



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA18/05619

Date and time of decision: 28 November 2018 10:33:00
S Ryan, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan and arrived in Australia [in] May 2013. On 21 March 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 30 August 2018 and referred the matter to the IAA on 4 September 2018.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The IAA received a statutory declaration made by the applicant, a submission made by the applicant's representative, and a statutory declaration made by a Pashto interpreter. Those portions of the submissions to the IAA made up of legal argument - including argument relating assessment of credibility and use of country information - and argument responding to the delegate's decision, reasserting claims, and interpretation of evidence and country information that was before the delegate are not new information and I have had regard to those matters.
4. Additionally, in support of the arguments with the delegate's findings the representative's submission refers to a range of country information that was not before the delegate. The applicant's statement also contends that there was an interpreting error made in the Entry Interview and provides a statutory declaration made by a Pashto interpreter regarding the same matter. These were not before the delegate and are new information.
5. Under s.473DD(b) the applicant must satisfy the IAA in relation to any new information given by the applicant that either the new information was not, and could not, have been provided to the delegate before the decision was made, or, that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims. Additionally, under s.473DD(a), the IAA must be satisfied that there are exceptional circumstances to justify considering the new information.
6. The IAA 'Practice Direction for Applicants, Representatives and Authorised Recipients' (the Practice Directions) states "If you provide or refer to new information such as country information reports or media articles, you must provide a copy of that information or extract part(s) of the information on which you rely. You must identify the source of the information. Lists of publicly available documents or hyperlinks to publicly available documents are not acceptable."

Country Information

7. The submission puts forward observations about events in Pakistan at the time the applicant lived there, as well as contemporary country information about the activities of Islamic militants and the risk of harm faced by the applicant that it contends can be drawn from the new information. The representative submitted that the additional information she has provided is not new, and should have been taken into account by the Delegate, but does not provide any further argument to substantiate this submission. The sources of the information are identified and, aside from references to sources used by the delegate, nearly all of the country information referenced in the submission is new information. It is difficult to gauge the degree to which the new information is relevant to the applicant's personal claim to have a

well-founded fear of persecution, or verify if the arguments are an accurate depiction of the assessments in these reports as the applicant's representative has made only brief references to the new information, and has not provided any extracts or copies of the reports. The information does not comply with a key aspect of the Practice Direction. I note that the applicant's representative is an experienced migration agent who is familiar with the Practice Direction, and that the IAA has provided a copy of the Practice Direction and information about that Direction to the applicant early in the process. I have determined not to accept this information.

Interpreter's Statement

8. The submission draws the IAA's attention to a claimed error in the interpretation of the applicant's response given during the Entry interview in relation to his studies whilst in Pakistan, and provides an interpreter's statement in support. The applicant states that he has been forthcoming about his plan to study overseas and that he did not intend to mislead the delegate on the matter of an unsuccessful attempt to apply to study in [Country 1]. The interpreter's statutory declaration provides an account of a portion of the Entry Interview that is claimed to support the applicant's account of his response to a question about his studies. I have made different findings to the delegate in relation to these matters and I have drawn no adverse inference from the applicant's responses in the SHEV interview to questions about having previously held a passport, or to having made an unsuccessful application for a student visa to [Country 1]. There is little probative value in this information and I am not satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - He is a Sunni Pashtun from the [Subtribe 1] of the [Tribe 1] in [Town 1] in Khyber Agency.
 - At the end of 2012 a faction of the Pakistani Taliban (TTP) attempted to recruit him on two occasions. He refused to join and was told by a friend that he was on a TTP list and that they were specifically targetting him for recruitment as he was young and educated.
 - He did not want to join the Taliban and he feared he would be killed for refusing their request as this had happened to his friends. He fled to Peshawar and made arrangements to leave Pakistan.
 - He cannot relocate to another part of Pakistan as the Taliban would find him and kill as a person who has resisted their efforts to recruit him and they have links throughout Pakistan and continue to carry out attacks on their enemies.
 - His family have received a further recruitment/warning notice from the Taliban in 2015 or 2016.
 - He fears that having spent a number of years in a Western country, that he will also be targetted by the TTP as they will consider him to be an 'infidel' and a spy.

Refugee assessment

10. 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

11. 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.
12. The applicant claimed to have departed Pakistan on a false passport that was taken from him by people smugglers in [a transit country]. He has since provided copies of identity documents in his true identity, namely his Pakistani Identity Card, domicile certificate and educational certificates. The applicant has presented consistent evidence in relation to his identity throughout the entry interviews and protection application process, and has provided a range of credible biographical information. I accept that the applicant was born in [Town 1] in Khyber Agency in Pakistan, and is a national of Pakistan and accordingly I have assessed him against Pakistan as the receiving country.
13. I accept the applicant is a Sunni Muslim from the [Subtribe 1] of the [Tribe 1] tribe and that he spent most of his life in [Town 1], Khyber Agency before departing for Australia in April 2013. The applicant is the [family position] and his parents, [and siblings] all live in [Town 1]. The applicant completed [school studies] in [year], and completed a number of short courses in English and [another subject] [in subsequent years]. He worked with his father and brother in the family’s [business] in [Town 1] between [year] and 2013.
14. The applicant’s describes his town, [Town 1] as being approximately [distance] from the city of Peshawar, the capital city of the Khyber Pakhtunkhwa province (KPP). The Danish Institute for International Studies (DIIS) reported the Khyber Agency, in which [Town 1] is located, had a population of 550,000 in 2010 and that it is home to the Khyber Pass, an important trade route into Afghanistan. The applicant’s tribe, the [Tribe 1], is [present] in Khyber Agency which was once part of the Federally Administered Tribal Areas (FATA). In May 2018 the FATA agencies were merged into the KPP.

15. The delegate found that applicant failed to divulge that he had previously made an application to apply for a visa to [Country 1] in 2008. The delegate found that the applicant's responses to direct questions about whether he had made an application for a visa to another country raised a concern as to his general credibility as a complete witness of truth. I accept it may be possible that the applicant was not listening closely to the delegate's question about whether he had applied for a [Country 1] visa and confused it for a question about whether he had ever been granted a [Country 1] visa. I note the applicant has elsewhere freely volunteered that he had been studying English in Pakistan for the purpose of undertaking an English language test (IELTS) that is widely known as a requirement for overseas students to gain admission to universities. In any event I consider this a peripheral issue that has no material bearing on the applicant's claims for protection. I draw no adverse inference from the applicant's responses in the SHEV interview to questions about having previously held a passport, or his responses to questions about having made an application for a [Country 1] visa.
16. The applicant's claims are centred on the operations of pro-Taliban militant groups in Pakistan. The umbrella organization *Tehrik-e-Taliban Pakistan* (TTP) was formed in 2007, has been the most prominent opposition force to the Pakistan Army. The TTP was active in the former FATA and KPP in the period in question and remains active. The August 2018 Jane's World Insurgency and Terrorism report (Jane's) describe how the TTP was formed in December 2007 as an umbrella group for Pakistani pro-Taliban groups operating in the tribal regions to co-ordinate their activities and consolidate their regional influence. DIIS and Janes' reports both observe that the Pakistani pro-Taliban movement also comprised groups that were either not aligned with the TTP or were actively opposed to it.
17. The applicant has described the militant group that attempted to recruit him in 2012 and 2013 as being led by a man named Mangal Bagh. Country information indicates that this group is known as *Lashkar-e-Islami* (LeI) and that during the period in question the LeI was hostile to the TTP and frequently fought the TTP and other pro-Taliban militias for control of the Khyber Agency. The European Asylum Support Office (EASO) report that the Pakistani military operations in 2014 seem to have crippled the LeI's operational capabilities in Khyber Agency, and that it had merged with the TTP in March 2015.
18. Throughout the SHEV application and interview the applicant has referred to the militant group he claims sought to recruit him, as 'the Taliban'. He has claimed that the group is part of the broader Taliban network and described how his adverse profile with this group operating in Khyber would lead to him being targetted for harm in any region or city in Pakistan.
19. Country information before me - particularly Jane's and DIIS and the Institute for Social Policy and Understanding (ISPU) - indicates that the TTP is a loose and fluid confederation of factions and militant groups, often based along geographic and tribal affiliations, which nominally governs through the TTP's consultative council. It has a non-hierarchical, decentralised structure which has contributed to severe internal divisions and that indiscipline, disagreement, and infighting have been and remain common. According to the ISPU the decentralised TTP movement means that decisions are taken by local Taliban chapters and are based on a variety of interests, frequently the local political needs. Local leaders make operational decisions when it suits their immediate family, clan, tribal, and economic interests to do so. Each group's interest in pursuing broader Taliban strategy, ideology and theology varies greatly from group to group. IPSU particularly note that in Khyber Agency the TTP militants are composed of the drug mafia, smugglers, and local criminals.
20. At times, the activities of these factions have led to them focusing their activities on targetting and eliminating rival insurgent leaders or their tribal supporters. Militant groups will fight each

other for control of criminal networks, local markets, “taxes” on commercial activities, and differences over religious opinion. The DIIS 2010 report into the operations of the TTP observes that the frequent formation of tribal militias in FATA and KPP to confront the militia groups pointed to a lack of local support for the TTP in those regions. The applicant described how the tribes living in [Town 1] opposed the pro-Taliban militants and this is confirmed in country information. Jane’s report that [number of] people were killed and [number] others were wounded when a TTP suicide bomber detonated explosives inside a mosque in [a named town] in 2011. The TTP claimed that the attack was against the [Subtribe 1] in retaliation for the killing of TTP militants by the [Subtribe 1] tribal militia.

21. Country information confirms the applicant’s evidence that the [Subtribe 1] opposed the Taliban militant groups, and that Khyber Agency was a trade route for goods entering Afghanistan and had particular strategic value to various militant groups, the Pakistan Army and NATO forces. I accept the applicant’s evidence that between 2008 and the time he left in 2013, his home region was the site of conflict involving various pro-Taliban militias, tribal militias and the Pakistan army. The applicant does not claim to have ever been associated with, joined, trained or fought for an anti-Taliban tribal militia. Nevertheless I accept that, while he was never harmed, he has personally experienced the impact of violence incidents in his home region and that he has known many people who were injured or killed in the violence that was prevalent in the FATA during the period in question.
22. Country information indicates that the pro-Taliban militia groups predominantly used the following recruitment tactics: giving young recruits access to social networks and employment, exploiting local resentments against the Pakistan government and the actions of Western countries, providing tribes with other economic endowments, and employing coercion. The Asylum Research Centre (ARC) cites a range of sources observing militants occupying and using schools and madrassas to promote Islamist agendas, and that these have been used as a platform for training and recruitment. Non-state militant groups in Pakistan, particularly the Taliban, are known to target vulnerable children and youths, particularly those who are alienated or isolated from their families; in some instances kidnapping them, buying them from destitute parents, or coercing parents with threats or fraudulent promises into giving their children away. In that regard, I accept that some militant groups do target certain individuals for coercive recruitment, although none of the circumstances described in the country information remotely match the applicant’s situation in 2012.
23. The country information before me confirms that, during the period in question, the LeI and other pro-Taliban militant groups operating in the FATA and KPP sometimes used coercive tactics to recruit fighters and quell local dissent. The Express Tribune reported in January 2013 that the LeI had targetted Zaka Khel tribespeople in Bara, Khyber Agency and used coercive methods in its attempts to recruit fighters. The report indicates that families were requested to provide one fighter, or pay 300,000 rupees, or otherwise leave the area. I note that a number of key elements of the Express Tribune report are significantly inconsistent with the applicant’s account of his own circumstances in [a named town]. The report indicates that the LeI were focussed on intimidating Zaka Khel tribes in [a named town] to quell their opposition, and that the LeI’s local commander had issued the warnings to people in the form of pamphlets and announcements in local mosques.
24. There is no indication from this report that the LeI were focused on particular individuals, had lists of persons, had any focus on recruiting youths with particular attributes (such as education), or sent individuals personal warnings. The Express Tribune report quoted Zaka Khel tribespeople as being fearful of the LeI requests on account of being unable to pay a contribution, or being unable to leave their homes. However there is no indication in this

report or in any independent country information before me that families or individuals who did not comply with the militant recruitment request were harmed or killed for failing to join. In describing his own attempted recruitment the applicant does not mention whether he or his family were presented with any alternatives to recruitment, or whether they were unable to pay a monetary amount demanded by the LeI in lieu of recruitment, or whether they had contemplated moving away from [Town 1] (to Peshawar for example).

25. The applicant claims that many people from [Town 1], including a village leader were killed by militias because they resisted them. The submission to the IAA contends that the ISPU report contains proof that the TTP's coercive recruitment tactics in Khyber Agency included the killing of tribal elders who did not enforce the contribution of recruits by their families. I do not agree. The ISPU, as with virtually all other sources of information before me, notes that the TTP and other pro-Taliban militants targeted particular tribal leaders they perceived to be opponents. The ISPU observed the following in 2011: *"In places like Mohmand and Kurram Agency, the Pakistani Taliban killed tribal elders and warned others against supporting the government or organizing anti-Taliban jirgas"*. I accept that members of the [Subtribe 1], particularly prominent elders and those fighting in anti-Taliban tribal militias, were targeted by pro-Taliban militants. However there is no independent country information before me confirms that the pro-Taliban militias killed tribal elders in FATA for not enforcing the contribution of recruits by their tribe's families, or that the TTP killed individuals solely on the basis that they had not complied with requests to become recruits.
26. The evidence given by the applicant during the SHEV interview in relation to his circumstances in [Town 1] and the claimed attempts to recruit him is inconsistent, scant of detail and implausible. The applicant claims he received two personal 'warnings' by pro-Taliban militants at the end of 2012, that these approaches were two weeks apart, and that having twice told them he would not join their group, he fled to Peshawar and began making arrangements to leave Pakistan.
27. The delegate found that the applicant had provided inconsistent evidence in relation to the timing of the militant group's approaches to him. The delegate has described the applicant as having given evidence in the SHEV interview that he had initially claimed that they first attempted to recruit him in 2008 and then later changed his answer. In the submission to the IAA the applicant disputes this and states he did not provide this answer. Having reviewed the audio recording of the SHEV interview record it appears that, when asked to detail how the Taliban attempted to recruit him, the applicant began his response by describing the arrival of the Taliban in his village in 2008. The delegate asked the applicant to confirm that he was referring to an attempt to recruit him in 2008. It appears that the interpreter may not have conveyed this question to the applicant, and that the applicant continued his account without specifically responding to the delegate's question. I am satisfied that the applicant never claimed the Taliban attempted to recruit him in 2008, and that he has consistently claimed that he was approached by the Taliban to join them in late 2012.
28. The applicant and his representative have argued that the applicant's recollection of events has been affected by the passage of time, in that the events in [Town 1] took place more than six years prior to the SHEV interview. The applicant's representative also argues that inconsistencies in the applicant's evidence are the result of the difficulties inherent in the giving of evidence through an interview process. The applicant's representative has also requested the IAA apply a 'reasonable margin of appreciation' to any perceived flaws in the claimant's evidence arguing that it can be difficult for an applicant to recall exact dates, particularly when recounting peripheral details. I accept that the applicant may be unable to precisely recall precise dates for threats made by the Taliban, the deaths of his friends, or his

departure from his home town. Nevertheless I continue to have significant concerns about the consistency and plausibility of the applicant's account of having been personally targeted for recruitment by the Taliban in 2012, and that he was personally threatened with harm as a result. My concerns relate to evidence he has given on matters and events that are central to his claims, and I have drawn no adverse inference from his inability to recall precise dates for either key events or peripheral matters.

29. In the February 2017 statement of claims the applicant described the first approach made by the Taliban as being indirect; he was told by a friend that the Taliban were looking for people to recruit, they had mentioned his name and were searching for him. His friend further told him that the Taliban had a list of young and educated people to recruit and his name was on that list. This account significantly differs from his description of the first approach made by the Taliban in the SHEV interview. In the SHEV interview he described being personally approached directly by a Taliban member and having a personal conversation in which he was offered money to join with them, and that the Taliban told him they wanted him to explode a mosque or school or undertake a similar job for them. He claimed he responded to the Taliban member directly, telling them he wanted to continue his studies. In the SHEV interview he claimed that the Taliban made a second approach to him two weeks later and that, at that same time, the Taliban had killed two friends who had refused the Taliban requests to recruit them, and that he had decided to escape Pakistan. He was then asked by the delegate to clarify when his friends were killed, and stated that his friends were killed some time earlier, in 2011. As noted earlier, I accept that the applicant has had friends and family members in [Town 1] who were killed or injured, however, in the context of my concerns with this aspect of the applicant's evidence, and in the absence of any corroborative information, I am not persuaded that they were killed on account of having refused a request to join the LeI or another pro-Taliban militant group.
30. The applicant claims that the militants also sent a warning letter to his [brother] but that his brother was not subjected to the same pressure to join them. The applicant confirmed in the SHEV interview that his brother and the rest of his family have remained in [Town 1]. The delegate asked the applicant during the SHEV interview why his brother was not similarly targeted for forcible recruitment. The applicant responded by saying that his brother had received one warning, but hadn't received the 'very serious warning' that he had, and that he believed he was being specifically targeted for recruitment on account of being educated. I do not find his explanation to be persuasive. The applicant and his [brother] both [studied] at the same school, and the applicant then studied a number of short courses in Peshawar. Noting that the applicant and his brother both worked at the same [business] in [Town 1], it is not apparent how, on account of having completed [some] short courses in Peshawar, the applicant would be singled out for targeted, coercive recruitment by the militant groups, and his brother would not. The sole basis for the applicant's belief that the militants had issued a 'very serious warning' to him and that he was on a list, was via the opinion of a friend who had associations with the pro-Taliban militants.
31. There is no independent evidence before me that confirms that [Subtribe 1] tribespeople in [Town 1] were subjected to coercive recruitment by pro-Taliban militia groups. However, given the Express Tribune report of LeI threats to residents of Bara around the same time, and noting the [Subtribe 1] were similarly opposed to pro-Taliban militant groups, I am willing to accept that the applicant's family may have been one of many thousands of households in his home region who received a pamphlet from LeI requesting that they offer a male family member as a recruit in 2012 and/or 2013. I accept that the LeI's 'request' may have involved intimidation directed towards [Town 1] residents, and that in refusing to provide a recruit, the applicant's family may have needed to pay the fine required by LeI, or move out of Khyber

Agency. However I do not accept that the applicant was differentially targetted for recruitment, and I note the applicant's family, including his [brother], have remained in [Town 1] without having been harmed or threatened by the LeI. These circumstances suggest that the family may have either given the requested monetary support to the LeI, or refused to pay and that there were no consequences to their disregard of the request.

32. The independent country information before me suggests that it is highly unlikely that the pro-Taliban militant groups would have pressured the applicant to join them in the manner he has claimed. Considering the evidence provided by the applicant in the context of the country information more broadly, I am not satisfied that he was a personal target of an aggressive campaign to recruit him that resulted in personal threats of harm, or that he has been a person of adverse interest to LeI or any other militant group operating in Pakistan on the basis of these circumstances. There is no credible evidence before me to suggest that the applicant would be of any future adverse interest to pro-Taliban militant groups on this basis in future. I am not satisfied the applicant faces a real chance of any harm on this basis.
33. The ARC 2018 Pakistan Country Report describes Pakistan's current security landscape as volatile and complex due to sectarian and ethno-political tensions and the intricate web of terrorist and militant groups in the country. Contemporary country information, including EASO, ARC, Department of Foreign Affairs and Trade (DFAT), PIPS, all highlight the highly regionalised nature of conflict and security risk in Pakistan, which makes it difficult to summarise with broad observations at a national level.
34. Country information before me describes how the TTP, and the Pakistani pro-Taliban militant groups more broadly, have been greatly weakened by successive military operations undertaken in KPP and the former FATA by the Pakistani armed forces since 2014. Security analysts cited by EASO and ARC now describe the army's current operation in KPP as being out of the main combat phase, and is now able to focus on clearing isolated pockets of the insurgency. While there has been a marked decline in violence overall, the same analysts also point out that the significant territorial loss in Pakistan does not translate to complete elimination of the militant threat. The TTP has shown capacity to continue sporadic attacks throughout 2017 and 2018. The ARC noted that in KPP in 2017 there continued to be violent clashes between TTP aligned groups and other groups and various tribes with pro-government militias and peace committees. The ARC cites an analyst from Dawn observing in October 2017 that the marked reduction in violence in the former FATA and KPP is real, but cautions that these areas remain vulnerable to militant violence.
35. Over the past two years the large proportion of TTP's sporadic attacks in the applicant's home region were directed against Pakistani security forces deployed in the former FATA (now KPP). The pro-Taliban militants continued violent sectarian attacks on religious minorities, particularly targetting Shia, and also attacked foreigners in Pakistan, and Pakistani journalists reporting on sensitive issues. The TTP also selectively targetted activists, candidates and members of particular political parties. In July 2018, in the lead up to the national elections, at least 20 people were killed and 65 others were wounded in a TTP suicide attack at a political rally in Peshawar. The country information before me indicates there has been a significant downturn in violent incidents in FATA and KPP over the past few years, and that while the pro-Taliban militant groups remain active, those persons at an increased risk of harm are essentially limited to the profiles described above.
36. The applicant is an ethnic Pashtun, and a Sunni Muslim from the [Subtribe 1] of the [Tribe 1] tribe, which makes him part of a large [group] in his home region. The Center for Research and Security Studies June 2018 report on FATA tribes observed that, while the powerful tribes like

the [Subtribe 1] in [Town 1] were at one time opponents of the LeI and TTP, they were later able to 'normalise' relations in order to protect their business interests. I accept that the applicant and his family may be sincere in opposing the ideologies of Islamist militant groups such as LeI and other pro-Taliban militias. Nonetheless there is no credible information before me that indicates either the applicant or his family have taken any action to oppose militant groups operating in his region, are currently taking such actions, or would take such actions in the future. The applicant did not mention that he has ever been a member of any political party, or that, if returned to Pakistan, he intended to participate in politics.

37. The applicant fears that having spent a number of years in Australia he will be regarded by the TTP as an 'infidel' and a spy and would be targetted on this account. I note DFAT's assessment in 2017 that, despite an increasing conservatism and religiosity across the country, individuals in Pakistan are not subject to additional risk of discrimination or violence on the basis of having spent time in Western countries or because of perceived Western associations. DFAT further notes that the influence of the West is pervasive in Pakistan, and that many Pakistanis live abroad and return to Pakistan, or have relatives who do so. DFAT assesses that people who have spent time living in Western countries are not subject to discrimination or violence on this basis.
38. I am not satisfied the applicant faces a real chance of harm on the basis that he refused recruitment by pro-Taliban militant groups, that he has an actual or imputed anti-Taliban opinion, or having returned from a Western country.
39. The applicant has claimed he departed Pakistan on a passport issued in a name that was not his, but contained his image. It is not clear whether the applicant has travelled on a genuinely issued passport obtained through the provision of fraudulent information, or whether this was a fraudulently manufactured passport. Nevertheless, the information before me is that, if returning to Pakistan, the applicant will need to apply for a temporary travel document in his true identity and this may attract some level of scrutiny from Pakistan authorities in relation to his circumstances in departing Pakistan.
40. DFAT understands that those returned to Pakistan are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. There is no information before me is that the applicant wanted for crimes in Pakistan, or committed any offences while abroad, or that he would be suspected of being involved in human trafficking or people smuggling operations. Nevertheless it may become apparent to Pakistani authorities that the applicant did not exit Pakistan on a valid travel document issued in his true identity in 2013, which is in contravention of Pakistani immigration laws. EASO advise that, in general, returnees are considered 'victims' and not 'offenders' and that, in cases where a person has travelled on a false travel document, the Pakistani authorities are far more interested in the travel agent or any other person who facilitated the returnee's departure.
41. DFAT advise that persons who have left the country illegally are typically arrested and detained, but tend to be released within a few days, either having been bailed by their families or having paid a fine. EASO indicate that a returnee who has travelled on a false travel document may be held in custody for up to 14 days before a criminal case is filed in a court. DFAT and EASO indicate that the outcome of criminal prosecutions in these matters can vary greatly; it may result only in the imposition of a fine, although there are provisions for jail sentences of up to three years. There is no information before me that the applicant has an existing criminal record, would be suspected by Pakistani authorities to be a person involved in

manufacturing or facilitating fake documents for other people, or that he is a repeat offender in this regard.

42. Taking into account the applicant's circumstances in the context of the above country information I consider that it is most likely that, in the event the applicant were prosecuted for having obtained one bogus travel document, he would be held in custody for 14 days while a case was being filed in court. If prosecuted, it is most likely the applicant would face a fine, as opposed to facing the more severe range of penalties that could be potentially applied. While I cannot preclude the possibility that the applicant may face a jail sentence, on the information before me I consider the chance of that outcome occurring is remote.
43. DFAT advise that conditions in detention and prison facilities in Pakistan do not meet international standards because of under-resourcing, overcrowding and poor sanitary conditions. Conditions in some prisons and detention centres were extremely poor with problems such as overcrowding, inadequate medical care, mistreatment of prisoners, inadequately trained staff and a lack of accountability mechanisms. EASO advise that prisoners from religious minorities were generally afforded poorer facilities and subject to abuse by other inmates and prison staff.
44. The information before me does not indicate that there is a real chance that the applicant, a Sunni Muslim, would be subject to targeted, punitive treatment whilst in prison. The information before me does not indicate that persons detained and prosecuted for charges relating to departed Pakistan on a false travel document are differentially targeted for harsh treatment whilst in detention. I further note the applicant is a young man who has not claimed to have any significant medical condition, or other health vulnerability. In these circumstances, I do not consider the poor prison conditions or the period of detention to which the applicant may be subject are applied discriminatorily. Country information cited above indicates that the process and the treatment to which the applicant will be subject is not discriminatory nor is it applied or enforced in a discriminatory manner. Rather it is a law which applies to all Pakistanis. I am not satisfied that it amounts to systematic and discriminatory conduct. I am not satisfied that there is that the applicant faces a real chance of persecution because he departed Pakistan illegally.

Refugee: conclusion

45. I am not satisfied that the applicant has a well-founded fear of persecution. 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

46. 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

47. 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.

48. I have concluded above that the applicant does not face a real chance of any harm on the basis that he refused recruitment by pro-Taliban militant groups, having an actual or imputed anti-Taliban opinion, or having returned from a Western country. As 'real risk' and 'real chance' involve the application of the same standard, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

49. I accept that Pakistani authorities may question the applicant at the airport and infer from his circumstances that he departed Pakistan unlawfully, and that as a result he may be detained, questioned and prosecuted for contravention of Pakistani immigration laws. The evidence does not suggest any intention to inflict pain or suffering that could be reasonably regarded as cruel or inhuman in nature, severe pain to suffering or any intention to cause extreme humiliation. Furthermore, it does not amount to the death penalty, arbitrary deprivation of life or torture. As noted above, the country information indicates that persons with the applicant's profile are not the focus of Pakistan authority's investigations and that the likelihood a prison sentence would be imposed is remote. I do not consider there is a real risk he would be remanded or otherwise detained in prison for an extended period.

50. For these reasons, I am not satisfied the applicant will face a real risk of significant harm on return to Pakistan.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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