at an early point of the SHEV interview while later claiming that relatives from his village joined them. If the applicant did not mention his relatives in the TTP because he was afraid this would negatively affect his claims for protection, it is not evident why he changed his approach and disclosed this information during the course SHEV interview. I note that when first advancing the claim, the applicant did not explain that he had previously withheld this information for this reason. He provided this explanation only after the delegate had expressed his concerns about the timing of this claim.
32. The applicant has been represented throughout the SHEV application process. I note that in her submission to the IAA, the applicant's representative asserts that the fact that the applicant has relatives in the Taliban is the main reason that the applicant is fearful he will be targeted if he returns. In these circumstances, I am not persuaded that the applicant omitted

from his SHEV application the important information that he had relatives in the TTP who had told the TTP that he was a government informant because of any fear that this information would have adversely affected his application for protection.

33. I note also that it is not apparent how the applicant came to know that it was his claimed relatives in the TTP who told the TTP that he was a government informant. As discussed, the applicant claims that he only discovered why the TTP were interested in him when a man who was studying in a madrassa told the applicant's brother that the TTP suspected the applicant of sharing information about their facilities that was used by the government in shelling attacks on the TTP. His description of this interaction did not include any reference to the applicant's relatives.
34. I am not satisfied, on the evidence before me, that the applicant has distant relatives from [Town 1] who are members of the TTP. Even if I were to accept that he has relatives who are members of the TTP, and I do not accept this is the case, it is difficult to understand why his relatives would tell the Taliban he was a government informant, or why they or other members of the Taliban would believe the applicant had any information about TTP bases and training centres that could be shared with the government. The applicant does not claim that he had this information. He had not resided in [Town 1] since 2008 and has lived in Peshawar for a number of years. In Peshawar, he studied [subjects] and worked in a [Business 2] and a [the other business] as a [Role 1]. I am not persuaded that his employment, including his role as a [Role 1] in [another business] in a [specified area], would have given rise to any suspicion on the part of the TTP that he was a government informant.
35. The copy of the purported first letter from the TTP suggests that the TTP's adverse interest in the applicant was such that they were willing to kill him if he did not attend their centre. It is therefore difficult to understand why, when the applicant did not comply with the first order, they did not take further action to secure the applicant's until approximately one year later, in 2010, and why they then issued a further written order, rather than approaching the applicant in a more direct manner. The applicant suggested that it was hard for the TTP to locate him in the year following the first threatening letter as he was working at night and frequently staying at the [Business 2] at which he was working. He said also that his employer's body guard escorted him home. I am not persuaded by this explanation. The applicant claims that the TTP were able to identify and contact his employers in Peshawar and in Rawalpindi and establish his home address in Peshawar. This tends to suggest that the TTP could have confronted him in person, including at his place of work, if they had wished to do so. Further, the applicant claims that after the second letter demanding that he attend the TTP's centre in 2010, the only further actions taken by the TTP in relation to him were threats to his employers and brother. It is not clear why the TTP would not have approached the applicant directly following the issue of the second letter, had they had any genuine adverse interest in the applicant.
36. Following the SHEV interview, the applicant submitted a document described by the delegate as a purported declaration from the applicant's former employer in Peshawar corroborating the applicant's claims relating to threats from the TTP. Noting that he was unable to verify the identity of the author of the declaration, to interview the author to test the credibility of the evidence in the declaration, or verify the credentials of the person before whom the declaration was made, the delegate placed no weight on this document. The existence of this document, and the purported copies of the letters from the Taliban, does not outweigh the concerns I have discussed regarding the applicant's evidence.
37. Having considered the evidence as a whole, I do not accept that the applicant received any letters or other threats from the TTP, or that the TTP telephoned his employers and brother in

relation to him, or otherwise threatened or contacted his employers or family members in relation to him. I do not accept that the TTP suspected the applicant of sharing information about the location of TTP facilities with the government that was used by the government in attacks on the TTP. I do not accept that the applicant was of any adverse interest to the TTP, or any other Sunni militant group, for any reason at the time he left Pakistan.

38. The applicant claims that his [Relative A, named] was once a high-profile Afghan [official]. During the SHEV interview, the applicant's then representative indicated that he understood that [Relative A] was [a member] of the Afghan Taliban and suggested that this might explain why the Taliban were in the applicant's family's village in [Town 1]. As discussed, country information indicates that the TTP were present in [Town 1] in 2007 and 2008 and that they and other militant groups became engaged in the sectarian conflict in Kurram Agency at least partially to secure access to Afghanistan via Kurram Agency.
39. The information before me indicates that [Relative A] was [details deleted].⁸ The country information before me indicates that although the Afghan Taliban and Hezb-i-Islami shared similar ideologies and goals, their relationship was strained and marked by many instances of armed conflict. Hekmatyar's government was overthrown by the Afghan Taliban in 1996.⁹ There is no indication in the information before me that [Relative A] was a member of the Afghan Taliban.¹⁰ In any event, as discussed, the TTP are said to maintain an identity separate from that of the Afghan Taliban and to frequently pursue different agendas.¹¹ There is nothing in the information before me to suggest that [Relative A] continues to be politically active in Afghanistan or Pakistan or has any links to the TTP or any other Sunni militant group in Pakistan.

During the SHEV interview, the delegate asked the applicant whether he was able to provide any documentary evidence to support his claim to be related to [Relative A]. The applicant said that because everything was burned in his village he was not able to produce any such evidence. He said he would nevertheless ask his father whether he had any relevant documents. The applicant did not provide any documentary evidence to the delegate before he made his decision. As the applicant indicated that his father was from Afghanistan and still owned property there in conjunction with [Relative A], it is surprising that the applicant was not able to provide any documentary evidence to support his claim to be related to this man. On the evidence before me, I am not satisfied that the applicant is the [relative] of [Relative A]. Even if I were to accept that he was related to [Relative A], having regard to the nature of [Relative A's] profile, I am not satisfied that there would be any chance of harm to the applicant in Pakistan, now or in the foreseeable future, for any reason related to that relationship.

40. The applicant claimed in his SHEV application that in 2014, after his departure from Pakistan, his [other] brother was kidnapped by the TTP in Peshawar and held for around four weeks before being released when the applicant's father paid a ransom. During the SHEV interview, he said that 'they' kidnapped his brother. He said that his brother's captors did not talk to his brother or question him. When asked to whom he was referring when he said 'they', the applicant said 'They received threats from the Taliban so it might be the Taliban who kidnapped him'. I note that his evidence in the SHEV interview suggests a degree of uncertainty as to the identity of the kidnappers. The applicant suggested that as his brother was on his way to university when he was kidnapped, he believed their relatives in the Taliban, who did not

⁸ [Deleted.]

⁹ "Taliban Profile", Jane's Intelligence Review, 28 September 2016, CX6A26A6E11188.

¹⁰ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

¹¹ Ibid.

approve of his brother attending university, may have told the TTP about his brother. This suggestion appeared to be speculative in nature.

41. The applicant did not advance any independent evidence relating to this event, such as any police report or news report. Country information before me from 2014 indicated that Sunni militant groups, as well as criminal gangs, had frequently engaged in kidnap for ransom to raise funds in cities across Pakistan.¹² DFAT reported in 2016 that kidnap for ransom occurs throughout Pakistan.¹³ On the limited evidence before me, I am willing to accept that the applicant's brother was kidnapped in Peshawar in 2014, held for a number of weeks, and released when his father paid a ransom. I am not satisfied however, that the TTP were responsible for the kidnap of the applicant's brother.
42. The applicant claims that if he returns to Pakistan, the TTP may demand that he join their organisation and may then kill him. As discussed, the information before me suggests that the Taliban generally recruit young Sunni men by offering financial incentives, exploiting their resentments, and through fear and persuasion.¹⁴ There is little evidence to suggest that men who are not willing to join the TTP have been harmed for not doing so. I am not satisfied that there is a real chance that the applicant would be forced by the TTP or any other Sunni militant organisation to join them, or that he would be harmed by the TTP or any other militant organisation if he refused to do so.
43. The applicant claims that his family is wealthy and because of this, and because of his profile with the TTP, he may be kidnapped for ransom by the TTP. I note that I have found that the applicant was not of any adverse interest to the TTP or any other militant group for any reason at the time he left Pakistan. The applicant stated that his father is employed as [an occupation] in [another country]. There is no evidence before me regarding any other source of income or wealth in the applicant's family. Information before me indicates that it is very common for Pakistani citizens to work overseas and to remit income to families in Pakistan.¹⁵ DFAT reported in 2016 that 2.76 million Pakistanis sought employment abroad in the period from 2008-2013.¹⁶ While I accept that the applicant's family is not regarded as poor in Pakistan, having regard to the nature of the applicant's father's employment, the common nature of overseas employment in Pakistan, and the lack of any evidence of any other source of wealth in the applicant's family, I do not accept that the applicant's family is wealthy or is regarded as wealthy in Pakistan.
44. Since 2014, the Pakistani Government has taken significant steps to reduce violence in Pakistan, including the major counter-terrorism military operation 'Zarb-e-Azb', and implementing the 'National Action Plan' to address terrorism. As a result of the actions taken by the government, the level of violence in Pakistan has significantly reduced in recent years.¹⁷ While indicating that exact figures were not available, DFAT reported that military operation Zarb-e-Azb, launched in 2014 had also substantially reduced the level of serious crime

¹² International Crisis Group, "Policing Urban Violence in Pakistan", Asia Report No. 255, 1 January 2014, CIS27118.

¹³ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

¹⁴ Institu Qandeel Siddique, Danish Institute for International Studies, "Tehrik-e-Taliban Pakistan: An Attempt to Deconstruct the Umbrella Organization and the Reasons for its Growth in Pakistan's North-west", Human Security Gateway, 1 January 2010, CIS19710.

¹⁵ "Remittances - the impact on communities", email sent to the UN Office for the Coordination of Humanitarian Affairs, 19 May 2005, CX122184.

¹⁶ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

¹⁷ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63; Center for Research & Security Studies (CRSS), "Annual Security Report - 2016", 4 January 2017, CISED50AD56.

throughout Pakistan.¹⁸ DFAT reported in 2016 that militant groups, particularly the TTP, are divided and disrupted, and no longer have access to safe-havens in Khyber and North Waziristan Agencies.¹⁹ PIPS commented that the operational capabilities of the TTP in 2016 had suffered a great blow.²⁰ Having regard to the evidence before me, I am not satisfied that there is a real chance that the applicant will be kidnapped for ransom by the TTP or by any other group or person on his return to Pakistan, even having regard to his brother's past kidnap in 2014.

45. The applicant indicated in his August 2013 entry interview that many suicide bombings occur in Peshawar and it is unsafe there. As mentioned, the security situation in Pakistan has improved considerably since 2013. The Pak Institute for Peace Studies (PIPS) reported that Pakistan experienced a decline of 48 percent in terrorist attacks in 2015 compared to 2014. This trend continued in 2016 with the number of such attacks decreasing by a further 28 per cent compared to 2015. PIPS reported that the number of overall incidents of violence in Pakistan, including terrorist attacks, attacks by security forces, political and ethnic violence, clashes between militants and security forces, and clashes between security forces and criminal gangs in 2016, decreased by around 32 per cent compared to 2015. The number of people killed in these incidents also decreased.²¹
46. Many members of militant groups are reported to have been killed or arrested in operations conducted by security forces. For example, security forces and law enforcement agencies are said to have arrested 1,418 suspected terrorists and members of radical organizations in search operations conducted throughout Pakistan during 2016. These included 812 suspected militants linked with the TTP or local Taliban groups.²² Despite these achievements, militant groups are reported to remain active in Pakistan. The TTP are said to have particularly targeted members of security forces, government institutions and personnel, and members of religious minorities in attacks in recent years.²³
47. The applicant resided in Peshawar from approximately 2007 until his departure from Pakistan in 2013. He states that his family continues to reside there. I find the applicant will return to Peshawar on his return to Pakistan. Khyber Pakhtunkhwa, the province of which Peshawar is the capital, experienced a 61 per cent decline in the number of terrorist attacks in 2015 compared to 2014.²⁴ The Center for Research and Security Studies (CRSS) reported a sharp decline in the number of fatalities among civilians, militants and security forces in the Province in 2015. However, PIPs reported that in 2016, the number of terrorist attacks in Khyber Pakhtunkhwa increased slightly by 2 per cent compared to 2015, while the number of people killed in these attacks increased by five per cent.²⁵ Five suicide attacks took place in the Province in 2016 resulting in the deaths of 32 civilians. However, CRSS reported that the number of fatalities as a result of violence in Khyber Pakhtunkhwa Province during 2016 fell by

¹⁸ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

¹⁹ Ibid.

²⁰ PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

²¹ PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63; DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

²² Ibid.

²³ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264; PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

²⁴ European Asylum Support Office (EASO), "EASO Country of Origin Information Report: Pakistan Security Situation", 1 July 2016, CIS38A80121710.

²⁵ PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

20 per cent compared to 2015, while the number of people injured in violent incidents increased by around eight per cent.²⁶

In Peshawar, the capital city, CRSS reported that fatalities from violence declined considerably in 2015 compared to 2014.²⁷ The number of fatalities reported as a result of violence in 2016 declined by around 23 per cent from 136 in 2015 to 105 in 2016. These numbers include the deaths of civilians, members of the security forces, militants, insurgents and criminals in a range of violent incidents, including militant attacks and security operations.²⁸ I note that Peshawar is reported to have a population of more than 3.5 million people.²⁹ According to PIPs, as many as 48 terrorist attacks took place in Peshawar in 2016, causing 62 deaths. Personnel and check-posts of security forces and law enforcement agencies were the targets of most terrorist attacks in Peshawar. Twenty nine of the 48 terrorist attacks in Peshawar in 2016 targeted personnel of security and law enforcement agencies. Civilians were targeted in nine terrorist attacks.³⁰

48. I have not accepted that the applicant was of any adverse interest to the TTP or any other Sunni militant group at the time that he left Pakistan for any reason. There is nothing about the applicant's profile to suggest that he would be of any future adverse interest to any Sunni militant group. I note that I have not accepted the applicant's family is wealthy or perceived as wealthy, and have found that there is not a real chance that he will be kidnapped for ransom in Pakistan, even having regard to the past kidnap of his [other] brother. The applicant indicated that nothing had happened to his family since his departure from Pakistan.

49. While incidents of violence continue to occur in Peshawar, when considered as a whole, the evidence before me, including the applicant's profile, the absence of any evidence of harm to his family in Peshawar since his departure from Pakistan, the information concerning the level and pattern of violence in Peshawar, the size of the population of Peshawar, the overall downward trend in violence in Pakistan, and the government's apparent ongoing commitment to reducing violence in Pakistan, I am not satisfied that there is a real chance of harm to the applicant from the TTP or any other Sunni militant group, including in the form of kidnap for ransom, or as a result of the security situation, in Peshawar, now or in the foreseeable future.

Refugee: conclusion

50. 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

51. 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.

²⁶ CRSS, "Annual Security Report - 2016", 4 January 2017, CISED50AD56.

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

²⁸ Center for Research & Security Studies, "Annual Security Report - 2016", 4 January 2017, CISED50AD56.

²⁹ DFAT, "DFAT Pakistan Country Information Report January 2016", 15 January 2016, CIS38A801264.

³⁰ PIPS, "Pakistan Security Report 2016", 9, 1 January 2017, CISED50AD63.

Real risk of significant harm

52. 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.

53. I have concluded, having regard to the applicant's individual profile and circumstances, and to the other information before me, that the applicant does not face a real chance of harm in Peshawar from the TTP or any other Sunni militant group, including in the form of kidnap for ransom, or as a result of the security situation in Peshawar. As 'real risk' and 'real chance' involve the application of the same standard,³¹ I am also not satisfied that the applicant would face a real risk of significant harm on these grounds.

Complementary protection: conclusion

54. 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.

³¹ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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