



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09354

Date and time of decision: 29 July 2021 16:52:00
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 Afghanistan. He applied for a protection visa on 4 April 2017. A delegate of the Minister for Immigration refused to grant the visa on 15 June 2021. The delegate did not accept the applicant was a citizen of Afghanistan, finding instead that he was Pakistani national and that he was not owed protection on that basis.

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). No submissions or new information was obtained or received by the IAA.
3. I note that some concerns were raised about the quality of the interpretation during the visa interview. The applicant discussed some of his concerns with the delegate, which I have weighed in the assessment below.
4. The applicant and his representative requested and were provided a copy of the visa interview recording. While they indicated to the delegate that they intended to make submissions, no further submissions were made.
5. I have weighed whether to obtain further information from the applicant or undertake a further interview. Beyond the examples which were provided, the applicant has not detailed any other concerns he had during the interview. I consider he has been afforded a reasonable opportunity to make submissions if he had further or additional concerns. I have weighed his existing concerns in assessing his evidence and have been conscious that errors can arise in interpreting. I consider the issues arising in this review remain as they were before the delegate. In all the circumstances, I do not consider it necessary to interview the applicant or otherwise seek further information or comment from him.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He is a citizen of Afghanistan.
 - He was born on [date] in [his home] village, [in a named] District, Kandahar Province. He is a Sunni Muslim of Pashtun ethnicity.
 - He has never been to school or obtained any formal education in Afghanistan. He and his family were living a very simple and respectable life in their village.
 - He does not have any Afghan identification as he was a minor at the time that he left Afghanistan, and there is no culture or custom of having these documents in remote villages, as most people are uneducated.
 - He never obtained a valid passport or travel document. The passport provided to him by his agent was false. He registered with UNHCR in Indonesia, but he cannot provide a copy of his card because the agent took everything before his boat journey to Australia.

- His father was killed in 2010 by the Taliban due to his resistance against their ideology, condemning their actions and not submitting to their orders.
- The village he was born in, and the surrounding villages, have always been controlled by the Taliban. It is an area where the Taliban is active and has full control. His village is far from the main capital city in Kandahar, which is governed by the Afghan Government.
- As there was no government control, the Taliban would openly recruit children and for parents to hand their children to the group, often against their will. Those who objected to the Taliban, such as his father, were killed to prevent further disobedience or uprising against their ideologies.
- When he was a child, he recalled his friends were taken away by the Taliban. Their parents never found out their whereabouts or what happened to them. He was lucky to have survived this. His father sacrificed his life so the applicant and his brothers would not be handed over to the Taliban.
- He was around [age] years old when his father was killed. He did not understand what happened. He asked his mother about the incident and the reason why his father was targeted and killed. She told him that the Taliban were trying to force his father to allow the Taliban to recruit him and his brothers.
- His father was the sole breadwinner and was looking after their family. After he was killed, the applicant's mother decided that it was no longer safe for them to remain in the village and that they had to move to Pakistan to live with his uncle. His uncle came and took them to Pakistan. From 2010 to February 2013, the applicant lived in [Village 1], [in a named] District in Balochistan Province in Pakistan.
- His uncle's actions brought him to the Taliban's attention. As a result, his uncle received threats against his life, and he has not been able to return to Afghanistan as he fears being prosecuted by the Taliban.
- [Village 1] is close to the border of Afghanistan. The Taliban can freely cross the border into Pakistan to carry out their activities such as targeting those that have fled Afghanistan from persecution or those that have been disobedient to them.
- After receiving threats from Taliban and fearing abduction, his uncle and mother decided to send him away to a country where he could live in peace and without fear of being kidnapped or killed.
- The Taliban is not the only threat in his village. Many times, people in his village were killed by government soldiers, as well as the Taliban. In one attack in 2012, an American soldier killed [number] people in his village, including nine children and three women. This increased his fears of returning to Afghanistan, because it meant his village was not safe for anyone. He feared that if he was there when this incident happened, he would also have been killed. He fears harm from the Taliban and the Afghan Government, including crossfire between the Taliban and foreign forces that operate in the area.
- The situation in Afghanistan is very unstable and on high alert due to the increased number of suicide bombings and the emergence of Islamic State. The risk from the Taliban and Islamic State is the same for all residents of Afghanistan, and he will not be able to live anywhere in the country. He does not have family or friends in Afghanistan that will provide him with protection or shelter.
- Having lived in Australia for the last four years puts him at high risk due to the activities of western countries in Afghanistan. He is highly likely to be considered a western spy

by the Taliban, who have constantly targeted those that work with the NATO forces, Afghan Government, Afghan Army, Police or other authorities.

- He fears that if he is returned to Afghanistan he will be subjected to harm, assault, torture and prosecution because the Taliban are very powerful and have active members all over Afghanistan. He will not be able to receive any assistance or protection from the authorities because the Afghan Government has limited access to and control of many small villages and provinces.

Factual findings

Identity

7. The applicant has been broadly consistent in his evidence about his name and his birth date. There has been some minor variance in the spelling of his name, but I consider that can be attributed to the variance that occurs in the translation of names. I accept his name as claimed. I have weighed the assessment of the age determination assessor and the applicant's broadly consistent evidence about his birthdate. I accept the applicant's age and I am satisfied the applicant was a minor when he arrived in Australia. I have also weighed his age when assessing his evidence.

Nationality/citizenship and lack of identity documentation

8. A key consideration in this case is the nationality/citizenship of the applicant. For the reasons that follow, I am not satisfied the applicant is a citizen or national of Afghanistan. I consider he is a national and citizen of Pakistan.
9. The history of this issue is as follows. On his arrival in Australia in 2013, the applicant claimed to be a national of Afghanistan. He indicated that he had no identity documentation and no taskera (the Afghan national identity document).
10. In the applicant's age determination interview, which took place on 25 July 2013, the applicant also discussed his time in Afghanistan and Pakistan, his documentation and his education. When asked how he knew his date of birth, the applicant stated that his maternal uncle had a taskera, with details of his birth, and a note which recorded his family's details.
11. On 4 April 2017, the applicant applied for a protection visa. In his visa statement, he stated the following:
 - I have never obtained a valid passport or a travel document. The passport that I was provided by the agent to facilitate my travels to Australia was fake.
 - I had registered with UNHCR in Indonesia but cannot provide a copy because the agent took everything from me including the registration card from me upon being boarding the boat to Australia.
 - I do not have any Afghani Identification as I was a minor at that time and also there is no culture of having these documents in the remote villages as most of the people are uneducated and there is no such custom to have identification documentations.
12. On 19 May 2017, the applicant was first requested, under s.91W of the Act, to provide evidence of his identity, nationality and citizenship. He was given 28 days to respond to the request.

13. In a statutory declaration, declared on 23 May 2017, the applicant responded as follows:
 - At the time, I left Afghanistan, I was a minor (about [age] years old) and have not been back ever since.
 - Registering births, marriages and deaths are rare in Afghanistan (e)specially in villages due to high number home births in Afghanistan and nonexistence of such systems.
 - I have left Afghanistan under very harsh circumstances and without having any legal documents. I do not know if my father has registered my birth or obtained National Identity Document for me.
 - I have asked my mother if she can provide me with a copy of the requested documents and she has advised me that at the time I left no such documents were recorded.
 - I sincerely wish to cooperate with the authorities, but I am unable to provide such documents because to obtain national identity document I will need to seek assistance of the authorities in Afghanistan.
 - I am not able to obtain such assistance as my family has also fled the country and are currently residing in Pakistan.
14. On 16 May 2018, the applicant advised the Department that he had appointed a representative. I note the contact address for the representative was the same as that recorded on the Department's decision notification of 15 June 2021.
15. In the visa interview in May 2021, the applicant indicated he did not have a taskera, but he could get one. He said his family in Pakistan have all the documents, and he can ask for it.
16. On 7 June 2021, the applicant was sent a copy of the protection visa recording via registered post. No post-interview submissions were made to the delegate, and no documentary evidence of his identity was provided.
17. The applicant has not provided any documentary evidence about his identity, despite being formally requested under s.91W of the Act, and having almost four years to provide some form of evidence regarding his identity. He indicated at the visa interview that he could provide such evidence, but he has not done so. He has also provided no identity documents or other submissions to the IAA.
18. I consider the applicant has provided inconsistent evidence about whether he or his family held any identity documentation. At the arrival interview, he indicated he had no taskera. At the age determination interview, he indicated that he did have a taskera, or that his uncle did, and that it details of his birth, and that a note from his uncle contained the full dates of birth of the applicant and his siblings. I note there was some confusion later in the interview about his taskera and the false Pakistani passport issued by the smuggler, however I am satisfied the applicant clearly referred to having a taskera with his birth details.
19. In the visa application and the response to the Department's s.91W request, he stated his family had no identity documentation from Afghanistan, and that he could not provide documentation in part because he would need to seek the assistance of the authorities in Afghanistan.
20. At the visa interview, the applicant indicated he was able to provide evidence of his identity from Afghanistan, also suggesting his family held some documentation. When the delegate reminded the applicant of his response to the s.91W request, and the apparent inconsistency

in his evidence, the applicant said that from the beginning he had said it was not possible to get a taskera. He stated that he had been trying to obtain documentation and that he had been told that because his ancestors lived there, they would be able to provide him with a taskera and that he would provide it as soon as possible.¹

21. I consider his evidence at the visa interview was materially different to that put forward in his visa application. While I have weighed his concerns about misinterpretation, his evidence still appears to have shifted from his family having no documentation and being unable to provide documentation, to a claim that they hold some documentation and that he was now able to provide it. Even if this was just a misunderstanding or a shift in his circumstances, it is apparent he now has the ability to obtain a taskera or other documentation that could demonstrate his or his family's links to Afghanistan.
22. It is not implausible that if the applicant was a minor living in a rural area, he may not have held documentation while in their village.² However, I consider there would be some documentation of his or his family's identity, or documentation could have by this point been obtained and provided. In that context, I consider his failure to obtain and provide any document before or after the interview raises clear concerns about his identity and nationality/citizenship.
23. I have weighed the fact that there may be some barriers to obtaining information due to the pandemic, but I also consider that the applicant could have arranged for his family to take photos of whatever documents they hold and send them to him digitally. Even if there are barriers to him providing evidence of his identity from his home, I consider the applicant is now aware of the possibility of obtaining a verification of his citizenship through the Afghan Embassy in Canberra.³ His decision not to do so is a further factor that leads me to question his identity (as it extends to his citizenship) and his overall credibility and claims.

Citizenship of mother and maternal uncle

24. A further concern here is the citizenship of his mother and maternal uncle.
25. At the visa interview, the delegate observed that the applicant had claimed in his application that his mother was born in Pakistan and that she was a citizen of Pakistan. The applicant explained that she was born in Pakistan, but she did not have documentation and 'nothing had been arranged'. He contended that in rural areas, women are not required to have those documents. He explained she was taken to Afghanistan by her father after their marriage.
26. The applicant indicated he had never registered his status as an Afghan refugee with the UNHCR or Pakistan authorities. He indicated he had never sought to apply for citizenship on the basis of his mother's citizenship. The delegate expressed some concern that he had never made any such attempts. The applicant said his mother was illiterate and uneducated, and that women like her are underprivileged and not asked to register with the authorities or obtain documents.
27. The delegate confirmed the applicant's uncle was a maternal uncle and the brother of his mother. The applicant confirmed this. The delegate then put to him that his uncle would also have been citizen of Pakistan. The applicant then asked whether he had to respond and

¹ I note at the end of the interview he corrected the interpretation stating he had not referred to his father when discussing his Afghan ancestry and ability to obtain documentation. I have weighed his evidence as it was revised.

² EASO, 'Afghanistan: Key socio economic indicators Kabul City Mazar-e Sharif & Herat', 14 August 2020, 20200817120822.

³ Embassy of Afghanistan (Canberra), 'Absentee Tazkira', 1 January 2018, CXBB8A1DA38039.

explain this to the delegate. The delegate confirmed he would need to answer the question. The applicant said that their (his mother and uncle's) parents were from Afghanistan, and had migrated to Pakistan. He said even though they were born in Pakistan, they were not looked at as citizens. He confirmed his uncle was born in Pakistan.

28. I found the applicant's evidence regarding the citizenship of his mother and uncle to be unsatisfactory. It is not implausible that his mother may not hold documentation, but I do consider it is implausible that his uncle was undocumented, given his residency in Pakistan, his employment, and his claimed travels across the border. Having regard to DFAT advice, I consider there is a range of documentary evidence available to Pakistan citizens and residents.⁴ While I accept there are undocumented Afghan refugees in Pakistan, I am not satisfied this is the status of his uncle and mother. The citizenship of his uncle and mother, viewed in the context where he has provided no documentary evidence relating to him or his family, raises serious further concerns for me about the applicant's own nationality and citizenship.

Education and language ability

29. The applicant arrived in Australia [in] March 2013. His age determination interview took place on 25 July 2013, during which he demonstrated what I consider was a very good understanding of English. At several points he appeared to correct the interpreter, or answer a question before it was translated. I consider his competency was evidenced in the following interaction with the interviewer that was undertaken in English:⁵

- Interviewer (I): Do you know how old you are?
- Applicant (A): Yeah, [specific age].
- I: And how do you know you are [that specific age]?
- A: Because my date of birth.
- I: Because of your...?
- A: Date of birth.
- I: And what is that?
- A: [Specific DOB]
- I: [Starts that DOB]
- A: [Completes the year]
- I: [Suggests a similar year]?
- A: [Confirms the correct year].
- I: And how do you know that is your date of birth?

30. It was at this point that the applicant reverted to using the interpreter.

31. The applicant was also asked during this interview where he had been to school before. He indicated he had not studied in Afghanistan, but he had studied at a Madrassa. The

⁴ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

⁵ From 0:12:50 of the Age Determination Interview

interviewer asked the applicant what he studied. He responded in English that they were learning the Quran and about religion. He stated he was [age] at the time.

32. The interviewer asked him how he was able to speak English. He indicated that when he went to Karachi, his friends spoke English well and he learned from them. He claimed he also learned some English at Christmas Island. The interviewer asked him how long he spent in Karachi, the applicant responded that he left his home on [a day in] February (appearing to correct the interpreter's mistranslation) and that he spent 16 days in Karachi.
33. At the visa interview, the delegate put his concerns about the applicant's language abilities (in Pashto, English, Urdu and Hindi) given he claimed to come from an illiterate family in regional Afghanistan and have no schooling beyond some study at a Madrassa. The applicant responded that he had not studied English in Pakistan. He claimed that some people on the trip to Australia could speak Urdu, Hindi and English, and they would explain how to say things, and that is how he learned English. He further stated that on the way to Australia, there was a need to know some English words. When he arrived in Indonesia, the people he was with said they would need to learn English, so they tried to improve their English there as well.⁶
34. The delegate also put to him that he had advised the Department that his English was 'good' when he arrived in Australia. The applicant responded that when he got to Christmas Island/[and another state], no one had ever asked him about his level of English. The delegate put to him that the interviews were recorded.
35. At the end of the visa interview, the applicant expressed some concerns about the quality of interpreting. He expressed these concerns in English. One of the points he referred to was to the discussion as to whether he had referred to his English language ability as 'good'. I note the reference to this by the delegate appeared to relate to the arrival interview, the record of which records his English competency as 'good'. At the end of the interview, the applicant claimed that his point was that he did not realise what 'good' meant at that time. He also explained that he was playing with friends a lot in Pakistan and he picked up other languages in that context (which I take to be reference to his ability to speak Urdu and Hindi, as well as English). I have weighed those considerations.
36. The applicant appears to be fluent in Pashto. His ability to speak Urdu and Hindi is untested, but I consider it a reasonable explanation that he would have picked up some Urdu, Hindi and English during his time in Pakistan, and that some basic English communication was used at a number of points in the journey to Australia.
37. However, I share the delegate's concerns about the level of the applicant's English, given his claim to come from a rural area, with limited literacy in his family, and to have undertaken no formal schooling, beyond the studies at the Madrassa (which were not in English). Accepting he may have picked up some English words playing with friends, and in travelling to Karachi and his onward journey to Australia, and also during his time in Australia, I still question how he would have been able to develop the level of English he demonstrated in the age determination interview which took place only a few months after his arrival.
38. I accept the applicant's submission at the visa interview that any rating of 'good' at the arrival interview cannot be relied on as an indicator of his ability at that time. I do, however, consider the testing of his English at the age determination is a relevant consideration. While

⁶ I have weighed his concerns at the end of the visa interview that his answer was more detailed than interpreted. I have no concerns about the summary provided, which I consider plausible, and have weighed those concerns.

I acknowledge that some people are just very quick learners of foreign languages, I find it very difficult to accept that the applicant could have obtained that degree of English competency based on his limited education and previous exposure to English, whether in Pakistan or Australia, particularly at a level where he was able to answer varied questions at the age determination interview, answer questions without interpretation, and at times appear to correct misinterpretation. While not determinative, I consider it a further circumstance that suggests he has not been open about his past profile and background.

Claims related to Afghanistan

39. The applicant was broadly consistent about his claims as they related to his father and Afghanistan, albeit it was also the case that he was young at the time and did not know many of the details.
40. In the visa application, the applicant indicated for the first time that he was at risk of forced recruitment from the Taliban and that the Taliban was trying to force his father to allow the applicant and his brothers to be recruited. While I have some concerns about the late raising of this specific personal risk profile, I have had regard to his age and consider it is not implausible he was only later advised of those specific risks by his family.
41. Of more concern to me is the claim that he and his uncle continued to be at threat in Pakistan. The applicant contended that his uncle received threats from the Taliban because he had taken the applicant and his family to Pakistan. He contended they live in an area ([Village 1]) that was near the Afghan border, and which the Taliban could freely cross. He contended the threat of him being abducted was grave enough that this was the catalyst for them to arrange for him to leave Pakistan with the assistance of a people smuggler.
42. If it was the case that the applicant and his uncle were at threat from the Taliban, I find it very difficult to accept that they would remain living in an area near the Afghanistan border, which would expose them to greater risks. Whether his mother was documented or not, his evidence is that his mother and uncle are Pakistani citizens, and I consider they would have had the ability to move the family to a safer area in Pakistan.
43. Moreover, while the applicant did not know the costs of his journey to Australia (which I consider reasonable given his age and his limited understanding of his uncle's income), I expect the costs would not have been insignificant. If he and his family were at threat as he contends, I find it very difficult to accept that they would send the applicant to Australia, but make no arrangements for his uncle, mother and young siblings to move to a safer area in Pakistan.
44. At the visa interview, the applicant confirmed his family still live in [Village 1], meaning they have lived there for over 10 years. He has not detailed any direct threat or harm in recent years. Beyond the question of whether any threat has occurred, his family's continued residence in this area raises serious questions as to whether his family is at any actual threat.
45. While the applicant's claims related to Afghanistan are not implausible or incapable of being believed, I also do not consider his account is persuasive or particularly credible given the concerns above. More critically, I do not consider his claims and evidence at all overcome my serious concerns about his evidence as it relates to his and his family's nationality and citizenship.

Relations in Australia

46. At the visa interview, the delegate questioned the applicant as to whether a person the applicant lived with in Australia, and who had the same surname, was a relative of the applicant. The applicant stated that he was not and that [his surname] is common in Pashtun tribes.
47. A document on file relates to this third party and a financial transaction to Pakistan, to a person who shares the same name as one of the applicant's brothers, although with a different age, occupation and an incomplete address. I am conscious of the applicant's claims about the common names in Pashtun tribes, and I do not consider this single transfer, containing what I consider to be a very incomplete address, is indicative of a relationship between these parties and the applicant.
48. The delegate made no reference to the issue of any relative in their assessment, and I am satisfied they concluded that this information was incomplete and could not be relied on, particularly in the context of the applicant's explanation at the visa interview. I find accordingly and give it no weight.

Summary of assessment

49. I have again weighed the applicant's submissions about his age and his concerns about the interpreting at the visa interview. In the assessment above I have made allowances for those considerations, but I also note that concerns arise in relation to a number of aspects of his evidence across time, and his decision not to provide any documentary evidence regarding his or his family's identity, or even demonstrate he has made efforts to do so.
50. Weighing everything before me, I am not satisfied and do not accept the applicant is a national or citizen of Afghanistan. I consider his claims in this regard are a contrivance. While his father may have passed away, I do not accept his father was killed in Afghanistan or killed by the Taliban. I am not satisfied and do not accept the applicant was undocumented or had no status in Pakistan. I find he was educated in Pakistan and this explains his proficiency in English and other languages. I find his mother and uncle are citizens of Pakistan. While it may be the case that the applicant has some Afghan ancestry, I find that he is a resident and citizen of Pakistan. While I accept that he may have used a people smuggler to depart the country and travel to Australia, I am not satisfied and do not accept he used a false passport to leave Pakistan. I find he left Pakistan using his own valid passport.
51. To remove any uncertainty, I am not satisfied and do not accept that the applicant or his family are at any chance or risk of harm from the Taliban or any other person or group.
52. I find the applicant is a Sunni Pashtun, and citizen of Pakistan. The applicant has made no claims to fear harm in Pakistan, however I have considered his existing profile as it arises before me.

Refugee assessment

53. 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

54. 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.

Ethnic and religious profile

55. I have accepted the applicant is a Sunni Muslim. DFAT states that Muslims comprise 96.28 percent of the population of Pakistan, of whom approximately 85 to 90 percent are Sunnis. DFAT advises that Pashtuns comprise an estimated 15.4 percent of the population of Pakistan, making them the second-largest ethnic group in the country after Punjabis. Pashtuns traditionally live among their own tribes and sub-tribes in Khyber Pakhtunkhwa and the former FATA, although many have migrated to urban areas. The largest Pashtun communities live in Karachi, which hosts the largest population of Pashtuns in the world, followed by Peshawar. Pashtuns also live in Balochistan, Islamabad, Lahore and other urban areas.⁷
56. While the situation for religious minorities in Pakistan can give rise to risk, DFAT does not indicate the Sunnis are at risk of discrimination or violence. I accept there has been ethno-sectarian violence in Balochistan, but also note that the incidence of violence has fallen as a result of Pakistan security operations. Perhaps more critically, I note that while sectarian violence does occur throughout Pakistan, it disproportionately affects minority groups⁸
57. DFAT assesses 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 or locations where individuals have family or social connections face a low risk of official discrimination.⁹
58. Given my concerns with the applicant's evidence, it is not clear whether he is in fact resident in [Village 1] in Balochistan, however I have proceeded on the basis that this is his home region and the area he would return to live and work. I consider this would be a Sunni

⁷ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

⁸ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

⁹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

Pashtun majority area, or at least the village area he lives would be a Sunni Pashtun majority area. I have no reason to consider he would have any involvement with, or any proximity to, Pashtun or Sunni militant groups, or have any other association that may elevate his profile.

59. Based on the DFAT advice and limited information before me, I find there is not a real chance of the applicant facing harm or discrimination on the basis of his religious and ethnic profile as a Sunni Pashtun, whether now or in the reasonably foreseeable future. I accept that Balochistan does suffer from violence and ethno-sectarian violence, however I consider the applicant, as a member of the Sunni Pashtun majority in these areas, would not face a real chance of harm on the basis of his ethnic or religious profile.

Departure from Pakistan, time in west and claims for asylum

60. In its 2019 report, DFAT states that returnees tend to have left Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistan law. The government issues 'genuine returnees' with temporary documents when they arrive. A genuine returnee is defined as someone who exited Pakistan legally irrespective of how they entered destination countries. Those who are returned involuntarily or who travel on emergency travel documents are likely to attract attention from the authorities upon arrival. The authorities interview failed returnees and release them if their exit was deemed to be legal, but they may detain those deemed to have departed illegally. People suspected of or charged with criminal offences in Pakistan are likely to face questioning on return, irrespective of whether they departed legally or not.¹⁰
61. Those who return voluntarily and with valid travel documentation are typically processed like any other citizen returning to Pakistan. DFAT states that those 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. Those found to have contravened Pakistani immigration laws are typically arrested and detained. These people are usually released within a few days, either after being bailed by their families or having paid a fine, although the law provides for prison sentences. Those wanted for a crime in Pakistan or who have committed a serious offence while abroad may be arrested and held on remand, or required to report regularly to police as a form of parole.¹¹
62. DFAT further states 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. Although DFAT does note that societal or official discrimination or violence can still occur due to the reason a person attempted to migrate.¹²
63. While I accept the applicant may have used a people smuggler, I have not accepted he left Pakistan illegally on a false passport. He was a minor when he left Pakistan, and I have no reason to consider he had a criminal record or any other adverse profile, nor is there any suggestion he has developed any adverse profile in his time in Australia. As the applicant no longer has his passport, I expect he may require a temporary travel document. Given the loss of his passport and his extended period spent in Australia, I consider it a near certainty that

¹⁰ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

¹¹ DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

¹² DFAT, 'Country Information Report - Pakistan', 20 February 2019, 2019022009340.

he would be determined to have sought asylum and to have spent an extended period of time in the west (Australia).

64. As he would be travelling on a temporary document, I accept he would be questioned and briefly detained. Given his lack of profile and lawful departure, 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.
65. On the information before me, I find there is no real chance of the applicant facing harm for reasons of his asylum claims or his time in the west (Australia). Having not accepted his claims and the reasons he attempted to migrate, I am also satisfied he would have no adverse profile on return to Pakistan, nor face any chance or risk of discrimination or violence for those reasons.
66. It follows that I am not satisfied the applicant would face any real chance of harm for any reason related to his time in the west (Australia), his asylum claims, or in any processing on return to Pakistan, or for any other related reason.

Refugee: conclusion

67. 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

68. 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

69. 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.
70. 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.
71. 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 that 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.

72. 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.
73. Lastly, I accept the applicant's submissions that he has complied with the law in Australia, and that he has made efforts to improve his English, find employment and pay taxes, and his intentions to live and work in a regional area. The applicant is clearly an intelligent young man, and while I have not accepted his claims and citizenship, I accept he has been genuine in his efforts to engage and live in Australia. However, these are matters outside the scope of this jurisdiction.

Complementary protection: conclusion

74. 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.