



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09656

Date and time of decision: 27 September 2021 15:25:00
A Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Pakistan. He arrived in Australia [in] July 2013. On 7 July 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 12 May 2021 the applicant was interviewed by an officer of the Department of Home Affairs (the Department). On 6 August 2021 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate accepted the applicant was a Pashtun Turi Shia Muslim from Kurram District. However the delegate was not satisfied that there was a real chance that the applicant had a well-founded fear of persecution or that there was a real risk the applicant would suffer significant harm if returned to Pakistan.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 1 September 2021 the applicant's representative provided on the applicant's behalf an email to the IAA (the 1st IAA submission). Attached to the email were:
 - written submissions prepared by the applicant's representative; and
 - media articles and a video recording.
5. The written submissions restate aspects of the applicant's claims that were before the delegate and explain why the applicant disagrees with the delegate's decision. Apart from the issues discussed below, it contains nothing new. To that extent I regard it as argument rather than information and have considered it. The written submissions also cite extracts from the 2019 DFAT report on Pakistan. That report was before the delegate when the s.65 decision was made is not new information.
6. After being advised by the IAA that it was unable to access the video recording, the applicant's representative provided a second email to the IAA on 20 September 2021 (2nd IAA submission). Attached to the email were video recordings and a media article. One recording¹, which was included with both IAA submissions, could not be accessed by the IAA. I have not considered it.
7. The remaining video recordings and articles included with the two IAA submissions were not before the delegate and are new information. One article, 'Pakistan frets over security threats from neighbouring Afghanistan', post-dates the delegate's decision. I am satisfied that s.473DD(b)(i) is met. In relation to the alternative limb of s.473DD(b), the report is general country information not personal information in the relevant sense. Section 473DD (b)(ii) is not met. It was submitted that the country information provided concerns US troops departing Afghanistan and how that impacts the applicant's local area of Parachinar and surrounding areas; and that the country information illustrates the region's volatility due to the strategic location of the applicant's hometown with the Afghanistan border. On its face

¹ [Deleted.]
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the article is recent, from a reputable source, and provides commentary on the potential of political changes in Afghanistan to impact on Pakistan. Considering this, and my assessment on s.473DD(b), I am satisfied that there are exceptional circumstances to justify considering the new information.

8. The remaining articles and video recordings pre-date the delegate's decision. The applicant was represented before the Department. At the protection visa interview, at which that representative was present, the applicant was advised that it was his responsibility to provide information in support of his claims for protection, and that if the application was refused by the Department, he might not have another chance to provide the information. Almost three months elapsed between that interview and the decision being made. However, no information was provided by the applicant or his representative to the Department in that period. Section 473DD (b)(i) is not met in relation to these items. Nevertheless, on their face the items contain credible personal information about the intentions of the identified Pakistani Taliban² leader and other identified Sunni armed group leaders towards Pakistan's border areas in the wake of the Afghanistan Taliban's advance on Kabul. On the basis of the information before her, the delegate was not satisfied that there was a real chance that the applicant would be persecuted by the Pakistani Taliban or other Sunni armed groups. I am satisfied that had the information been known it may have affected the consideration of the applicant's claims. Section 473DD (b)(ii) is met. Apart from one article that is 11 months old, the items were published only a week or so prior to the delegate's decision. They provide up to date information on the activities of the Pakistani Taliban and related groups in the area the applicant is from. Considering this, and my assessment on s.473DD(b), I am satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

9. The applicant's claims as set out in the July 2017 SHEV application can be summarised as follows:
 - his ethnicity is Pashtun and his religion is Shia Muslim, and he was born in [Village 1], Kurram district, Khyber Pakhtunkhwa province, Pakistan. [A short distance] from the area where he lived was [Location 1], which is considered to be the main Taliban stronghold.
 - leading up to his June 2013 departure from Pakistan Shia Muslims were under constant daily attack by the Taliban and other armed groups.
 - in mid-2010 he and other villagers were working their farming lands under local police security, when his mother brought him food. The Taliban appeared and started firing at them. He and his mother threw themselves into a ditch and sheltered there for a while. The local police started to withdraw and they ran away through the long ditch. It took them more than an hour to get home, although their land was just five to 10 minutes from their home. He later found out that few farmers had been killed and injured but the local police escaped.
 - on an unspecified occasion, he, his younger brother and mother were working on the farm when the Taliban called them "infidels" because they are Shias. He took his family members and fled the area.

² The Pakistani Taliban is also known as the Tehrik-e-Taliban Pakistan (TTP).
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- around midnight in late 2011 the Taliban attacked their home. First an RPG landed on their rooftop, and then they fired small ammunition directly at their home. The assault lasted for almost 2 hours and his mother was injured.
 - in 2012 he and his father were working their farming land. His grandmother came to bring them food, but stepped on a mine planted by the Taliban close to where they were working and lost her both her legs.
 - in 2012 he was in Parachinar city when a car bomb detonated near the "Turi Market" and many were either killed or injured.
 - in 2013, after he arrived in Australia his father was at an imambargah (Shia place of worship) in [a named location] when a car bomb exploded 20 metres away. His father was uninjured while people around him were killed or injured.
 - the Taliban threatened to kill him and his family and his family were under threat from the Taliban all the time.
 - he fears if he return to Pakistan he will be seriously harmed by the Taliban because he is a Shia Muslim; because he will be imputed to oppose the Taliban and other anti-Shia armed groups. He will be beheaded by the Taliban.
10. During the May 2021 protection visa interview the applicant claimed that:
- his ethnicity is [specified Turi].

Refugee assessment

11. 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

12. 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.

13. In support of his identity the applicant provided with the SHEV application certified copies of a Pakistan National Identity Card (NIC) (and English Translation) and a biodata page from a Pakistan Passport. I accept that the applicant's identity is as claimed and that he is a national of Pakistan. I find that Pakistan is his receiving country for the purpose of this review.
14. On the basis of the applicant's documentary and oral evidence I also accept: that he completed primary school, high school and two years at a degree college in Kurram District; that his parents and adult siblings continue to live in the house that they own in Kurram District; that in Australia he has worked as [an occupation 1]; and that he is single.
15. At the outset of the protection visa interview the delegate noted that, in connection with an interview scheduled with the applicant around a week previously, she had received a medical certificate from a general practitioner stating that the applicant 'has mentally stressful and unable to concentrate and will be unfit for work from 29/04/2021 to 07/05/2021 inclusive', and that he would like the interview postponed. The delegate enquired about the applicant's fitness to participate in the rescheduled interview, to which the applicant responded that he was okay to proceed, that he had slept well the previous night, and that he had not taken any medication but had eaten early because he was observing a religious celebration. Like the delegate, I am satisfied that the applicant was fit to participate in the interview and was able to put forward his claims for protection.
16. At the close of the interview, the applicant's representative referred to the medical certificate that had been provided and the applicant's mental health and asserted that the applicant had an appointment with a psychologist and was going to receive treatment, and that in Pakistan there was not much mental health treatment, and that as a consequence the applicant would experience difficulties establishing himself or finding work. Although the delegate invited the applicant to do so, no medical evidence was provided to the Department of Home Affairs (the Department) in the three months that elapsed between the interview and the decision. Nevertheless, in the Protection Visa Decision Record the delegate accepted that the applicant 'has poor mental health and suffers from depression' but was not satisfied that the applicant had a well-founded fear of persecution for that reason.
17. Country information indicates that basic health care in Pakistan is free, but limited capacity, lack of funding, corruption, slow economic growth and overarching governance challenges combine to reduce quality and accessibility. Wealthier Pakistanis have access to better quality private health care and many religious and secular charities provide health services generally focused on supporting the specific needs of their community or sect³. Mental health care is severely underfunded and under researched⁴. Pakistan spends, on average only four percent of its Gross Domestic Product on health, out of which only half a per cent is devoted to mental health care⁵. Nevertheless, some mental health treatment is a part of primary health care system in Pakistan and therapeutic drugs for psychological conditions are generally available at the primary health care level⁶. Also more recently, some effort has been

³ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

⁴ 'The state of mental health care in Pakistan', *The Lancet Psychiatry*, Vol. 5, June 2018, 20190717141442.

⁵ Tayyaba Rehman, Tahira Amjad, Fareed Aslam Minhas, Javeria Kamran, Noor Shah, 'Integration of Mental Health into Primary Healthcare: A challenge for primary care physicians', *Pakistan Armed Forces Medical Journal*, vol. 69 (Supplement 2), 17 May 2019, 20190717131529.

⁶ UK Home Office, 'Pakistan COI Report', 9 August 2013, OGC0D145414.

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made by the Pakistan Association for Mental Health to raise awareness about mental health and erase the long-standing societal stigma against mental illness⁷.

18. In the absence of evidence from an appropriately qualified health professional, other than the expired medical certificate relating to non-attendance at the initially scheduled interview, I doubt that the applicant has been diagnosed with depression or any other mental health disorder, or that he is being treated by a psychologist. I observe that the applicant's representative made a submission to the IAA on the applicant's behalf, however it did not refer to his mental health or include any related medical evidence. Notwithstanding this, as the delegate has accepted that the applicant 'has poor mental health and suffers from depression', I am prepared to do the same and have considered whether the applicant is at risk of harm for this reason.
19. On the information before me the applicant is not currently receiving treatment or taking medication for a mental health condition or symptoms. However, in the event that the applicant were to require treatment or medication, I am not satisfied he would be unable to obtain it in Pakistan. Country information cited above indicates that while health facilities in Pakistan, including for mental health, are inadequately resourced and overburdened there is some treatment and medication for psychological illnesses and symptoms available. Moreover, while health facilities in Pakistan may be not be resourced as in Australia, the evidence that is available to me does not suggest that in the event treatment or medication were sought, the applicant would be denied medication or other treatment, or restricted in his ability to obtain medication or treatment, as a result of any systematic and discriminatory conduct, including for any of the reasons in s.5J(1)(a) or otherwise. I note the review material includes evidence that the applicant's grandmother received medical treatment for the injury she suffered. Country information supports that the applicant may face some stigma in relation to his mental state in Pakistan. Although facing some societal stigma in relation to psychological ill-health, whether in the form of negative attitudes, a level of social isolation or otherwise, may be hurtful, I am not satisfied it amounts to significant ill-treatment or any other type of harm that may be regarded as serious harm.
20. In the 2017 SHEV application, prepared with the assistance of a representative, the applicant claimed his ethnicity is Pashtun. Four years later, at the protection visa interview, the applicant claimed his ethnicity is [specified Turi]. Country information indicates Pashtuns are the second largest ethnic group in Pakistan, comprising almost 32 million of the total population of over 207 million. Most Pashtuns are Sunni, and they traditionally live among their own tribes in Khyber Pakhtunkhwa province, which is the province where Kurram District is located. Although many have migrated to urban areas. The Turi are a Pashtun tribe of around 500,000 people, most of whom live in Parachinar, Lower and Upper Kurram, Orakzai, DI Khan, Kohat, and Hangu, which are districts in Khyber Pakhtunkhwa province. However, unlike most other Pashtuns, the Turi tribe is Shia. Turis are not generally distinguishable from other Pashtuns by appearance, but are identifiable by tribal names, accents, and residency in known Turi areas⁸.
21. It is of some concern that the applicant did not identify he was from the Turi tribe in the 2017 SHEV application, prepared with the assistance of a representative. It is also of concern that at the 2021 protection visa interview the applicant stated the [specified Turi] do not have a sub-section, contradicting information contained in the Kurram Agency Domicile Certificate

⁷ Mental health crisis, Dawn (Pakistan), 6 January 2019, 20190717140152.

⁸ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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that he provided to the Department soon after he arrived in Australia, suggesting his knowledge of the Turi tribe is limited. However, I have listened to the audio recording of the applicant's arrival interview conducted in 2013. I note at that time he identified his ethnicity as Pashtun Turi. I accept the applicant is a Pashtun [specified Turi].

22. The applicant claimed he is a Shia Muslim. I accept this is the case. I accept he is a Turi and as is discussed below I accept he is from Upper Kurram. Country information indicates around 80% of Upper Kurram's inhabitants are Shias and nearly all Turi are Shia Muslims⁹. Also, at the protection visa interview the applicant demonstrated a basic understanding of the differences between Shia and Sunni religious practices and was able to identify Shia places of worship he said he attended in Australia.
23. The applicant claimed he was born and lived in [Village 1 in] Parachinar [Location 1], and that [Location 1] was a Taliban stronghold. I have some concern about aspects of these claims. Oddly the English translation of the applicant's NIC, which country information indicates is one of the more reliable forms of Pakistani identification¹⁰, records the applicant's address as [Village 1] [Location 2], rather than [Village 1] [Location 1]. I am not satisfied on the information before me that [Location 2] is in Kurram District. Nevertheless, like the delegate, I am prepared to accept that [Village 1] is near [Location 1], and that both are in the Upper Kurram sub-district of Kurram District, and that [Village 1] is where the applicant was born and lived. Despite the unexplained reference to [Location 2], I note the NIC records the applicant's broader place of residence as [a location in] Parachinar, sub-district Upper Kurram and District Kurram. The bio-data page of the applicant's passport also lists his place of birth as Kurram District, as do the Character and Clearance and Domicile Certificates in the review material. While I am prepared to accept that [Location 1] is a Sunni village¹¹, I am not satisfied on the information before me that [Location 1] was a Taliban stronghold. Apart from the applicant's assertion, the applicant has not provided country information to support this and the information before me does not otherwise indicate this.
24. The applicant claimed in the SHEV application that on four occasions between 2010 and 2012 he, and other family members and their property, were subjected to attack by the Taliban. The applicant also claimed that in 2013 his father narrowly escaped a car bomb attack on a Shia place of worship, after he had left Pakistan.
25. I accept that in 2010 the applicant and other villagers were shot at while farming under police protection, that in 2011 the applicant's family's home was fired upon and his mother was injured, and that in 2012 the applicant's grandmother lost her lower legs as a result of stepping on a land mine. The applicant spoke spontaneously and consistently about these events at the protection visa interview, and that they occurred is plausible in the context of country information¹² indicating there were periods of fierce sectarian fighting in Kurram District between Sunni Muslims, backed by the Taliban, and Shia Muslims, backed by their

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

¹⁰ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹¹ Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011' (including annexes), May 2011, CISD9559B12437.

¹² Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011' (including annexes), May 2011, CISD9559B12437. Abou Zahab, M, "'It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', in 'The Dynamics of Sunni-Shi'a Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402. Middle East Institute, 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', December 2014, CIS2F827D91993. Mahsun, MK, 'The Battle for Pakistan: Militancy and Conflict in Kurram', New America Foundation, April 2010, CIS18543.

armed militias, at that time that caused many deaths and injuries. The applicant also provided some medical and official documents and photographs supporting the circumstances and nature of his grandmother's injuries. I have some doubt that the applicant and his father were present when bombs exploded in Parachinar city in 2012 and 2013 respectively, as the applicant provided few details about these incidents in the SHEV application, and did not mention either event at the protection visa interview. However, as the delegate accepted these claims, I am prepared to accept them as well.

26. The applicant also claimed that the Taliban called him and some family members "infidels", that the Taliban threatened to kill him and his family, and that his family are under threat from the Taliban all the time.
27. Like the delegate, I am not satisfied that the applicant and other members of his family were verbally taunted by the Taliban in the circumstances claimed. His evidence about where this was alleged to have occurred varied significantly and he did not describe when it happened. In the SHEV application the applicant claimed the insults occurred when he, his mother, and his younger brother were farming their land. At the protection visa interview he said they were called 'infidels' while participating in a Muharram procession, and when he and his cousins were walking on the streets. Nor am I satisfied that the applicant's family received death threats from the Taliban. The applicant has provided no details about when or how any threats were made against them. In this context, I reject the submission that he has been a direct target of the Taliban and will continue to be so upon his return. The latter claim, that the applicant's family were constantly at risk from the Taliban, is implausible in light of his evidence that during the period of most intense sectarian conflict he completed high school in a nearby village, and subsequently travelled for several years between [Village 1] and Parachinar to attend college. Nor does it seem consistent with his family continuing to live in the same house in the two decades he was in Pakistan, and in the eight years since he has left the country. Particularly given country information cited above refers to many people being temporarily or permanently displaced as a result of the sectarian violence.
28. Kurram has a long history of sectarian and tribal tension and violence, to some extent stemming from competition between Shias and Sunnis over resources. Turis occupy the most fertile area of the district. However, the nature of the violence in Kurram intensified from around 2001 when Afghan Taliban and refugees escaped across the Pakistan border. Between 2007 and 2011 Kurram was the scene of significant violence. Mortars and rocket propelled grenades were used in sectarian clashes involving local tribes. Taliban and other Sunni militants from elsewhere came to support the local Sunnis and there was some suggestion of overseas support for the Shias, further fuelling the sectarian war. During this period approximately 1,500 people were killed¹³.
29. In its most recent report DFAT referred to Turis facing significant violence between 2008 and 2014 when they were targeted for their Shia faith. Militants frequently stopped and killed Turis travelling on roads. A significant spike in profiling and targeted killings occurred between 2009 and 2014 along the Thall-Parachinar road, which links Kurram and Peshawar. Following something of a lull, in the first six months of 2017 there was an uptick in violence.

¹³ Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011' (including annexes), May 2011, CISD9559B12437. Abou Zahab, M, 'It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402. 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', Middle East Institute, December 2014, CIS2F827D91993.

One hundred and twenty Shias were killed in three bombings in two markets and an imambargah in Parachinar. The following year there were decreased reports of attacks against Turis in Kurram¹⁴. Assessing the likelihood of future events, DFAT noted there had been decreased attacks against Turis in 2018 and thought it was likely to continue in 2019, yet they also assessed Turis in Kurram as still facing a moderate risk of violence from militant groups because of their Shia faith. DFAT also assessed that Shias in the former Federally Administered Tribal Areas (FATA) faced a low risk of sectarian violence within the context of a moderate level of militant and criminal violence. Although DFAT also stated the risk of sectarian violence in Parachinar was higher than in other parts of the former FATA¹⁵.

30. Credible reports published in the two and a half years since the DFAT report was released indicate that Kurram District has experienced a low incidence of violence that fluctuates slightly from year to year. In its most recent report, the FATA Research Centre referred to three militancy related incidents in Kurram District in 2020, compared to one in 2019 and three in 2018. The most serious of which was the late July explosion at a Turi market in Parachinar which killed one individual and injured 18 others. Around the same time there was armed fighting in Lower Kurram between two tribes over land that resulted in 14 dead and 40 injured. In October six unidentified assailants were arrested after firing on a vehicle killing four and injuring two family members in Kurram. The victims included an individual fighting a legal battle over land, his family members and a soldier. While the FATA Research Centre concluded that the security situation in Kurram District remained tense in 2020, it attributed this largely to the escalation in land disputes and only partly due to a slight increase in militancy related incidents¹⁶.
31. While there have been military operations against the Taliban and other Sunni militants since 2007 and local agreements aimed at reducing sectarian violence previously, since 2014 the Pakistan armed forces has launched several major security operations aimed at eradicating militant and sectarian violence, including Operation Zarb-e-Azb, its successor Radd-ul-Fasaad, and the National Action Plan (NAP). In 2018, the Government announced its second National Security Policy, and the Ministry of Interior was reportedly preparing NAP-2. These operations have disrupted the activities of militant groups, limited their access to former safe havens and resulted in a significant decrease in the number and severity of attacks on Shias. There are also tighter Afghanistan-Pakistan border controls and the military has implemented a twenty to thirty square kilometre area red zone for Parachinar, and a second, smaller red zone inside the outer red zone, in which markets and schools are located. While these initiatives have improved the security situation in Kurram District they have also restricted freedom of movement and limited the community's access to services and trade opportunities¹⁷.
32. I accept the applicant is a Pashtun [specified Turi] and Shia Muslim from Kurram District, and that he and his family were affected by a number of instances of sectarian violence between

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

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

¹⁶ Javid Hussain, 'At least 17 injured in IED blast in Parachinar's Turi Bazar', Dawn (Pakistan), 23 July 2020, 20200724103731. 'Land dispute: Balishkhel tribesmen continue sit-in during Eid', Tribal News Network, 5 August 2020, 20200812164428. 'Land Ownership Disputes Weigh On Pakistan's Pashtun Heartland', Pamir Sahill and Abubakar Siddique, Radio Free Europe/Radio Liberty - Gandhara, 18 October 2020, 20201020105259. 'Four killed as vehicle attacked in Kurram', Dawn (Pakistan), 27 October 2020, 20201028094425. Irfan U Din and Mansur Khan Mahsud, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', FATA Research Centre, 7 January 2021, 20210113125205.

¹⁷ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409. Middle East Institute, 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', December 2014, CIS2F827D91993.

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2010 and 2013. Should he go back to Pakistan, I find it highly likely that the applicant will return to Kurram District. It is the area where he was born, educated, and lived for his whole life prior to leaving Pakistan, and it is where his parents and siblings continue to live. Furthermore, country information indicates significant numbers of Turi Shias live in Kurram District, particularly in Upper Kurram where his family home is located¹⁸. However, for the following reasons I am not satisfied that the applicant has a well-founded fear of persecution for any of the reasons claimed.

33. Country information set out above indicates that sectarian and militant violence in Kurram District has steadily and significantly reduced since the applicant left Pakistan in 2013, apart from a fluctuation in the first half of 2017. For the three years from 2018 to 2020 small-scale militant or sectarian violence has only occasionally flared in the district, and there is no information before me concerning incidents in 2021 to date. The most violent event in the district in 2020 was a land dispute which occurred in Lower Kurram, not Upper Kurram where the applicant lived, and the applicant's identity documents indicate he is not from either of the tribes involved in that land conflict. Nor has the applicant claimed that his family or tribe owns land that is the subject of a dispute. Additionally, apart from his father's experience in 2013, the applicant has not claimed that any member of his family has been harmed for reasons of their race, tribe or religion or for any other s.5J reason, in the eight years he has been absent from the country and while they have continued to live in the same house in the same village.
34. In the IAA submission the applicant's representative highlighted DFAT's February 2019 assessment that Turis in Kurram faced a moderate risk of sectarian violence from militant groups and that the risk of sectarian violence for civilians in Kurram District, particularly in Parachinar, was assessed as higher than in other parts of the former FATA. The representative also asserted that incidents in 2020 in the area indicated the applicant's fear of persecution is well-founded, referring to a volatile political situation in Pakistan and Afghanistan due to US troops withdrawal from the latter country. It was argued that the delegate did not properly assess the situation of Afghanistan and how this will impact the Shia community in Parachinar, and that recent country information¹⁹ indicates that the Taliban's takeover of Afghanistan will embolden domestic terror groups within Pakistan and that their militant fighters will cross from Afghanistan and launch attacks on Pakistan's territory. The representative also pointed out that the Pakistan Taliban's leader has publicly stated his group will continue its "war against Pakistan's security forces" and that its goal is to "take control of the border regions and make them independent".
35. Recent country information provided by the applicant supports that the Pakistan Taliban may feel vitalised by the Taliban's assumption of power in Afghanistan. However, country information cited above also indicates the Taliban and other Sunni armed groups have moved between Afghanistan and Pakistan and been active in and around Kurram District for over a decade without being able to gain control of the area. The Pakistan authorities have regularly carried out security operations targeting the armed groups and built security cordons in

¹⁸ DFAT, 'DFAT Thematic Report: Shias in Pakistan', 15 January 2016, CIS38A801265. DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

¹⁹ 'Taliban Reemerges In Former Pakistani Stronghold', Gandhara, 26 October 2020. <https://youtu.be/rf3A2gHT9S4>. <https://m.facebook.com/CNNconnect/videos/344298037199267/>. <https://en.dailypakistan.com.pk/27-Jul-2021/outlawed-ttp-chief-threatens-holy-war-on-pakistan-in-cnn-interview-as-afghan-taliban-gain-power?version=amp>. 'Opinion: The Taliban is playing a double game', The Washington Post, 28 July 2021. 'Pakistan frets over security threats from neighbouring Afghanistan', Reuters, 1 September 2021.

Kurram aimed at restricting the groups movements²⁰. Sources also note that the Pakistan Taliban has been unable to win widespread popular support in Kurram in the past²¹, and that their former supporters, Sunnis in Kurram, came to regret their collaboration with the Taliban²². To date, the suggestion that the Taliban's rise in Afghanistan will result in increased Pakistan Taliban attacks in border districts like Kurram, does not appear to have been borne out by the country information before me. Apart from the applicant's assertions, there is no independent evidence before me of Taliban attacks against Pashtun Turi Shias in Kurram District in the period in which the Taliban advanced across Afghanistan and seized control of the country. Even if occasional future incursions were to occur, their degree of success is highly uncertain given the past willingness of Shias in Kurram District to fight to protect themselves, and the willingness of the Pakistan authorities to take security measures against them. Overall, I consider the submission to be speculative.

36. Nevertheless, I accept on the basis of some country information that it is possible that occasional sectarian or militant attacks by the Taliban or other Sunni groups may occur in Kurram District in the reasonably foreseeable future. However, having regard to the nature and frequency of militant and sectarian incidents in Kurram District I am not satisfied that they rise to the level of real chance. In reaching my conclusions I have drawn on an array of sources, some of which, such as the FATA Research Centre, report in detail down to the district level and lower. I attach weight to the more recent FATA Research Centre and media reports. While I consider the DFAT report generally to be highly reliable, I note that in relation to this issue the DFAT report was published more than two and a half years prior to some of the other reports I rely on. Also, the DFAT report does not explain the basis on which it reached its assessment of a moderate risk of militant violence facing Turi Shias from Parachinar. Particularly given the most recent incidents DFAT referred to were mass attacks against Shia public spaces in Parachinar in the first half of 2017. The later reports do not support the DFAT assessment.
37. The security and associated measures taken by the authorities may have impacted on the lives of the inhabitants of Kurram District. However, one or a few incidents each year since 2018, are not indicative of widespread militant or sectarian violence. Nor do they bear out DFAT's predictions regarding the likelihood of sectarian violence in Kurram. I do not think the situation is indicative of a real chance of harm for Pashtun Turi Shia from Kurram and I am not satisfied the applicant would be impeded from practising his religion. Country information indicates the Pakistan authorities provide security to ensure the peaceful celebration of major Shia religious occasions²³. The applicant previously regularly attended an imambargah within walking distance of his home and occasionally went to the city for major celebrations, and it is not clear why he could not do so again. The applicant has not claimed he has before, or intends in future, to go on a religious pilgrimage to another country. As already noted, while it is possible that sporadic sectarian or militant attacks by the Taliban or other Sunni extremists may occur in Kurram District in the reasonably foreseeable future, having regard to the nature and frequency of militant and sectarian incidents in Kurram

²⁰ Middle East Institute, 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', December 2014, CIS2F827D91993. DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²¹ Internal Displacement Monitoring Centre, 'Can Shi'a and Sunni overcome the sectarian divide? Displacement and negotiations in Kurram, 2007-2011' (including annexes), May 2011, CISD9559B12437.

²² Middle East Institute, 'Sunni Deobandi-Shi'i Sectarian Violence in Pakistan: Explaining the Resurgence since 2007', December 2014, CIS2F827D91993.

²³ 'Ashura being observed across Pakistan amid tight security', Dawn (Pakistan), 21 September 2018, CXBB8A1DA35775.

District and to the applicant's particular circumstances I am not satisfied that they rise to the level of real chance.

38. Although the applicant did not claim to fear harm for this reason, the delegate considered whether he was at risk of harm as an asylum seeker and returnee from a western country.
39. Country information indicates Pakistani citizens require a valid passport to enter or exit Pakistan and that in practice, returnees tend to leave Pakistan on valid travel documents and therefore do not commit immigration offences under Pakistan law. Those who return voluntarily and with valid travel documentation are typically processed like any other citizen returning to Pakistan. 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 Ministry of the Interior will interview failed returnees and release them if their exit was deemed to be legal. People 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. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. Returnees are responsible for arranging their own onward transportation from their point of entry into Pakistan. Voluntary returnees may be eligible for assistance from IOM and/or domestic NGOs²⁴. In DFAT's view returnees are typically able to reintegrate into the Pakistani community without repercussions stemming from their migration attempt. NGOs report that less than 0.5 per cent of returnees do not reintegrate. DFAT assesses that individuals in Pakistan are not subject to additional risk of discrimination or violence on the basis of having spent time in western countries or because of perceived western associations (such as clothing), despite a generally increasing conservatism and religiosity across the country²⁵. DFAT assesses that returnees to Pakistan do not face a significant risk of societal violence or discrimination as a result of their attempt to migrate, or because of having lived in a western country²⁶.
40. I am satisfied the applicant departed Pakistan legally using a passport in his own name as he has consistently claimed. While there is no independent evidence to suggest that it has occurred, it is possible that the Pakistani authorities, Sunni armed groups or someone else may come to know or suspect that the applicant has been in Australia and sought asylum. It is also possible that the applicant's faith and ethnicity may be apparent from his name or place of residence on his identity documents or his accent²⁷. However, country information does not support that returnees from the west or Australia, including Pashtun Turi Shia returnees, are targeted for harm by the Taliban or other Sunni armed groups or the Pakistan authorities. I also note the applicant indicated in the SHEV application that he has never been the subject of an arrest warrant or charged or convicted with any offence in Pakistan and he has not claimed that he has been convicted of any crimes in Australia. I consider it highly likely that on arrival in Pakistan the applicant would, if he returns voluntarily, be allowed to enter the country without question. If he returns involuntarily it is very likely he would be interviewed and found to have departed Pakistan legally and found not to be wanted for criminal offences

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

²⁵ DFAT, "DFAT Pakistan Country Information Report September 2017", 1 September 2017, CISED50AD5515.

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

²⁷ DFAT, DFAT Thematic Report: Shias in Pakistan', 15 January 2016, CIS38A801265. DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

and released within a couple of hours. In that case, I do not consider such an interview would amount to harm, let alone serious harm. Country information indicates travel in parts of Pakistan is dangerous for all travellers, regardless of sectarian, religious or ethnic affiliations. It does not suggest that roads are currently closed in Kurram District. Rather it states that Turi individuals are reportedly confident to travel on the main Thall-Parachinar road between dawn and dusk²⁸. I am satisfied the applicant would be able to safely and legally access Kurram District. I observe the applicant has not claimed that he experienced any difficulties travelling between his home in Kurram District and Lahore airport when he departed Pakistan in 2013, a time when the security situation was much worse in the country than it is now. I conclude that the applicant does not have an adverse profile, and that there is no basis to conclude his returning from overseas or having sought asylum in Australia would be a matter of interest. I am not satisfied there is a real chance the applicant would suffer any harm for these reasons.

41. The applicant is a single adult Pashtun [specified Turi] Shia male from Kurram District. I have been prepared to accept that he suffers from depression. Apart from the 10 day period covered by the expired medical certificate, there is no evidence before me to indicate the applicant has otherwise been prevented from working because of mental ill-health. The applicant would be returning to Kurram District where he was born, educated, and lived prior to travelling to Australia, and to an area where his ethnic and religious groups are in the majority. It is also where his family owns a house and land, some of which his father has continued to cultivate, and where one of his brothers has employment in a retail store in the nearby city. The applicant completed high school and several years of tertiary education in Kurram; and in addition to his first language Pashtun, he speaks Urdu and some English, the official languages of Pakistan²⁹. The applicant claimed, and I accept, he has been employed in Australia as [an occupation 1]. I am not satisfied that any psychological illness or symptoms would prevent the applicant from establishing himself or finding work in Kurram District. Taking all of this into account, I consider it highly unlikely the applicant would be unable to find employment or subsist in Kurram District. I am not satisfied there is a real chance the applicant will be denied the capacity to earn a livelihood, or that he will otherwise suffer serious harm now or in the reasonably foreseeable future. I am not satisfied there is a real chance the applicant will suffer serious harm now or in the reasonably foreseeable future for any, or a combination, of the reasons claimed.
42. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Pakistan.

Refugee: conclusion

43. 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

44. 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

²⁸ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

²⁹ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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

45. 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.
46. 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.
47. If the applicant were to require mental health treatment or medication in Pakistan, I accept the standard of medical treatment he would receive in Pakistan may not match the standard of treatment he would receive in Australia. However, I am not satisfied that there is a real risk the applicant would be unable to access treatment or medication for mental health symptoms or any other medical condition(s) or that any restriction on his ability to access treatment would constitute significant harm. I am also not satisfied that any limitations in the services available are the result of an intention to cause pain and suffering that can reasonably be regarded as cruel or inhuman, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life as understood in the context of s.36(2)(aa). I am not satisfied on the evidence that if he returned to Pakistan, and required medication for mental health symptoms or other medical treatment, the applicant would be at real risk of being subjected to significant harm. I accept the applicant may face some social stigma in relation to his mental health. As acknowledged above social stigmas may at times be hurtful, however, I am not satisfied on the evidence that any hurt he may suffer from social stigma will amount to severe pain or suffering, or pain and suffering that could reasonably be considered as cruel or inhuman in nature. Similarly, social stigmas may be hurtful or harassing but it does not amount to extreme humiliation. I am not satisfied that there is a real risk of the death penalty, arbitrary deprivation of life or torture. I am not satisfied that any social stigma suffered by the applicant in relation to his mental health condition amounts to significant harm. Nor am I satisfied that any limitations on access to treatment and social stigma cumulatively amount to significant harm.
48. I have otherwise concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard³⁰, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.
IAA21/09656

Complementary protection: conclusion

49. 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:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - 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
 - 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:

- conflict with a characteristic that is fundamental to the person's identity or conscience; or
- conceal an innate or immutable characteristic of the person; or
- without limiting paragraph (a) or (b), require the person to do any of the following:
 - 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;
 - conceal his or her true race, ethnicity, nationality or country of origin;
 - alter his or her political beliefs or conceal his or her true political beliefs;
 - conceal a physical, psychological or intellectual disability;
 - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - 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):

- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- the persecution must involve serious harm to the person; and
- 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 threat to the person's life or liberty;
- significant physical harassment of the person;
- significant physical ill-treatment of the person;
- significant economic hardship that threatens the person's capacity to subsist;
- denial of access to basic services, where the denial threatens the person's capacity to subsist;
- 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.