



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA20/08051

Date and time of decision: 24 April 2020 15:03:00
M Simmons, 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 Pashtun Shia and a Bangash Tribesmen from Kurram District, Pakistan. On 11 July 2017 he lodged an application for a Safe Haven Enterprise Visa. A delegate of the Minister for Immigration refused to grant that visa on 20 March 2020.

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. On 14 April the IAA received written submissions from the applicant's representative. These submissions contain new information and new claims to fear harm for reasons related to the presence of COVID 19 in Pakistan. These submissions include information extracted from dozens of sources, most of which are media articles concerning COVID 19 which postdate the delegate's decision. Also provided is a report dated 7 April 2020 from the Office of the District Health Officer for Lower and Central Kurram documenting 4 cases of COVID 19 in Lower Kurram.
4. A few sources referred to in the submissions are identified only by a website address. The Practice Direction clearly stipulates that only providing a web address as a source of information is not acceptable. The lack of any other identifying particulars for the information purportedly extracted from those web addresses makes it difficult to determine the weight it ought to be afforded. For instance, it is not possible to verify whether the content posted at that web address may have been subsequently altered in the absence details such as a publication date. Per s.473FB(5), I have decided not to accept the information from those sources only identified by a web address.
5. Some extracts provide dated general information regarding matters including population, the economy, and geography and health resources in Pakistan generally and parts of Kurram District specifically. These appear to be offered only as context to the more recent information regarding COVID 19. Extracts have been provided from the World Health Organisation, the United States Institute of Peace, the International Monetary Fund, and the National Institute of Advanced Studies; from reports dated 2016, 2017 and 2018. These clearly predate the delegate's decision and do not convey credible personal information. These extracts are of only tangential relevance to my review and do not materially add to the more recent and detailed information before me including 2019 reports from the Australian Department of Foreign Affairs and Trade (DFAT), United Kingdom (UK) Home Office, and the European Asylum Office (EASO) which provide more recent social and economic context for Pakistan including in the context of the applicant's claims. There are not exceptional circumstances that justify my consideration of the information from the World Health Organisation, the United States Institute of Peace, the International Monetary Fund, and the National Institute of Advanced Studies. The requirement of s.473DD are not met and I have not had regard to it.
6. Otherwise I am satisfied that the new information in the submissions to the IAA was not and could not have been provided prior to the delegate's decision and that there are exceptional circumstances justifying my consideration of this new information. The new information relates to the global COVID 19 pandemic. This extraordinary event constitutes a change in

circumstances beyond the applicant's control since the delegate's decision that the applicant now claims give rise to new grounds for protection. I have had regard to the various pieces of information relating to COVID 19 that postdate the delegate's decision, including media reports and the report from the District Health Officer, and the new claims to fear harm for reasons related to the presence of COVID 19 in Pakistan.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:

- He is a Pashtun Shia and belongs to the Bangash tribe. He originates from Parachinar where he lived for his entire life prior to travelling to Australia. The applicant's wife and [children] continue to reside in Parachinar, as do his mother and siblings. His father is deceased.
- The Taliban attacked his area as they wanted to have control of Parachinar and because Parachinar is a majority Shia area. The Taliban regard Shia as infidels. By the way they look, their accent and their language Shia from Parachinar was easily identifiable.
- His family operated a [products business] in [a location] in Parachinar. During approximately April 2007 the [premises] was burnt down by the Taliban. They carried out many attacks in the area and they did not want Shias to do business.
- His family managed to rebuild their [premises] and started trading again. [In] November 2007, the Taliban attacked again and the [premises] was burnt down. His father was killed in this attack. He was in the house above the [business] when the Taliban set fire to it. His father went downstairs to try and save the [business] but he was shot by the extremists.
- The applicant [assumed responsibility] for supporting them financially. He rebuilt the [premises] and started trading again. However he started receiving threatening phone calls indicating that he would be killed like his father if he did not close his business. He was scared but he had to continue his work to support his family.
- The applicant went to Lahore and Peshawar to get stock for his [business]. On [a day in] March 2012 he was returning home by bus and passing through [a town in] Lower Kurram Agency, when a remote control bomb planted in the ground was detonated. His bus was full of Shia. One person was killed and [number] were injured including women and children. The applicant believes that he was the target of the attack.
- After the attack he closed the business and stayed at home as he was scared for his life. He left Pakistan [in] May 2013.
- If he returns to Pakistan he believes he will be killed by the Taliban or groups aligned with the Taliban. He would also be unable to freely practise his Shia Islamic faith openly as doing so would cause him to be targeted by Sunni extremists.
- There is no place in Pakistan where he can safely reside. He can be easily identified as a Shia Muslim from Parachinar due to his accent and his identity card. The authorities in Pakistan are not able to protect him against the Taliban.
- Due to the COVID 19 pandemic, he also fears persecution because of his "Membership of a particular social group namely Pashtun, Shi'a Moslem and member of the Turi tribe from Parachinar with no familial/tribal links outside of the Upper Kurram, he will be denied a capacity to subsist due to the economic, social and health consequences of the global COVID-19 pandemic." There is also a real risk that he will suffer significant harm in the form of cruel, degrading and inhumane treatment due to the inability of the Pakistani

State to effectively curtail a major economic downturn due to the COVID-19 outbreak. The Pakistani State will not protect the applicant from the harm and therefore should be taken to intend the harm caused. The applicant also cannot safely access Parachinar because air travel to Pakistan has been suspended.

Factual findings

Identity and background

8. It is claimed the applicant is a national of Pakistan. He provided copies of various Pakistani identity documents including a passport, national identity card and marriage certificate. The details of these documents corroborate his claimed identity, nationality and origins from Kurram District.
9. He has provided consistent details regarding his family composition, religion, ethnicity, tribal affiliation and area of origin. During the interview with the delegate he further elaborated in reasonable detail and with spontaneity on these subjects. The applicant was questioned as to how he would be identifiable as a Pashtun, a Bangash and a Shia. He responded, and I accept, that he may be identifiable through his identity documents, his name, and while practising is religion including through prayer and engaging in religious events. My impression of his evidence regarding Parachinar was that he was able to respond with ease and in detail when questioned by the delegate about this area. I accept that the applicant is a Pakistani national. Pakistan is the receiving country for the purpose of this review. I accept the applicant is Shia by religion, ethnically Pashtun, a member of the Bangash tribe and that he originates Parachinar in Kurram District where his family continue to reside.
10. The Bangash tribe is a Pashtun tribe which comprises both Shia and Sunni sub groups.¹ Material before me indicates the Shia Bangash are closely aligned with the predominantly Shia Turi tribe, and they are occasionally referred as Turi-Bangash.² This is due to a shared place of origin, their common Shia faith, and because they fought alongside each other against the Taliban in 2007-08. Therefore, I consider information before me regarding the Turi tribe relevant and applicable to Bangash tribesmen such as the applicant.

Events in Pakistan

11. The applicant's description of recurrent violence over of number of years in his area of Pakistan prior to his departure generally accords with reports before me on the conflict in Kurram District, which was fought between Sunni and Shia groups and also along tribal lines. The Bangash and Turi tribes have a history of conflict with Sunni groups, and notably the Taliban, due to Shia Tribal elders' refusal to allow the Taliban the use of Upper Kurram as a refuge and launching pad for attacks into Afghanistan.³ Between 2008 and 2014, Shia tribesmen Kurram District faced significant violence from Sunni extremists who targeted them because of their

¹ Calhoun: The Naval Postgraduate School, 'Bangash Tribe', CIS38A80128178.

² Khyber.org, 'Tribes of the Kurram', 1 March 2014, CIS27584; Department of Foreign Affairs and Trade (DFAT) DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

³ Arif Rafiq. 'Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007', 1 December 2014, CIS2F827D91993; Marian Abou Zahab, 'It's Just a Sunni-Shiite Thing!': Sectarianism and Talibanism in the FATA of Pakistan', 1 January 2013, CIS29402; Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011', 1 May 2011, CISD9559B12437; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

faith, including during road travels.⁴ I accept that in the years preceding the applicant's departure from Pakistan there was a high level of sectarian violence in Kurram District. I accept that due to resistance by Shia tribes against the Sunni Taliban incursion into Kurram the applicant's religious and tribal community may be perceived as anti-Taliban.

12. In his visa application the applicant details a number of attacks on the family [business], one of which claimed the life of his father. The first two attacks occurred in 2007. The second, in November 2007, was when his father was killed. In the statement provided with the visa application he indicated extremists set fire to the family business and when his father tried to save the [business] he was shot and killed. However submitted with the visa application is an undated document entitled 'Death Certificate' that says his father was killed in mortar shelling outside his home. The applicant's evidence at the interview with the delegate was that his father was killed when his [business] was bombed. I note that in the arrival and induction interview undertaken shortly after he entered Australia the applicant indicated he was killed by a mortar. I am concerned that the visa application, which was prepared with assistance from a migration agent, provides a different account of the applicant's father's death to that which has otherwise been consistently presented by the applicant. Nevertheless I consider that the applicant provided a reasonably detailed and plausible account of the attack on the business and his father's death when questioned by the delegate and his evident emotion when discussing this matter was compelling. I consider his account of his father dying in a mortar attack in which the family business was also destroyed is plausible in light of country information before me. DFAT reports that Shia tribes in the then Federally Administered Tribal Area (FATA), which encompassed Kurram District (Kurram Agency until 2018) experienced significant violence between 2008 and 2014.⁵ However, the Internal Displacement Monitoring Centre reports before me suggest that sectarian violence commenced in Parachinar in late 2006 and increased throughout 2007.⁶ After months of tension and rumours of Taliban infiltration in Upper Kurram, another round of violence commenced in Parachinar on 9 November 2007 during which many houses were torched or hit by rockets,⁷ which accords with the applicant's account. I accept his father was killed in an attack in Parachinar in November 2007 during which the family business was destroyed. On the evidence presented I am not satisfied that the applicant's father or business were specifically targeted, rather I consider it seems both were casualties of a broader campaign of violence in Kurram.
13. Given he assumed the [financial responsibility for] the family, and in light of his consistent and plausible narrative, I accept that following his father's death the applicant re-established the family business and began operating it himself. He claims he started receiving threatening phone calls referring to his father's death and suggesting that if he did not stop operating the business they would kill him too. There is no suggestion the applicant took any precautionary measures in light of the telephone threats, that he reported them to the authorities, or that whoever was making those threats ever sought to confront or harm him. He continued residing at the same address and operating the family business. I am not satisfied that if the applicant did receive threats from persons who he believed had killed his father and had previously attacked his [business], that he would continue operating the business for a number of years without taking any precautions. I do not accept he received anonymous threatening phone calls from 2008 onwards as claimed.

⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁵ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁶ Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011', 1 May 2011, CISD9559B12437.

⁷ Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011', 1 May 2011, CISD9559B12437.

14. The applicant claimed he was travelling on a bus in March 2012 that bombed and that he personally was the target of that bombing. The applicant submitted documentation with his visa application that seeks to corroborate the bus bombing claim. This is an 'injured certificate', obtained by the applicant's brother in 2017 that states the applicant suffered a 'bomb blast injury' on [a date in] March 2012 as well as a report from [a named source] listing the persons injured in the bombing which appears to include the applicant's name. On 31 July 2013, shortly after entering Australia, the applicant undertook an arrival and induction interview. He was asked directly whether anything specifically happened to him personally and he responded that he was never injured or attacked. This is at odds with the narrative in his visa application and at the interview with the delegate regarding the bus bombing. During this arrival interview he also mentioned his father being killed and the family business being burned down and he discussed the difficulties he had in obtaining stock for his [business] and talked about general insecurity when travelling by road. The delegate asked the applicant why during the arrival interview he indicated he was never injured or attacked despite later claiming he was the target of the bus bombing. He responded: "I did not mention that because I relied on my father's death I thought that would be enough and I did not have the ability to say everything that I mentioned". I am mindful that the particular circumstances of the entry interview may in some cases impact on the full and frank disclosure of relevant information by some individuals.⁸ The difficulty with the applicant's response is that he did not merely omit to mention the bus attack, but expressly disavowed ever being injured or attacked while in Pakistan. The claimed bus bombing occurred around 16 months prior to the arrival interview and was said to have contribute to his eventual departure from Pakistan. I do not accept that the applicant would omit this detail, and moreover expressly disavow ever being attacked or injured, if he had been on a bus that was bombed as claimed. There is no indication that he was somehow hindered or impaired during that interview such that it may account for this response which runs contrary to the subsequent evidence regarding them bus bombing.
15. I have considered the documentation provided in support of the claims bus bombing. I note that the copies provided give little indication they are genuine. The unnamed signature on the 'injured certificate' is the same as that on the 2007 death certificate for the applicant's father and the font and text are mixed and misaligned. The [named source] report appears to lack any official letterhead despite seemingly being issued by a Medical Superintendent, like the death certificate and the injured certificate. In light of my concerns regarding the bus bombing claim and considering that that fraudulently alerted and counterfeit documents are common in Pakistan,⁹ I give these documents no weight.
16. In his visa application and at the interview with the delegate the applicant expressed the view that he believes he was personally the target of the bus bombing. Considering the documentation provided by the applicant indicates he resided at the same residential address whilst in Pakistan, and that he continued to operate the family business in the same location following his father's death it would seem anyone wanting to target the applicant would be able to easily locate him within Parachinar, I consider it very unlikely that the applicant would be targeted while travelling outside of Parachinar in a public bus. Overall I am not satisfied that the applicant a victim of a bus bombing, I reject that claim in its entirety as embellishment. As I do not accept he was involved in the bus bombing, I do not accept that he closed his business in March 2012 as claimed.

⁸ *DWA17 v MIBP* [2019] FCAFC 160.

⁹ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

Refugee assessment

17. 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

18. 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.
19. The security situation in Pakistan has varied over time and across different regions. Between 2008 and 2014, Kurram District experienced significant violence largely along religious and tribal lines.¹⁰ December 2014, following an attack on army school in Peshawar, the Pakistani Government introduced the National Action Plan (NAP) which has had a significant impact on Pakistan’s security environment in the years following. The NAP and associated military operations are credited with significantly reducing violent incidents and terrorist attacks across the country. In 2018, there were just 11 sectarian related attacks in Pakistan, a decline from the previous year and a significant reduction from the 2013 levels.¹¹ The Pakistan Institute for Peace Studies (PIPS) assessed that a nine-year downward trend in terrorist attacks across Pakistan continued in 2018 and that sectarian violence also reduced significantly by 40 percent compared to 2017 levels.¹² Similarly, serious crime reduced significantly after the introduction of the NAP and associated military operations.¹³ A significant majority of terrorist attacks in Pakistan in 2018 targeted security and law enforcement, with politicians and political workers also a focus of attacks. These groups accounted for around 490 of the approximately 595

¹⁰ Arif Rafiq, ‘Sunni Deobandi Shii Sectarian Violence in Pakistan: Explaining the Resurgence Since 2007’, 1 December 2014, CIS2F827D91993; Marian Abou Zahab, ‘It’s Just a Sunni-Shiite Thing’: Sectarianism and Talibanism in the FATA of Pakistan’, 1 January 2013, CIS29402; DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

¹¹ DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

¹² Pakistan Institute for Peace Studies (PIPS), ‘Pakistan Security Report 2018’, 6 January 2019, 20190121110758.

¹³ DFAT, ‘DFAT Country Information Report Pakistan’, 20 February 2019, 20190220093409.

deaths from terrorist activity in 2018.¹⁴ The applicant does not belong to, and is not associated with, any of these groups.

20. Similar to other parts of Pakistan, Khyber Pakhtunkhwa province, which encompasses Kurram District from where the applicant originates, has seen a significant reduction in violence in recent years. According to the South Asia Terrorism Portal (SATP), one incident of sectarian violence in 2017 killed three people, and no incidents of sectarian violence occurred between 1 January and 6 May 2018.¹⁵ Credible sources have reported on the Pakistani government's tough stance and relative success in combatting terrorism activities across Pakistan, including in Kurram District. Since 2014 the Pakistani government has taken significant measures to address sectarian and other violence, including by operations targeting terrorist groups such as the Taliban in Khyber Pakhtunkhwa. Observers credit these measures and also the 2014 NAP with a significant reduction in the number of violent and terrorism related attacks in Pakistan.¹⁶ PIPS reported in early 2019 there has been a nine-year downward trend in terrorist attacks across Pakistan, although they also reported that Khyber Pakhtunkhwa, reported the highest number of terrorist attacks and lowest number of decreased attacks when viewed across in Pakistan for 2018. Nonetheless, when viewed in context, it also evidences a downward trend. Moreover, from 2017 to 2018, terrorist attacks in Khyber Pakhtunkhwa also fell and the number of persons killed and injured fell significantly in comparison to 2017.¹⁷ This trend has continued in the years since.
21. Shia continue to face a threat from anti-Shia militant groups in some areas of Pakistan with Baluchistan being a notably dangerous location for Shia in recent years.¹⁸ Sectarian violence in Pakistan has historically targeted individuals; places of worship, shrines and religious schools, and Shia have traditionally represented a higher proportion of the casualties. Shia make up around 80 per cent of Kurram District's population and Parachinar is the largest town.¹⁹ During 2017, militants carried out mass-casualty attacks in Parachinar, including three bombings in Shia areas. Sunni extremist groups claimed responsibility and said that they had deliberately targeted Shia. Notably, since June 2017, there have been no further attacks on Shias reported in Parachinar or further large scale attacks in Kurram District.²⁰
22. Much of the risk assessment in the material before me concerns mass-casualty attacks in 2017. DFAT assessed in 2017, and repeated this assessment in 2019, that the risk to civilians from sectarian violence is higher in Kurram District than other parts of the former FATA.²¹ However this risk assessment is not borne out by the detailed reporting on this area before me. It does not demonstrate any increase in violence, or any ongoing or systematic attacks against Shias or Bangash/Turis in Kurram District during 2018 or 2019, and the number and extent of violent incidents has remained low.²² A roadside bomb attack in January 2018 in Upper Kurram killed six members of the same family, although the motive and identity of the perpetrators is

¹⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁵ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁶ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁷ PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

¹⁸ UK Home Office, 'Country Police and Information Note - Pakistan: Shia Muslims', January 2019, 20190522151230; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁹ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²⁰ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²¹ DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²² PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

unknown. There were no other reported terrorist attacks in Kurram in 2018.²³ DFAT indicated in February 2019 that the trend of decreased reports of attacks against Shia in 2018 due to the improved security situation in Parachinar and Kurram was likely to continue,²⁴ and that appears to have been borne out by the subsequent reporting, and absence of any notable incidents. The European Asylum Support Office similarly reported that Kurram District observed a 'significant' decrease in violent incidents was observed in 2018 compared to 2017.²⁵ It is now early 2020 and there are no more recent reports before me or presented indicating the security situation in Kurram has deteriorated or materially altered. The material before me does not support a real chance of harm from Sunni extremists, including the Taliban, in Kurram District now or in the reasonably foreseeable future.

23. The applicant has established social, tribal and familial networks Kurram District. I note that the applicant's family continue to reside in Parachinar and have done so since his departure from Pakistan seven years ago. It is contended that the applicant's family continue to live in fear of harm in Kurram. The applicant has not suggested that his immediate family had been targeted or threatened by the Taliban or Sunni extremists since his arrival in Australia, despite also being Shia Bangash. I have accepted that the applicant's father was a victim of the sectarian conflict and that the family business was destroyed. There is no indication that any of the applicant's relatives have experienced any recent difficulties because of these past events.
24. In his decision the delegate also considered whether the applicant would face discrimination due to his race/ethnicity or religion that would amount to serious harm, despite noting that the applicant had advanced no such claims. Ultimately he found the chance of harm to be remote. The applicant did not comment on the delegate's approach in his submissions to the IAA, nor did he seek to advance any arguments in support of the claims identified by the delegate. I concur with the delegate on this point. Relevantly DFAT assesses that Pashtuns in Pashtun majority areas, which would include Kurram District, or locations where individuals have family or social connections, face a low risk of discrimination.²⁶
25. Various sources are cited in submissions to the IAA discussing the anticipated consequences of the spread of COVID 19 throughout Pakistan. I am not satisfied that this gives rise to a real chance of persecution. Persecution relevantly involves an element of motivation for the infliction of harm. The material presented does not suggest that a s5J(1)(a) reason would be an essential and significant reason for the feared harm attributed to COVID 19. The material before me also does not suggest any systematic and discriminatory conduct in responding to the COVID 19 outbreak or the associated economic downturn; the feared consequences of the economic downturn and the pandemic apply to the Pakistani populace broadly.
26. Additionally I am not satisfied that there is real chance of the applicant's capacity to subsist being threatened due to COVID 19. It is submitted owing to COVID 19 and the related economic downturn the applicant will not be able to find employment if he were returned to Parachinar, nor will he be able to return to self-employment due to restricted movement policies, and therefore he will suffer serious harm due to significant economic hardship. The applicant's representative has provided material from various sources commenting on the expected economic hardship expected in Pakistan due to measures to curb the spread of COVID 19. For instance, the BBC reported on 1 April, 2020 that as the country issues more stringent lockdown measures and forces people to stay home, many daily wage earners here

²³ PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

²⁴ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²⁵ European Asylum Support Office (EASO), 'Pakistan: Security Situation', 30 October 2019 20191031160110.

²⁶ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

– from street-food vendors to shoe-shiners – now haven't earned a rupee in weeks, and they're going hungry.²⁷ The material provided also indicates that the Pakistani authorities are working to minimise the impact of economic downturn. The Voice of America reports the due to the downturn the Pakistani government has started the largest and most comprehensive program of providing financial support to the poor and marginalized segments of the society.²⁸ I note that the applicant informed the delegate that his family owned a house in Parachinar as well as land that they cultivated in addition to operating the [products] business. These assets combined with the financial support the applicant indicated he has been providing his family throughout his time in Australia suggests the applicant is well placed to weather any economic downturn. Furthermore the material before me indicates the Pakistani government is offering financial support to persons severely affected by the downturn.

27. It is also suggested that the outfall of the COVID-19 pandemic may trigger a rise of sectarian conflict as unrest is a very real concern in worsening economic conditions due to COVID-19. The submissions did not refer to any recent examples suggesting an uptick in violence. I find that contention to be purely speculative and not borne out on the material before me.
28. In response to COVID 19 the Pakistani authorities have implemented travel restrictions including limiting air travel. It is contended for this reason the applicant cannot safely return to Parachinar. The material before me does not suggest that it is intended such measures are to be enduring, with Prime Minister Khan recently noting that restrictions would be gradually eased when it is appropriate to do so.²⁹ I am not satisfied that the applicant would be unable to access Kurram District in the foreseeable future due to the current limitations on travel.
29. I accept the region from which the applicant originates has been the subject of considerable violence in the past. I accept that Shia Bangash have previously been targeted for harm for reasons of their religion and tribe. However as outlined above the information before me indicates there has been a marked improvement in Kurram District during the seven years since the applicant left Pakistan, and that it continues to improve. I do not accept that this applicant continues to be of any interest to any group for any reason related to the events that occurred more than seven years ago and arose in the context of sectarian unrest which has now largely dissipated. I note that the delegate did not accept that there was a real chance of harm to this applicant in Kurram District in the foreseeable future because he was a Shia Bangash and the applicant did not address or respond to those findings in his submission to the IAA. I am not satisfied that he faces a more than remote chance of harm from any group, including the Taliban or other Sunni extremists, in Kurram District now or in the foreseeable future because he a Shia from the Bangash tribe who originates from Parachinar. There is no real chance of persecution to this applicant in Kurram District arising from the COVID 19 outbreak.
30. This applicant's fear of persecution is not well founded.

Refugee: conclusion

31. 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).

²⁷ British Broadcasting Corporation (BBC), 'The law of generosity combatting coronavirus in Pakistan', 1 April 2020.

²⁸ Voice of America News, 'Pakistan Launches Relief Program for families suffering from COVID-19 Shutdown', 10 April 2020.

²⁹ Voice of America News, 'Pakistan Launches Relief Program for families suffering from COVID-19 Shutdown', 10 April 2020.

Complementary protection assessment

32. 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

33. 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.
34. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
35. This applicant claims to fear stemming from the COVID19 outbreak. Cruel or inhuman treatment or punishment and degrading treatment or punishment all require an element of intention. There is no suggestion that any potential harm experienced by the applicant due to the outbreak would be intentionally inflicted upon him due to the act or omission of any person or group, and I am not satisfied it would be. I am not satisfied there is any intention to cause pain and suffering, severe pain or suffering that could reasonably be regarded as cruel or inhuman, or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life, as properly understood. I am not satisfied there is a real risk this applicant will suffer significant harm as relevantly defined because of the COVID 19 outbreak. Moreover I am not satisfied there is a real risk of harm, including significant harm, due to a potential increase in sectarian unrest because of COVID 19 as I find that claim to be purely speculative.
36. I have found otherwise that the applicant does not face a real chance of harm on return to Kurram District. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.³⁰ Accordingly, for the same reasons I have concluded this applicant does not face a real chance of harm, I find that there is not a real risk of any harm including treatment amounting to significant harm to him in the foreseeable future were he to return to Pakistan.

Complementary protection: conclusion

37. 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).

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

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.