



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09344

Date and time of decision: 14 July 2021 14:35:00
M Brereton, 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 Shi'a, Bangash and Pashtun from Parachinar, Pakistan. He departed Pakistan legally on 26 April 2013 and arrived on Christmas Island [in] May 2013. On 6 July 2017, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 10 June 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the SHEV.
2. The applicant claimed to fear harm from extremist groups in Pakistan because he is a Shi'a, Bangash, and Pashtun from Parachinar; he worked as a religious volunteer; it is unsafe to travel on the roads and he would not be able to reach his family; and he does not trust the authorities because they take Shi'a people and beat them.
3. The delegate accepted the applicant's claims as to identity and origin. The delegate noted that the applicant has not experienced any personal or targeted attacks or harm. The delegate considered country information about the current security situation in Pakistan and was not satisfied that the applicant faced a real chance or real risk of relevant harm if he returned to Parachinar.

Information before the IAA

4. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. No further information has been obtained or received.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He was born and raised in Parachinar, Khyber Pakhtunkhwa (KP), Pakistan. He is a Shi'a, a Bangash, and a Pashtun.
 - He was married and had a [child] in Pakistan, but he divorced his wife in 2013.
 - He worked as [an Occupation] in Parachinar.
 - He was involved in a group called '[Group name]', a religious organisation that provided support to Moharram processions. He was with the group for about 10 days a year.
 - Shi'a Muslims are persecuted and killed in Pakistan. One of his neighbours was killed while travelling on the road. It was not safe for the applicant to work outside Parachinar. It is not safe to travel on any roads between Parachinar and the rest of Pakistan.
 - He has experienced constant fear because he is a Shi'a.
 - He cannot relocate to anywhere else because Shi'as are persecuted all over Pakistan and he has no family outside Parachinar.
 - In 2017, his uncle was killed in a bomb blast in Parachinar. This uncle was a part of the Pakistani military.

- The military cannot protect itself and cannot protect Shi'as. The military and police take Shi'as and beat them.
- He will not be able to reach his family in Parachinar safely.
- He has a partner who is an Australian citizen. They have been together since 2014. He has two [children] who are Australian citizens.
- He has opened a [business] in Australia and if he gets a permanent visa, he will be able to get a bank loan to grow this business.

Factual findings

7. The applicant claims to have been married and then divorced in Pakistan and to have one son living in Pakistan. He claims that he has been in a relationship with an Australian citizen since 2014 and has two [children] born here. I accept the applicant's claimed marital history. However, the purpose of this review is to determine whether the applicant is owed protection. He has not claimed to fear any harm in Pakistan arising from his marriage, his divorce, relationships, or his children. His relationships and children, while personally significant for the applicant, have not otherwise been advanced as relevant to his protection claims against Pakistan. I do not consider that this information has any other bearing on my consideration of his claims to fear relevant harm should he return to Pakistan.

Refugee assessment

8. 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

9. 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.

10. The applicant claims to be a Shi'a, Bangash, and Pashtun from Parachinar. He has provided a copy of his Pakistani passport and a Pakistani driver's licence in support of these claims. At the interview with the delegate on 15 April 2021 (the interview), the applicant said that he is Bangash, but is part of a bigger group called Turi Bangash. He has been assisted by Pashto interpreters during his engagements with the Australian Department of Home Affairs (the Department). The Australian Department of Foreign Affairs and Trade (DFAT)¹ reports that a significant number of Bangash and nearly all Turis are Shi'as, and many Bangash and Turi Shi'as come from the Kurram Agency. Most Shi'as in Parachinar are Turis. The applicant has not claimed to have a right of return to, or residence in, any country other than Pakistan. I accept the applicant's claims as to identity and origin, and I find that he is a Shi'a, Turi/Bangash, and a Pashtun from this part of Pakistan, and that Pakistan is the receiving country for the purposes of this review. The applicant claims that his family in Pakistan remains in Parachinar and has said that he himself cannot relocate anywhere else in Pakistan because he has no family outside Parachinar. He said that he has not lived anywhere else in Pakistan. I find that he will return to Parachinar, should he return to Pakistan.
11. The applicant claims to fear harm as a Shi'a. He told the delegate that he has not been attacked personally, or faced any harm, in Pakistan. He said he has heard about Shi'as being attacked and claims that his uncle was killed in a bomb blast in 2017. He said that he himself used to work as a volunteer during Shi'a religious processions but did not experience any harm when doing so.
12. DFAT² does not identify the Bangash as facing any additional risk of harm, other than as Shi'as. It does refer to historical animosity between the Bangash and Turi tribes, but the applicant does not claim to have experienced, or to fear, any harm from Turis. However, the Pakistani Taliban and Al Qaeda had in the past gained significant ground in the former Federally Administered Tribal Areas (FATA, now part of Khyber Pakhtunkhwa (KP)), killing many Shi'as, especially in Parachinar. DFAT assesses that this rendered Turis and other Shi'a tribes of the former FATA amongst the most vulnerable across Pakistan. Between 2008 and 2014, Turis faced significant violence and were targeted for their Shi'a faith. Militants frequently stopped and killed Turis travelling on roads and a significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Thall-Parachinar road, which links Parachinar and Peshawar. A significant escalation in violence in Parachinar occurred in the first half of 2017, killing more than 120 people:
- on 21 January 2017, militants detonated a remote-controlled improvised explosive device in a marketplace;
 - on 31 March 2017, a suicide bomber attacked an *imambargah*³; and
 - on 24 June 2017, two devices detonated in a market.
13. Other information in the review material⁴ also reports significant violence targeting Shi'as, including Turis, in Parachinar and the wider Kurram Agency between 2007 – 2017. This led to

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

² DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

³ Shi'a congregation hall.

⁴ "'It's Just A Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Marian Abou Zahab, 1 January 2013, CIS29402; United Nations High Commissioner for Refugees (UNHCR), 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan', 14 May 2012, CIS23071; 'A report from Kurram', Let Us Build Pakistan, 1 January 2011, 20190522143241; 'Kurram groups sign accord to open key highway', Dawn, 9 October 2011, 20190821101538; 'The Kurram blockade', Dawn, 10 November 2011, CX297319; 'Kurram deal: Haqqanis' Afghan insurance policy', Dawn, 18 February 2011, CXCB3E63421440; 'Kurram Agency peace deal: Tribal

the closure of the Thall-Parachinar road, until the Pakistani army was able to force it open in 2011. The attacks in 2017 in Parachinar were claimed by the Pakistan Taliban and a Sunni extremist group, Lashkar-e-Jhangvi (LeJ). In November 2017, the Pakistani authorities issued a terror alert for Parachinar, after reports of militants in the area.⁵

14. I accept that the applicant's uncle was killed in 2017. The applicant claims that this was an attack on the military (which, he says, his uncle was part of), but I also note that 2017 saw three mass casualty attacks in Parachinar. In any event, the applicant does not claim that his uncle was targeted personally, or that he was killed because of his membership of the applicant's family, tribal group, or for any other profile shared with the applicant. I am not satisfied that the applicant has any adverse profile, or that he faces a higher risk of violence than other persons of the same ethnicity and religion in Parachinar, because of the death of his uncle.
15. DFAT⁶ reported that the Pakistani armed forces commenced security operations in June 2014, targeting terrorist groups in the former FATA and KP. In December 2014, a National Action Plan (NAP) commenced, forming a joint civil-military effort to combat terrorist, separatist, and criminal groups across Pakistan. In 2017, as noted above, there was an upswing in violence and the armed forces announced a second operation, expanding the role of the military in counterterrorism. Local observers, including officials, in KP reported a trend of increased security, a reduction in reported killings, and reduced fear within the community in 2018. Residents of Peshawar reported an increased sense of security in the evenings due to the enhanced military presence. Government and military operations were said to have disrupted the activities of militant groups and limited their access to former safe havens. Nonetheless, militant groups remained active across Pakistan and although counterterrorism operations had succeeded in suppressing terrorism-related violence, societal intolerance and religious extremism appeared to have increased, suggesting that the underlying causes of violence remained. DFAT assessed (in 2019) that, despite a reduction in levels of violence, sporadic large-scale terrorist attacks are likely to continue to occur, against a background of ongoing smaller-scale attacks (albeit at a reduced tempo).
16. The European Asylum Support Office (EASO)⁷ 2020 report quotes sources who have referred to the decline in militant violence throughout Pakistan, although noting that the threat of violence has not disappeared. In 2019, according to the Pakistan Institute of Peace Studies (PIPS), the Pakistani Taliban was involved in 82 'terrorist attacks', compared to 79 in 2018. These attacks were concentrated in KP and Balochistan and the Taliban was said to remain a threat to security in 2020, mainly in north western KP and Punjab. Other extremist groups including LeJ, Islamic State, and Siyah-e-Sahaba (SSP) also remain active, as do separatist and nationalist groups. From 1 January 2020 to 31 July 2020, EASO noted three violent incidents in Kurram which were attributed to rival sectarian groups and unknown militants:
 - May 2020, a bomb blast occurred in an *imambargah* in Kurram tribal district.

elders to enforce pact in Parachinar only', Express Tribune, 11 October 2011, CX302566; 'Kurram tribal region: Peace accord signed to end years of bloodshed', Express Tribune, 4 February 2011, CX317554; 'Limited Goals, Limited Gains: The Pakistan Army's Operation in Kurram', Critical Threats, 6 September 2011, 20190829151217.

⁵ Dewatering drive stirs worries among Kurram people', Dawn, 2 January 2017, CXC90406630; 'The little boy killed at the market', BBC News, 26 January 2017, CXC90406620866; 'Bomb wrecks crowded market in Parachinar', Express Tribune (Pakistan), 22 January 2017, CXC904066518; South Asia Terrorism Portal, 'Pakistan Timeline - 2017 (to 4 December)', 12 December 2017, CISED50AD7845; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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

⁷ European Asylum Support Office (EASO), 'Pakistan: Security situation', October 2020, 20201102100212.

- June 2020, a clash between two tribes erupted and evolved into a sectarian clash. At least five people were killed and over 20 injured.
 - 23 July 2020, a bomb explosion occurred at a local market in Parachinar, wounding 18 people. After this incident, people protested and blamed the security forces for the violence in the region
17. The Centre for Research and Security Studies (CRSS)⁸ reported in 2021 that the former FATA (unlike other regions) experienced a substantial increase in violence in 2020. However, further analysis shows that most casualties were suffered by security and government officials, and the districts of North Waziristan and Bajaur reported most casualties. North Waziristan reported 130 fatalities out of a total of 191 for the FATA. Kurram reported eight fatalities and 19 injuries, although this appears to include casualties from non-militant violence, and I note another 2021 report⁹ indicates that although Kurram reported only the three militancy-related incidents in 2020, the district remained volatile due to the growing number of land disputes there. Disputes and tribal clashes (which do not appear to have involved Bangash or Turis) resulted in 14 deaths and 40 injuries in Kurram.
 18. The United States Commission on International Religious (USCIRF)¹⁰ reported that in 2019 the blasphemy law remained in effect and that nearly 80 individuals remained imprisoned for blasphemy, with at least half facing a life sentence or death. USCIRF indicated that these provisions are frequently abused to target religious minorities through false accusations and that while Muslims represent the greatest number of individuals charged or sentenced, religious minorities face a disproportionately higher rate of allegations and arrests. USCIRF also noted that while terrorism has decreased in recent years, Pakistan remains a base for extremist groups who often target Shi'a and Sufi Muslims in addition to non-Muslims. It referred to an April 2019 bombing (claimed by the Pakistani Taliban and the Islamic State) that targeted a (Hazara) Shi'a neighbourhood in Quetta.
 19. In 2019, DFAT also reported that there have been significant attacks on Turis in the past (although there were no reported attacks on Bangash). However, military and security operations, together with associated counter-terrorism activities, had significantly decreased the number and severity of such attacks. In the first quarter of 2018, the Turi community reported two attacks, including one involving an improvised explosive device that targeted women and children. This compared to community estimates that 200 Turis were killed and 1000 injured in 2017, although DFAT stated that it was unable to verify these claims. DFAT also noted that Turis 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.
 20. In my view, DFAT's 2019 assessment that Turis in Kurram Agency faced a moderate risk of sectarian violence from militant groups because of their Shi'a faith, is not borne out by the detailed reporting (noted above) on this area in recent years. The reporting does not demonstrate any notable increase in violence, or any ongoing or systematic attacks against Turis, or Shi'as more broadly, in the Kurram District during 2018, 2019, or 2020 and, as set out above, the number and extent of violent incidents has remained low. While I

⁸ Centre for Research and Security Studies, (CRSS), 'CRSS Annual Security Report 2020', 10 February 2021, 20210211103243.

⁹ 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', Irfan U Din and Mansur Khan Mahsud, Fata Research Centre (FRC), 7 January 2021, 20210113125205.

¹⁰ United States Commission on International Religious Freedom (USCIRF), 'USCIRF 2020 Annual Report - Pakistan', April 2020, 20200429103634.

acknowledge that an absence of past harm is not necessarily an indicator of the risk of future harm, the applicant's profile and the information before me does not indicate that he will be targeted in Parachinar as a Shi'a, a Bangash, or a Turi/Bangash.

21. The information before me does not indicate to me that sectarian and other violence is likely to increase in the reasonably foreseeable future. I also note that the applicant does not claim to have any individual adverse profile; rather, his profile is that of an ordinary Shi'a, Turi/Bangash and Pashtun in Kurram. While I acknowledge that future attacks may occur, the evidence before me does not indicate that such attacks (or harm stemming from them) are so common, frequent, or systematic across the whole of the Kurram Agency, such that there is more than a remote chance that a person with the applicant's profile would be caught up in such violence. I am not satisfied that the chance the applicant would be harmed by sectarian or generalised violence in Kurram is more than remote. Nor am I satisfied that the chance he may be harmed or killed as a bystander in such an attack is more than remote. I am not satisfied that he faces a real chance of harm from sectarian or generalised violence for these reasons.
22. Turning to general discrimination, DFAT had no evidence of systemic discrimination against Shi'as in gaining employment in the public service, police, military, or the private sector. However, some Shi'as perceive discrimination against Shi'as gaining roles at higher levels of some organisations. Overall, DFAT assessed that Shi'as (who are not Hazaras or Turis) generally do not face discrimination based on their religious affiliation when seeking employment. Low-level anti-Shi'a discrimination did occur at the community level and could manifest in violence or damage to property; however, that the more recent information before me does not indicate community discrimination leading to violence or damage to property in Kurram or Parachinar in recent years. DFAT went on to note that Sunni and Shi'a students attend the same public and private education institutions and students must declare their religious affiliation for entry into both public and private institutions, including universities. Religious bias in public education predominantly affects non-Muslims, but Shi'a groups have raised concerns that the public-school syllabus and prescribed textbooks contain depictions of Sunni prayer rituals and omit prominent historical Shi'a figures. Shi'as are well represented in parliament and regularly contest elections for mainstream political parties. DFAT assessed that there are no barriers preventing Shi'as from actively participating in democratic processes in Pakistan due to their sectarian affiliation.
23. The information before me does not indicate that Bangash face discrimination in Parachinar. DFAT has reported that Turis tend to live in enclaves with other Turis, mitigating societal discrimination. Outside these areas, DFAT assessed that Turis faced a moderate risk of societal discrimination based on their Shi'a religion and historical animosity with the Bangash tribe. Turis face a similar risk of official discrimination as other Pashtuns based on ethnicity, and no additional risk of official discrimination based on their religion. The applicant has not claimed to fear harm from Turis or from any animosity between the two tribes.
24. Turning to his Pashtun ethnicity, DFAT reported that Pashtuns comprise an estimated 15.4% of the population of Pakistan, making them the second-largest ethnic group in the country after Punjabis. Pashtuns report racial profiling and harassment by security officials in areas where Pashtuns are in a minority. DFAT assessed that Pashtuns face a medium risk of official discrimination in the form of terrorism-related and racial profiling by security forces in areas where they are a minority, particularly in Punjab. Pashtuns in Pashtun majority areas (such as Kurram), or locations where individuals have family or social connections, face a low risk of official discrimination. Pashtuns who are not Turis or are not linked to the Awami National Party (ANP), face a similar risk of violence as other ethnic groups in Pakistan in the same

locations. However, as noted above, the more recent reporting does not indicate that Pashtuns in Kurram or Parachinar have faced any increase in violence or high-level discrimination, nor does it indicate that ordinary Pashtuns with no political or extremist associations face a real chance of violence, high-level discrimination, or similar harm.

25. The applicant is from Parachinar, which is a Pashtun majority area. He has not claimed any links to the ANP. Having regard to the history of enmity between the Taliban and Pakistan's Shi'as, the applicant's origin and personal history, and the lack of any reported official harassment or discrimination against Pashtuns in Kurram, I am not satisfied that the applicant faces a real chance of being profiled by the authorities, or being imputed with any adverse pro-Taliban profile as a Pashtun or a Pashtun Shi'a Turi/Bangash, by the authorities or any other group or person.
26. I note the DFAT assessment that Turis may face a moderate risk of societal discrimination and I accept that the applicant may face some low-level official or societal discrimination as a Pashtun Shi'a and Turi/Bangash in Kurram. There is no information before me to indicate that such discrimination may include, or amount to, conduct that may constitute a threat to the applicant's life or liberty; significant physical harassment or significant physical ill treatment; or significant economic hardship, denial of access to basic services or denial of a capacity to earn a livelihood of any kind, where the hardship or denial would threaten the applicant's capacity to subsist; or any other conduct that may be considered serious harm as contemplated by s.5J of the Act. I am not satisfied that the applicant faces a real chance of serious harm as a Shi'a, Turi/Bangash and Pashtun should he return to Pakistan.
27. I accept that the applicant would need to travel within Pakistan to return to his home in Parachinar. In 2019, DFAT indicated that the road to Parachinar was open and that Pakistanis are travelling on this road to safely access Parachinar and other parts of the district (albeit in daylight). DFAT did not report any post-2017 attacks on Pakistanis travelling to Parachinar from outside Kurram. Other recent country reporting I have referred to above does not indicate that there have been ongoing attacks on the Parachinar road (day or night), or that travellers in and around Parachinar are being targeted by day or night. I note from the information before me that there continue to be reports of persons being harmed by improvised explosive devices and remnants of war while travelling on roads in Pakistan, but these reports do not indicate that such events are commonplace or frequent, or necessarily occur in the vicinity of Parachinar or within Kurram. I note the information about recent clashes between the rival tribes in Kurram, but there is no information before me indicating that persons who are not members of the rival tribes have been, or may be, targeted if travelling on the roads. I am not satisfied that the applicant faces any more than a remote chance of being harmed while travelling on the roads, by day or night. I am not satisfied that the applicant faces a real chance of harm accessing, or travelling in or around, Parachinar.
28. The applicant left Pakistan on his lawful passport. This passport expired in 2017 and the applicant does not claim to have renewed his passport since he has been in Australia. I accept that he may have to obtain temporary travel documents in order to return to Pakistan. According to DFAT, those who are returned to Pakistan involuntarily, or are travelling on emergency travel documents, are likely to attract attention from the authorities upon arrival. DFAT understands that those returned 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. The applicant does not claim to be wanted for crimes in Pakistan. I note information before me that those found to have contravened Pakistani immigration laws are typically arrested and detained, but the applicant does not claim to have contravened the immigration laws.

29. I accept that the applicant may be questioned at the airport, but I am not satisfied that he has any profile that may lead to him being detained, imprisoned, or subjected to any other adverse interest. I am not satisfied on the information before me that any brief period of questioning that he may experience on return to Pakistan amounts to harm, let alone serious harm, as contemplated by s.5J of the Act. In any event, the information before me indicates that the enforcement of Pakistani immigration law is not discriminatory or applied in any discriminatory way. I am not satisfied that it constitutes persecution as contemplated by s.5J of the Act.
30. DFAT and the other information before me does not indicate that returned asylum-seekers with no other adverse profiles are subjected to persecution because they have sought asylum overseas. DFAT assessed 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. The applicant has not claimed to have been involved in any political, extremist, or other activities which may bring him to the adverse attention of the Pakistani authorities. I am not satisfied that the applicant faces a real chance of harm from the Pakistani authorities because he has sought asylum overseas.
31. DFAT reported 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 assessed that individuals in Pakistan are not subject to any additional risk of discrimination or violence for having spent time in western countries or because of perceived western associations, despite a generally increasing conservatism and religiosity across the country. DFAT noted that societal or official discrimination or violence may still occur due to the reason that a person attempted to migrate. The applicant does not claim to have left Pakistan due to official or societal discrimination, and I am not satisfied that he faces a real chance of violence.
32. Having regard to his profile and the information above, I am not satisfied that the applicant faces a real chance of harm as a returned asylum-seeker, or as a returned asylum-seeker who has been in the West.
33. The applicant does not have a well-founded fear of persecution in Pakistan.

Refugee: conclusion

34. 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

35. 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

36. 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.
37. 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.
38. I am not satisfied that the recent reporting considered above indicates a real risk that the applicant will face discrimination as a Shi'a, Turi/Bangash, and Pashtun in Parachinar. In any event, the information before me (including the recent reporting) does not indicate that any such discrimination would include, or amount to, violence or other conduct that could be considered significant harm as defined. I am not satisfied that the applicant faces a real risk of significant harm for this reason.
39. I have found above that the applicant does not face a real chance of harm for any other reason or reasons should he return to Pakistan. As 'real chance' and 'real risk' equate to the same threshold,¹¹ and for the same reasons as given above, I am not satisfied that the applicant faces a real risk of significant harm for any reason or reasons, should he return to Pakistan.

Complementary protection: conclusion

40. 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.

¹¹ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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