



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA18/04283

Date and time of decision: 30 August 2018 15:25:00
C Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be from Afghanistan. He arrived in Australia [in] April 2013 and on 9 November 2016 he lodged an application for a temporary protection visa.
2. The delegate found the applicant was not a citizen of Afghanistan, but was in fact a Pakistani citizen. No claims were advanced in relation to Pakistan.

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. The applicant provided a one page submission to the Authority. The submission does not provide any new information, but responds to the delegate's decision.
5. No further information has been obtained or received.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He was born and lived in [Paktia Province], Afghanistan.
 - His father worked as [an Occupation 1] for the Coalition forces and lived in fear of the Taliban.
 - The applicant noticed some wires under a bridge and reported this as a suspected bomb to the local border police. The Coalition forces defused the bomb. As a reward they took the applicant to their base and gave him \$US [amount].
 - The applicant told people in his village about discovering the bomb, and consequently the Taliban heard about it. Two months later they left a warning letter on the doorstep. Four weeks later they came to the house looking for the applicant. His father refused to let them in so the Taliban killed the father. The applicant, his mother, and brother fled to the neighbours' house during the incident.
 - The applicant fled with his mother and brother to Peshawar in Pakistan, where his [Relative A] lives. The [Relative A] got the applicant out of Pakistan, but the mother and brother stayed in Peshawar.
 - He fears returning to Afghanistan because the Taliban will still be looking for him.

Factual findings

7. The applicant claims to be a citizen of Afghanistan, however the delegate found the applicant was in fact a citizen of Pakistan. For the following reasons I have come to the same conclusion.

8. The applicant claims to have been born in Afghanistan and to have lived there all his life. He provided a photocopy of a taskera (an Afghan national identity card) as evidence of his claimed Afghan citizenship. He claimed not to be able to provide the original, because it had been left in his home in Afghanistan. He claimed he and his family fled immediately after the Taliban killed his father, and never returned to the house to collect personal belongings before fleeing. No explanation has been given as to how in these circumstances he came to have even a photocopy of the taskera. He told the delegate he could not provide any evidence from Afghanistan, as it was not safe to return to collect anything, they have no contact with the neighbours since leaving and he didn't even know if his house was still there. If his original taskera was left at home as claimed, I question how or where he obtained a photocopy of it.
9. The Department was unable to verify the authenticity of the taskera, given the poor quality of the photocopy. As put to the applicant by the delegate at the interview, the numbers on the taskera appear crooked such that the document looks inauthentic on the face of it. DFAT advises document fraud is a major issue for Afghan taskeras, due to lack of security features in the documents.¹ I have concerns about the crooked numbering on the document and the poor quality of the copy provided. I also question how he obtained a copy of the taskera, given he claims to have left the original at home in Afghanistan. I am not satisfied the copy of the taskera provided is a copy of a genuine document.
10. The delegate put to the applicant concerns about his identity and country of nationality at a second interview, in November 2017. The applicant was encouraged to provide any documents or other evidence to demonstrate his claimed Afghan citizenship, or documents showing his relatives in Pakistan were there as refugees and not as citizens. The only evidence provided after the interview were his mother's taskera and some photographs. The photographs do not show any landmarks or signage to demonstrate they were taken in Afghanistan. They are photographs of the applicant alone and the applicant with his mother, brother and cousin, and could have been taken anywhere. The copy of the mother's taskera is a poor photocopy and is untranslated. As noted in the delegate's decision, a forensic assessment could not be completed to test the authenticity due to the poor quality of the copy. The applicant has not provided a better copy.
11. The delegate viewed the applicant's [social media] page and printed screenshots of the applicant's profile showing people and groups he likes or follows. The delegate noted the overwhelming like of things Pakistani on this [social media] page. This information was shown to the applicant at the second interview. The applicant did not dispute this was his [social media] account, and said as he has a brother in Pakistan, and has married a Pakistani woman in Australia, it is normal for him to like things from Pakistan.
12. As the delegate noted, the applicant has followed or liked groups and people predominantly from Pakistan. According to his [social media] page he likes various Pakistani sports teams, cricketers, actors, public figures and politicians. He follows a number of Pakistani news and sports channels. He likes numerous Pakistani [institutions]. There were also some Australian groups and institutions, and some from India. Most tellingly, I could not discern any reference to Afghanistan. Whilst I accept having a brother in Pakistan and a wife from Pakistan may influence the things he follows on [social media], I do not accept a person from Afghanistan would overwhelmingly follow or like Pakistani related material, and have no reference to Afghanistan on their [social media] page. I find the applicant has not provided a plausible explanation as to why an Afghan would do so. Given his overwhelming

¹ DFAT *Country Information Report Afghanistan*, 18 September 2017

identification with Pakistan on [social media], I find his [social media] page indicates he is from Pakistan.

13. In addition to the applicant's [social media] page, the delegate took screen shots of the applicant's brother's page. The applicant confirmed this was his brother's page. The brother's profile states he lives in Peshawar and is from [an] outer suburb of Peshawar. There is nothing on the brother's [social media] page, as printed by the delegate, to indicate he is from or has any connection to Afghanistan.
14. The delegate found two of the applicant's Pakistani friends on [social media] were actually his brothers. The delegate found it was so unusual as to be improbable that the applicant could be from a family of only 2 children as claimed, given families in Afghanistan usually included numerous children. I give no weight however to the normal family size is in Afghanistan, as I accept there could be various reasons why the applicant's mother had only two children. The applicant denied they were his brothers, but said they were relatives on his mother's side, and may be the children of his mother's cousins. I make no finding on whether the [social media] friends are brothers or distant cousins, but I find it significant that they are Pakistani. I find it significant that these relatives also have no reference to Afghanistan on their [social media] pages.
15. The applicant was invited to provide evidence of how his mother and brother can live in Pakistan, such as identification as refugees or other temporary registration papers. No such evidence has been provided. The only document provided by his brother was an ID card for school in Pakistan. As found by the delegate's research, and not contradicted by the applicant, entry to that school required evidence of the student's father's national identity card for Pakistan. The applicant said the [Relative A] arranged documentation for his brother to stay in Pakistan, but has not provided any copies of the documents his [Relative A] obtained. He claimed his [Relative A] was not willing to share any documents with him. If, as he claims, this [Relative A] organised and paid for him to come to Australia to save him, I find it highly unlikely the [Relative A] would not now help him with evidence to support his claim for protection in Australia. I find it significant that no documentary evidence has been provided to show the applicant's mother and brother are residing temporarily in Pakistan. I find such evidence has not and cannot be provided because they are not living there temporarily, but are in fact Pakistani citizens.
16. The applicant provided an untranslated document that he says is a report about his father's death in Afghanistan. He was asked to provide a translated copy but did not do so. He says the translators he approached were unable to read it. I have given this document no weight as none of it has been translated, and while the copy may be poor quality, I do not accept that nothing could be translated from it. I find it has not been translated because the document does not state what the applicant purports it to state.
17. I find it significant the applicant has not attempted to provide any further evidence to the Authority of his Afghan citizenship or evidence that his family in Pakistan (including the [Relative A] and extended family) are not Pakistani citizens. In his submissions he responded to the delegate's findings about 2 of his [social media] friends in Pakistan actually being his brothers. He responds to the delegate's observation that the picture on the mother's taskera appeared to show a woman much older than the mother's stated age. He says his mother has had a difficult life which makes her look old and weak. He also responds to the adverse findings the delegate made about him liking things on [social media] from Pakistan. He submits that just because a person likes something from another country, it doesn't mean

they are from that country. I accept people can like things from other countries, but find his overwhelming like of things Pakistani, and no affiliation with Afghanistan, is striking.

18. After considering all the material before me, I find the following supports a finding that the applicant is a Pakistani citizen: his family ties to Pakistani citizens, including a [Relative A] and distant cousins; his mother and brother's residence in Pakistan, with his brother having attended school there; and the social media accounts viewed and printed by the delegate which show an overwhelming affiliation with Pakistan and nothing in relation to Afghanistan. I find the copies of the taskeras provided are insufficient to outweigh the evidence in support of a finding the applicant is Pakistani.
19. I find the applicant is from Pakistan, and not a citizen of Afghanistan. I find he is most likely from Peshawar in Pakistan, given his family currently lives in Peshawar, as do his [social media] friends, and his following on [social media] of a number of people and groups from Peshawar.

Refugee assessment

20. 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

21. 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.
22. The applicant claims to fear harm from the Taliban in Afghanistan. I have found the applicant is from Pakistan, and is most likely from the city of Peshawar. I find Pakistan is his receiving country.
23. It follows I do not accept his claims in relation to Afghanistan. I do not accept he was living in Afghanistan, and I do not accept any of the following: that the applicant's father was working as [an Occupation 1] for the Coalition forces in Afghanistan; that the applicant found a bomb

and reported it to local police; that he was rewarded by Coalition forces; and that the Taliban came looking for him, killed his father, and will have an ongoing interest in the applicant.

24. The applicant has not made any claims to have a well-founded fear of persecution in Pakistan. I note his mother and brother live in Peshawar and there is no evidence they have suffered any harm there. I find that had the applicant experienced any harm in Pakistan, or if he had a fear of harm in Pakistan, he would have raised this in his application and would not have fabricated the story in relation to Afghanistan. Even in the face of the delegate's findings, the applicant has not sought to raise any claims in relation to Pakistan. I find the applicant does not have a well-founded fear of persecution in Pakistan.

Refugee: conclusion

25. 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

26. 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

27. 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.
28. I have found the applicant is a citizen of Pakistan, not Afghanistan. I have found Pakistan is his receiving country.
29. There are no claims before me in relation to Pakistan, and nothing to indicate he has a real risk of harm in Pakistan.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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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.