



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09134

Date and time of decision: 8 June 2021 15:31:00
D Hughes, 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 citizen of Pakistan. He applied for a protection visa on 24 May 2017. A delegate of the Minister for Immigration refused to grant the visa on 10 May 2021.

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 applicant made one submission to the IAA. In the submission, the applicant refers to ongoing insecurity for Shias in Pakistan, including the kidnapping of young people in Parachinar, and the shooting of Shias in Peshawar. He also refers to an incident on 4 January 2021, where eleven Shias were killed in Much (likely Mach) Sindh, while stating that other incidents have happened many times before, for example in Chilzs (likely Chilas) Gilgit. The applicant has not provided any sources or specific reports relating to these incidents.
4. The applicant has previously made submissions regarding the situation for Shias in Parachinar and throughout Pakistan, and consistently claimed that Shias are still being abducted and killed. To the extent these are general submissions about ongoing insecurity for Shias, I am satisfied this is not new information and I have weighed those contentions against the specific country advice before me.
5. In terms of the specific claimed incidents in Sindh and Gilgit, if this is new information, I am not satisfied there are exceptional circumstances to justify considering this information.
6. While relevant to his claims broadly, the applicant has not claimed, and I am not satisfied, this is credible personal information in the relevant sense. The 4 January 2021 incident predates the delegate's decision by around four months, and the applicant has also not provided evidence about the dates of the other incidents. In the circumstances, the applicant has not satisfied me that the information was not, and could not have been, provided to the Minister before the delegate made their decision, or that the information is credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims.
7. In addition, I do accept in the assessment below that Shias have been targeted in Pakistan in recent years, including in abductions. I also consider the country information before me regarding the situation for Shias in Pakistan is current and comprehensive. I do not consider the general and unsourced new information provided by the applicant is exceptional or otherwise requires further consideration. I have weighed the fact that the applicant is currently unrepresented, however I am not satisfied any of this information could not have been provided at an earlier time, including while he was represented. Having regard to all the circumstances, I am not satisfied there are exceptional circumstances to justify considering the new information.
8. The submission also includes new information that his brother's friend was kidnapped a few months after a 2019 attack in Peshawar and remains missing.

9. The First Information Report (relating to the attack on his brother) that was provided to the Department in April 2021 also states that his brother's friend was injured in the attack. I am satisfied that aspect of the claim is not new information.
10. If it is accepted that the incident took place in October 2019, then the new claim regarding the abduction of his brother's friend would have taken place sometime in early 2020. While referring to missing Shias generally, the applicant did not appear to make any additional claim or submission about the kidnap of his brother's friend prior to the delegate's decision. The applicant has not provided the IAA with specific details of the abduction or other supporting evidence that might assist in the weighing of this claim, including details of where the abduction occurred, the circumstances of the abduction, and the suspected identity of the perpetrators, or explained whether he considers his brother or family are at risk as a result. I accept that the claims and details of claims can evolve over time and I have weighed the fact that the applicant is not currently represented, but I do not consider that explains why this claim was not detailed at an earlier point. Ultimately, I consider the limited detail regarding this claim, its late raising, and the lack of explanation for the earlier omission, or its relevance to his own claims, are relevant here. In the full circumstances, I am not satisfied there are exceptional circumstances to justify considering the new information.
11. I have weighed whether to interview the applicant or otherwise obtain new or further information from him. I am satisfied the applicant is aware of the issues arising in this review, and has had a reasonable opportunity to make submissions on those issues and/or provide further information. Although I have not accepted the new information provided, I have weighed his submissions to the IAA. In all the circumstances, I am not satisfied I need to invite him to an interview or give him a further opportunity to provide additional information.

Applicant's claims for protection

12. The applicant's claims can be summarised from his visa application as follows:
 - He is from Kurram Agency, and his area was involved in sectarian fighting. Since 2007, living conditions in Kurram Agency deteriorated. The Taliban started attacking from all fronts. Their objective was to kill Shias.
 - Shias living in Kurram Agency moved to Parachinar city for safety as the Taliban started attacking villages in Kurram Agency. Bomb blasts were everywhere, and attacks and killings were rampant. Even Parachinar City became a target. They were surrounded by the Taliban. He saw many dead bodies from the attacks, with dismembered hands and feet of people that had been killed.
 - In their area, they could not send their young girls to school. If they went out they were not sure if they would come home safely. The Taliban would kill people who worked in the villages. Whether they sent them to school or stayed home, the Taliban would not leave them alone.
 - Because of the safety concerns, it became impossible to leave his home. He was an [Occupation 1] before 2007. His mentor's shop was in [a] market, and most of his clients belonged to Kurram Agency and were Sunni. These people know him personally. The Sunni clients left Parachinar and spread to other parts of Pakistan.
 - Prior to 2007, he had full [use of Body Part 1]. As the roads to Peshawar were closed for five years, he had to use a local doctor for treatment. However, the treatment was not

adequate, and he lost the [use of Body Part 1]. He still cannot [use it], and requires medication.

- He could not move to another part of the country, as he would not be safe in other parts of Pakistan. The roads were blocked at that time. Even with convoys they were attacked by Taliban.
- There was no government there at the time. The police and other security people were helpless, and police vehicles were detonated.
- He would not be safe in Pakistan. He fears the Taliban, who are still killing people in and around Parachinar. He also fears Lashkar-e-Jhangvi, Sipah-e Sahaba and a new enemy (Daesh). He would be killed by these terrorists, who are preaching the killing of Shias. They teach that if a person kills a Shia they will go to Jannah.
- He would not receive protection from the Pakistani Government. The security people do not protect common people. Higher authorities and influential people are also not safe in Pakistan.
- He cannot relocate within Pakistan. He is a Shia and belongs to the Parachinar area. People would identify him through his national identity card. As a Shia, he would not be safe in other parts of Pakistan.

Factual findings

13. The applicant provided a range of documentary evidence regarding his identity, including a scan of the biodata page from his Pakistan passport. At the visa interview, he gave spontaneous and prompt advice about his background, his home area, and his religious profile. I found this evidence persuasive. Based on the documentary and oral evidence, I accept his identity and I am satisfied the applicant is a Shia from the Parachinar area. Although not a key component of his claims and evidence, based on the visa application and his use of a Pashto interpreter at the visa interview, I accept the applicant is of Pashtun ethnicity. In addition, having regard to his birth certificate, I accept he is from the Turi tribe.

Past experiences in Pakistan

14. The applicant claims to fear harm on the basis of his religious profile as a Shia, and as a Shia from Parachinar.
15. In terms of his own experiences in Pakistan, the applicant has consistently referred to seeing the aftermath of explosions and other attacks, as well as the impact of the blockades on his own health, as he was unable to access adequate medical treatment in Peshawar and as a result lost the use of his [Body Part 1]. The applicant also spoke of other issues, including access to education (particularly for girls), the serious ongoing threat to those working in villages from the Taliban, and their inability to leave home because of the threat. I consider his past experiences were consistently advanced, and highly consistent with the country advice cited below. I accept his past experiences and the impact on him and his family. I am satisfied this dangerous security environment was the catalyst for his departure from Pakistan in 2012.
16. In his visa application, the applicant referred to his employment as an [Occupation 1], working for his mentor in [a] Market in Parachinar. He claimed that most of the clients were Sunni and knew him personally.

17. In the visa interview, the applicant expanded on this information, indicating he believed he had an additional profile as a result. He stated that because he worked in the market, lots of people knew he was from Parachinar and a Shia Muslim, and because of that they wanted to kill him. He explained that those Sunnis lost their businesses, and suffered lots of damage, and that was why they left and went to other cities. When questioned by the delegate, he confirmed his Shia faith was the only reason he had a risk profile through his work.
18. I accept the applicant likely knew Sunnis who owned businesses and were customers prior to the conflict in 2007. I accept that Sunnis that left Parachinar due to the conflict likely suffered damage and were negatively impacted. However, beyond his ethnicity and ability to remain in Parachinar and work, the applicant has not me satisfied that he has an adverse profile with these Sunnis, even if they did know him. I do not accept he had a higher profile than other Shias living and working in Parachinar. I note he worked for his mentor, and does not appear to have even been the business owner. In that context, I consider his profile was limited and low level, even accepting he was known to Sunni customers and business owners.
19. I found the applicant's claims in this regard undetailed and unpersuasive. He has not satisfied me that the Sunnis that left Parachinar have or would seek to threaten or harm the applicant, that he is or was specifically at threat for any reason, or that the applicant has any additional profile beyond his religious profile, and as a Shia from Parachinar.
20. The applicant claims his brother was seriously injured in an attack in Peshawar in 2019. The applicant provided a copy of a First Information Report (FIR) which provides some corroboration of his claim that his brother was attacked and injured, along with a friend, on [date] October 2019. It confirms the two men were walking towards home when two persons on an unregistered motorcycle approached them, ordered them to stop, and then fired at them. His brother suffered [an] injury, and his friend was injured on his [Body Part 2]. They indicated they had no enmity or hostility to anyone, and while they could identify the men, they were unknown to the applicant's brother or his friend.
21. The applicant indicated at the visa interview that his brother appears to have some [specified] damage from this attack. He currently lives with the applicant's family in [Area 1] along with a number of his other family members. He initially indicated that the attackers were the Taliban, however when the delegate put to him that the FIR indicated the attackers were unknown, the applicant said he thought the Taliban might have done it, or other Sunnis.
22. I have weighed the copy and translation of the FIR. DFAT observes that document fraud is widespread in Pakistan. It states that FIRs use standard forms with the relevant information written in by hand, and are relatively simple to counterfeit. Reports exist of police accepting bribes to verify fraudulent FIRs. DFAT does not consider the existence of an FIR to constitute evidence that the events described in the FIR actually occurred.¹
23. While I have some doubts about the FIR, I found the applicant's evidence that his brother lives at home with what he thinks is [specified] damage to be convincing. In all the circumstances, I accept the FIR and that his brother (and a friend) were victims of a violent attack in Peshawar, and both suffered injuries. However, based on the information before me, I am not satisfied the applicant's brother was targeted by the Taliban, was known to the perpetrators, or that they knew he was travelling [overseas]. His brother did not know the attackers and his brother did not identify them as Taliban, and I consider this is evidenced by the FIR. I consider his claims in this regard are speculative. I consider the limited evidence

¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

before me does not indicate this was anything other than an opportunistic attack, albeit one I accept may have had a sectarian motive. I am not satisfied the applicant's brother (or his friend) were known to their attackers, and I am not satisfied they continue to be at any specific threat or have any ongoing profile in relation to this attack. It follows that I am not satisfied there is any ongoing threat to the applicant's brother, the applicant or his family.

Refugee assessment

24. 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

25. 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.

Religious and related profile

26. I accept the applicant is a Shia from the Parachinar City area in Upper Kurram, Khyber Pakhtunkhwa (KP). His family now live in an area around [number] kms from Parachinar City called [Area 1], but continue to travel to attend mosque in Parachinar City. I find the applicant would seek to return to live in Parachinar City or [Area 1], which I consider are in the same area.
27. The applicant has advanced claims to fear harm on the basis of his religious profile as a Shia, as well as a Shia from Parachinar.
28. In line with the applicant's claims, the reports before the IAA confirm a dramatic rise in sectarian violence in Kurram District in or around 2007, spearheaded by the Taliban (specifically Tehrik-i-Taliban Pakistan or TTP), but also other armed groups such as Lashkar -e- Jhangvi (LeJ). I accept that between 2007 and 2014, the Shia population in the Kurram and surrounding areas faced significant violence and insecurity, with thousands killed in targeted

attacks, suicide bombings, restrictions on work and education, and blockades and killings along the Thall-Parachinar road, which links Parachinar and Peshawar.²

29. Since the applicant's departure from Pakistan, the Pakistan military commenced major operations (Operation Zarb-e-Azb) targeting terrorist groups, including the TTP, extending into the former FATA and KP. This resulted in a significant reduction in the number of civilian casualties from attacks against the Shia populations in Kurram, and a period of relative calm in Parachinar. That period of calm was interrupted in the first half of 2017, when there was a spike in targeted attacks in the area, specifically three high profile and coordinated sectarian attacks against Shia civilians in Parachinar, attributed to (or claimed by) the TTP, LeJ and Islamic State. In July 2017, the Pakistan military extended its successor operation (Operation Radd-ul-Fasaad) to target the TTP and these other Sunni extremist groups.³
30. Observers credit Operation Zarb-e-Azb, its successor Radd-ul-Fasaad, and the National Action Plan (NAP) with a significant reduction in the number of violent and terrorism related attacks in Pakistan, and allowing roads to reopen. In 2018, local observers and officials in KP reported a trend of increased security, a reduction in reported killings, and reduced fear within the community.⁴
31. In 2017, DFAT assessed that Shia in the FATA typically face a low risk of sectarian violence overall, in the context of a moderate level of militant and criminal violence across the region. DFAT also assessed that the risk of sectarian violence for civilians in Kurram, particularly in Parachinar, was higher than in other parts of the FATA, noting the 2017 attacks.⁵
32. In its 2019 report, DFAT again assessed that Shia in the former FATA face a low risk of sectarian violence, within the context of a moderate level of militant and criminal violence across the region. While noting attacks against civilians can occur in any part of the former FATA, DFAT again assessed that the risk of sectarian violence for civilians in Kurram Agency, particularly in Parachinar, is higher than in other parts of the former FATA. DFAT continued to note a trend of decreased reports of attacks against (Turi) Shias in 2018 due to the improved security situation in Parachinar and Kurram Agency. However, notwithstanding its analysis of the improved situation, and the limited evidence of recent attacks, DFAT again assessed in 2019 that Shias/Turi Shias in Kurram Agency faced a moderate risk of sectarian violence from militant groups, because of their Shia faith.⁶
33. DFAT's 2017 and 2019 assessment appears to be fairly influenced by the spike of serious incidents in Parachinar in the first half of 2017. However, scrutiny of other reporting, analysis and data about recent security incidents, and the impact of Pakistan military operations, also confirms DFAT's overarching analysis of a continuing trend of improvement within the security environment in the region for Shias and more broadly. The country advice indicates

² M.A Zahab, "'It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Hurst & Company, 1 January 2013, CIS29402; A.S. Rafiq, 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', Middle East Institute, December 2014, CIS2F827D91993; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515; Reuters, 'Blast kills at least 21 in Pakistan vegetable market, says official', 21 January 2017, CXC90406612371.

³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515; Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; Fata Research Centre, 'FATA Annual Security Report 2017', 17 January 2018, CIS7B8394188.

⁴ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; Fata Research Centre, 'FATA Annual Security Report 2017', 17 January 2018, CIS7B8394188.

⁵ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

⁶ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409.

that Sunni extremist groups (including the Taliban/TTP and Islamic State) have been driven out of the area, and their capacity to undertake attacks in Parachinar and Kurram has been significantly reduced.

34. The reports before me do not indicate a resurgence or increase in violence against the area's Shia populations since 2017, and the number and extent of incidents has remained low through 2018 to 2021. The FRC reported one incident in Kurram in 2019, with two casualties.⁷ In July 2020, an IED explosion at a Turi bazaar in Parachinar injured 17.⁸ While the FRC reports that there are tensions in Kurram due to escalation in land disputes/clashes, and there are reportedly fears that extremists may take advantage of these disputes to promote sectarianism, no further attacks have been reported in Parachinar or Upper Kurram since July 2020, whether by the Taliban, Daesh, LeJ or SSP.⁹ Perhaps indicative of the improved security environment, reports indicate that hundreds of displaced Shia and Sunni families began returning to their homes in 2018, including Sunnis to Parachinar. The reports indicate these Sunni families were warmly received, notwithstanding the challenges ahead.¹⁰ Reports also refer to a range of other initiatives aimed at improving stability and services in the region.¹¹ I consider this squarely rebuts the applicant's contention that no action has been taken.
35. I acknowledge the applicant's submissions, and I accept that sectarian and insurgent violence continues to occur in some parts of Pakistan, and that Shias have been targeted, in killings and abductions.¹² I accept the submission that these would have included low profile Shias. I have accepted the applicant's brother may have been a victim of such violence in Peshawar in 2019, albeit I have also found the applicant, his brother and other family members do not have any specific or ongoing risk profile from this attack. I also accept isolated security incidents can still occur, for example the July 2020 incident in the Turi Shia bazaar in Parachinar. However, I am also satisfied that security has improved significantly through Pakistani military security operations and local security improvements (including the implementation of fence lines, CCTV, and the red zones in Parachinar) and that this has resulted in what I consider to be low level and infrequent incidents of terrorist and sectarian related violence in the area since 2018.¹³
36. While I have had regard to the spike of violence in the first half of 2017, I consider the weight of advice would appear to confirm that DFAT's 2019 projection of a continuingly improved security situation in Parachinar and Kurram Agency was correct, and has continued into 2021.¹⁴ Even acknowledging that the situation in Afghanistan is of concern to Pakistan,¹⁵ I do

⁷ FATA Research Centre (FRC), 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', 7 January 2021, 20210113125205.

⁸ Javid Hussain, 'At least 17 injured in IED blast in Parachinar's Turi Bazar', Dawn (Pakistan), 23 July 2020, 20200724103731

⁹ FATA Research Centre (FRC), 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', 7 January 2021, 20210113125205.

¹⁰ Express Tribune (Pakistan), 'Sunni tribes start returning to Parachinar 11 years after displacement', 20 June 2018, CXBB8A1DA30592; Muhammad Irfan, 'As Fata merges with KP, Parachinar's Shias tell Sunnis it is time to come home', Samaa, 28 June 2018, 20190111113428.

¹¹ News International, 'Public-private collaboration yielding results in Kurram district', 13 December 2018, 20190110163827; AP (Pakistan), 'Minister directs for developing potential tourists sites in Kurram districts', 19 June 2019, 20190620104837; and others.

¹² The Nation, 'Nasir Shah meets protestors at Quaid's Moseluem', 26 April 2021; Shiite News, 'Protest against forceful disappearance of mourners in Multan and sit-in for 3 days', 26 April 2021.

¹³ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; Pakistan Institute for Peace Studies (PIPS), 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; Fata Research Centre, 'FATA Annual Security Report 2017', 17 January 2018, CIS7B8394188.

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

¹⁵ Anwar Iqbal, 'Regrouping of militants is Pakistan's biggest worry: US General', Dawn, 26 April 2021.

not consider the advice before me indicates security in Parachinar and Upper Kurram will deteriorate in the reasonably foreseeable future.

37. In full consideration of the information before me, I am satisfied there is not a real chance of the applicant facing harm (including targeted killing or abduction) from the Taliban, or any other person or group, for reason so of his religion of his profile as Shia from Parachinar, if he were to return to Parachinar and Upper Kurram, now or in the reasonably foreseeable future.
38. While not expressly claimed, I have also considered the risk to the applicant on the basis of his Pashtun ethnicity and Turi tribal background. In terms of his other profile, DFAT assessed in 2017 that Pashtuns do not face a higher risk of violence than other groups based on their ethnicity. In 2019, DFAT stated that Pashtuns who are not Turis, or are not linked to the ANP, face a similar risk of violence as other ethnic groups in Pakistan in the same locations. The differential risk to Turis relates to their Shia faith rather than their ethnicity. In terms of discrimination, DFAT states that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination. DFAT assesses that Turis a face similar risk of official discrimination as other Pashtuns based on ethnicity, and no additional risk of official discrimination based on their religion. DFAT notes that Turis tend to live in enclaves with other Turis, mitigating societal discrimination. According to DFAT, the population of KP is mostly Pashtun. Shias comprise around 40 percent of the population of Kurram Agency, while Upper Kurram is estimated to be around 80 percent Shia. Most Shia in Kurram Agency are from the Turi tribe, particularly in Parachinar.¹⁶
39. I have found the applicant will return to live in Parachinar or [Area 1]. Based on DFAT advice, I am satisfied this is a majority Shia, Pashtun and Turi area. I am satisfied he would face no real chance of harm on the basis of his Turi tribe or Pashtun ethnicity in this area. While I accept his religious, tribal and ethnic profile may put him at risk of discrimination if he were to relocate, including his profile as a Shia from Parachinar, I consider the chance of the applicant facing religious or ethnic discrimination in his home area is remote.
40. As there is no airport in Parachinar, I accept the applicant would likely return home via the Thall-Parachinar Road. I accept his contentions that there have been attacks on this road, as well as blockades that prevented him from receiving medical treatment in the past.
41. DFAT has stated that travellers in KP and districts in the former FATA are at greater risk of criminal or militant violence due to their isolation and the limited presence of security forces. Many roads fit this profile. In its 2017 report, DFAT advised that the use of security convoys mitigated the risk of attacks. In its 2019 report, DFAT stated that Turi Shias reported significantly fewer road attacks in 2018, as military operations had forced militants into the mountains. This had restored confidence within the community for individuals (although not large groups) to travel on the Thall-Parachinar road, although only between dawn and dusk.¹⁷
42. I give weight to the fact that there have been few recent reports of attacks against Shias and Turi Shias on this road. Given the improved security on the roads, I am satisfied the applicant could access his home area, particularly if he travels in a convoy, and in daylight hours. I do not consider this would involve any modification of behaviour, rather it would involve a common choice for those who travel on the roads in an area that has faced much insecurity.

¹⁶ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515.

¹⁷ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 20190220093409; DFAT, 'DFAT Country Information Report Pakistan', 1 September 2017, CISED50AD5515.

43. I am satisfied the applicant would be able to return to the Parachinar area to live and work. I am satisfied that it would be reasonable for him to return and remain in the Parachinar area given the security this would afford him and the family support he would find there. Given the improved security on the roads, I accept he could travel occasionally outside of the area, such as to Peshawar for example, for health care. In any event, even if he needed to travel outside of Parachinar, based on the assessment above and the infrequency with which I consider he would travel, I consider the chance or risk of him being harmed in any travels between Parachinar and areas such as Peshawar would be remote.
44. Given the applicant's past experiences, I consider the applicant's personal fears about returning to Pakistan are likely genuine. I acknowledge his concerns that there is no guarantee of safety if he returned to Pakistan, and I accept his past has had a serious impact on him and his family. However, when having regard to the range of analysis, reporting and data before me, I find there is not a real chance of the applicant facing harm from the Taliban, LeJ, Islamic State, SSP, or any other person or group, on the basis of his profile as a Shia or Shia from Parachinar, as a Turi or Turi Shia, as a Pashtun or Pashtun Shia, or on any related basis, whether now or in the reasonably foreseeable future.

Data breach, asylum claims, and time in Australia

45. The applicant contended that the Taliban may have accessed the information from the data breach and would know he has been overseas. He claimed the Taliban do not like people who go to western countries. At the very commencement of the interview, the applicant appeared to indicate that breach had resulted in some problems for his family in Pakistan.
46. In connection with these claims, the applicant referred to a threat letter sent by the Taliban which states they know the names of the people that went to other countries, and that these people are at threat. When questioned by the delegate, the applicant confirmed at the visa interview that the letter was sent to a local bazaar around two or three weeks prior to the visa interview and did not relate to him specifically.
47. After the visa interview, the applicant provided a photo and translation of the letter. My concern with the letter relates to its translated content. The first paragraph warns the reader to stop working with the eastern countries (which I accept may be reference to what we colloquially call the west) and to stop participating in the protests. The letter further states that the reader has been providing services to wounded Shias in Parachinar and warns the reader to stop such activities or face punishment. The last paragraph is the most problematic. It relevantly states:
 - *We are aware of your all movements. We have information regarding your family. Days of your living life is not much left and would end very soon. You will not be able to live anywhere in Pakistan. We tried once before to take you away, but a Police patrol vehicle failed our attempt. We are making sure this time to bring you definitely with us.*
48. The reference to the failed abduction attempt and the intervention of a police vehicle leaves me in no doubt that this threat letter is not a general threat letter intended for the Shia community in Parachinar as the applicant contends, but instead is one written specifically to an individual. I am satisfied the letter is not applicable to the applicant or the Shia community in Parachinar more broadly. I am satisfied the threat letter was not sent to or intended for the applicant in any way. Whether it is genuine or not, I find the threat letter has no bearing on the applicant's claims or his claimed profile, even if he returned to the Parachinar area after an extend period in the west (Australia).

49. I have accepted the applicant was impacted by a breach of Departmental systems in February 2014. Based on the letter from the Department, I am satisfied that information about the applicant's claims and profile was not accessible, nor were records of an earlier interview (as he briefly contended during the visa interview). I am satisfied the only information available was basic bio-data information and his immigration detention.
50. Further, while I accept the data breach occurred, I am not satisfied it was accessed by the Taliban in Pakistan, or would put the applicant at risk. Firstly, I am not satisfied on the information before me that the Taliban in Pakistan has the information systems or processes to access, identify or trace a person whose information was released in the data breach. Even if the information was accessed and used by the Taliban, I am not satisfied the applicant is known to the Taliban or has any specific profile with the group that would lead them to target or search for him. The evidence before me does not indicate the Taliban are currently present or active in Parachinar or that they would be able to identify or link him to his time in Australia or his asylum claims if he returned to live in the Parachinar area.
51. On the information before me, I am not satisfied there is any chance the Taliban accessed the information, identified the applicant from that information, identified or linked him to his time in the west or asylum claims, or that the applicant or his family would be or have been at threat (or faced problems) from the Taliban (or any other armed group) for those reasons.
52. More broadly, in terms of his profile from his time in the west or his asylum claims, I am satisfied he has no profile that would put him at a chance or risk of harm, whether from armed groups such as the Taliban, or any other person or group.
53. In its 2017 report, DFAT stated that western influence is pervasive in many parts of Pakistan, particularly in large urban centres. Western films and music are widely available (though in many cases subject to censorship), and western-branded retail chains operate throughout the country. Both Urdu and English are official languages, and English is taught in many schools and is widely spoken among Pakistan's elite. Many Pakistanis have relatives in western countries and many more aspire to migrate abroad. Those living abroad return to Pakistan frequently to visit relatives. DFAT assesses that 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 (such as clothing), despite a generally increasing conservatism and religiosity across the country.¹⁸
54. In its 2019 report, DFAT further assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country. DFAT does note that societal or official discrimination or violence can still occur due to the reason a person attempted to migrate,¹⁹ however in that respect, I am satisfied the applicant has no additional profile beyond his profile as a Shia from Parachinar, and have found he would not face a real chance of harm for these reasons.
55. The applicant has not put information or reports before me that indicate he would be targeted for reasons of any profile related to his time in the west. Based on the advice before me, I consider there is likely more conservatism in the applicant's home area, as it is not a major urban area, but on the information before me, I am not satisfied there is a real chance of the applicant facing harm on the basis of any profile from having returned from, lived in, or sought asylum in the west (Australia), or as a profile factor that increases his chance or risk of

¹⁸ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515.

¹⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

harm on the basis of his other profile. I consider these claims are unsupported on the information before the IAA. I am not satisfied the applicant would face any real chance of harm for these reasons, whether from the Taliban, or any other person or group, now or in the reasonably foreseeable future. I find his fears of harm for these reasons are not well founded.

56. Whether the information available from the data breach was accessed or not, I accept the Pakistani authorities may be able to determine that the applicant sought asylum in Australia. In 2017, DFAT stated that those who return to Pakistan involuntarily 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. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. That analysis is not contradicted in DFAT's 2019 assessment.²⁰
57. The applicant does not hold any profile that was or is against the Pakistan government or authorities. I note his police clearance certificate from KP indicates no political or criminal record. Based on the information before me, I am satisfied he has no adverse or criminal profile in Pakistan and consider his ability to depart Pakistan lawfully on his own passport is further evidence of that. I am satisfied no details of his claims could be accessed by the Pakistani authorities and, in any event, I am satisfied he has and would have no profile of interest to the Pakistan authorities, nor do I consider there is any evidence an adverse profile would be imputed to him. On the information before me, I find there is no real chance of the applicant facing harm from the Pakistani Government or authorities for reasons of his asylum claims or his time in the West. Given his lack of profile, I do not consider any brief period of questioning or detention by Pakistani officials at the airport on his return to Pakistan would constitute serious harm.
58. It follows that I am not satisfied the applicant would face any real chance of harm for any reason related to the data breach, his time in the west (Australia), his asylum claims, any processing on return, or for any other related reason.

Refugee: conclusion

59. 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

60. 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

61. Under s.36(2A), a person will suffer 'significant harm' if:

²⁰ DFAT, 'Country Information Report - Pakistan', 1 September 2017, CISED50AD5515; DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

- 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.
62. 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.
63. In terms of his return to Pakistan, I have found that any brief period of questioning or detention on his return to Pakistan would not constitute serious harm. Having regard to the same information, while I accept he may be detained for a few hours and questioned on return to Pakistan, I am also satisfied this would not constitute significant harm as defined.
64. I have found the applicant would not face a real chance of harm for any of the above reasons should he return to Pakistan now or in the reasonably foreseeable future. Having regard to that assessment, and the information and evidence above, I am also satisfied that there is not a real risk he would face harm or significant harm on return to Pakistan for any of these reasons.

Complementary protection: conclusion

65. 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.