



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

PAKISTAN
IAA reference: IAA21/09816

Date and time of decision: 20 October 2021 16:46:00
M Simmons, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Pashtun Shia and Turi tribesmen from Pakistan. On 28 February 2017 he lodged an application for a protection visa. A delegate of the Minister for Immigration refused to grant that visa on 31 August 2021.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He is a Pashtun and Shia Muslim from the Turi tribe. He lived in Parachinar from birth until leaving Pakistan, and his family remain there.
 - There were issues between Sunni and Shia people in his area of Pakistan from around 1996 onwards. On 7 April 2007 the Taliban attacked participants of a large Shia religious event. Since this time they have killed many Shias in Parachinar.
 - In 2008 Lashkar-e-Jhangvi (LeJ) issued a threat letter against all Hazaras and Shias in Pakistan and congratulated those who had killed Shias in Quetta and Parachinar.
 - His father was a junior officer in the Frontier Corps for around 25 years and fought against the Taliban. He was deployed to various locations. His last deployment was in [District 1], around [number] hours drive away from their home.
 - In 2002 his father started receiving threats from the Taliban. He didn't want the issue to come home to Parachinar so he stayed away for long periods.
 - In 2006 when his father was [age] years old he retired from his post and moved to [Country 1] to seek safety and for work. In 2019 he returned to Kurram.
 - In February 2012 two of the applicant's cousins were killed in a [bombing] in a bazaar in Parachinar. The applicant witnessed the attack and saw many dead bodies, but was not injured himself. After this attack his mother decided he should leave the country.
 - The applicant worked for [Organisation 1] from February 2012 to February 2013. [Details about the organisation deleted]. He has been identified as working with the Pakistani government and is at risk of being targeted by the Taliban. Local people in some of the villages he visited to carry out this work warned him that there were Taliban supporters amongst the local Sunni population. He fears harm due to his involvement with these social work activities
 - In 2014 some of his personal information was disclosed in a Department of Immigration data breach. He fears that the Taliban may have accessed this information and may seek retribution.
 - While in Australia he has been active on social media. One of his posts about Pakistan was reported to [social media] and then blocked, then his whole account was blocked. He believes Taliban supporters reported his post.

- He fears harm because he is a Shia Muslim and due to close family ties with his father who was a government military officer. The Taliban have a track record of killing prominent Government officials
- He fears harm from the Taliban but there are other groups he fears harm from too - Lashkar-e-Jhangvi, Sipah-e-Sahaba and Tehrik-i-Taliban Pakistan. These groups are present all throughout Pakistan and he cannot relocate

Factual findings

Identity and background

4. It is claimed the applicant is a national of Pakistan. He provided a copy of his Pakistani passport, domicile certificate and a certificate for a child under 18. The details in those documents corroborate his claimed identity, nationality and origins from Kurram District. The applicant has provided consistent and plausible details regarding his family composition, religion, ethnicity, tribal affiliation and area of origin. The applicant claims he is adherent to Shia Islam. He discussed his religious practice in Pakistan and Australia with the delegate. The applicant stated, and I accept, some Shia may be identifiable by common Shia names. Similarly, ethnic and tribal names can reveal a person's ethnicity or tribal affiliation.¹ I accept that the applicant is Pakistani citizen, a Pashtun, adherent to Shia Islam and a Turi tribesman who originates from Kurram District. I am satisfied his family continue to reside in Parachinar, and that he would return to that location were he to return to Pakistan. Pakistan is the country of reference for the purpose of this assessment.

Events in Pakistan

Violence in Kurram

5. The applicant's description of the recurrent violence in Kurram District prior to his departure generally accords with reports before me on the conflict in Kurram District, which was fought between Sunni and Shia groups and along tribal lines. Shia tribes have a history of conflict with Sunni groups. Both Bangash and Turi tribes resisted the Sunni Taliban and as a result were the target of sectarian violence. Between 2007 and 2014, Shia tribes in Kurram District faced significant violence from Sunni groups who targeted them because of their faith.² I accept that there was a high level of sectarian violence in Kurram District during this period as claimed.
6. It is claimed two of his cousins were killed in a bombing in February 2012 at a bazaar in Parachinar. Reporting before me confirms Shia in Parachinar were the subject of targeted sectarian violence at this time. A timeline of Shia deaths in Pakistan since 2001 prepared by the South Asian Terrorism Portal, and submitted to the delegate after the applicant's interview, documents this attack. I note that in 2013, shortly after entering Australia, the applicant described witnessing his two cousins being killed in this attack in an entry interview. His account of this attack has been consistent since that time. I accept that two of the applicant's

¹; Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; DFAT, 'Thematic Report -Shias in Pakistan January 2016', 15 January 2016, CIS38A801265.

² Marian Abou Zahab, "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan", Hurst & Company, 1 January 2013, CIS29402; Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409; DFAT, 'Thematic Report -Shias in Pakistan January 2016', 15 January 2016, CIS38A801265

cousins were killed by Sunni extremists as claimed. On the applicant's own evidence his cousins killings were sectarian in nature, targeted against Shia community in Parachianr generally. There is no suggestion that either his cousins were personally targeted due to any individual profile they held other than because they were Shia Turi.

Father's employment

7. There is no corroborative material before me to support the applicant's claims in relation to his father, such as documentation evidencing his previous employment. However the applicant has offered a reasonably detailed and consistent account regarding his father. He disclosed in in a 2013 entry interview, undertaken shortly after he entered Australia, that his father worked from the Frontier Corps, that he had been deployed to [District 1], and he has since moved to [Country 1]. He provided further elaboration upon this in his 2017 visa application and during the 2021 interview with the delegate. Given the applicant has offered a consistent account in respect of this matter over a number of years, I accept that his father was employed in the Fronter Corps as claimed.

Applicant's work/volunteer work

8. The applicant has offered a vague and shifting account of his claimed social work in the year prior to his departure from Pakistan. I note that in the 2013 entry interview he indicated he had never previously been employed. In the 2017 visa application he stated that from February 2012 until February 2013 he was involved with a government agency, [Organisation 1]. He claims he [performed specified tasks, and that], due to these social work activities has been associated with the Pakistani government. This employment is not reflected in the employment history set out in his visa application. I note that he would have been around [age] years of age when he claimed to have commenced this employment.
9. His evidence on this matter during the interview with the delegate was not persuasive. Asked whether he had ever undertaken any employment in Pakistan, the applicant replied that he has only attended school and worked on the family farm. She asked whether he ever did anything else, such as during the farming off season, and he replied that he just stayed home. Later in the interview he referred to undertaking volunteer work in Pakistan and being threatened as a result. Asked to describe the threats, he stated that local Shia people in a mixed Sunni-Shia village he visited in connection to this work warned him not to come back because some of the Sunni people supported the Taliban.
10. The applicant has offered no documentation to corroborate his claimed social work. I do not regard his account as being at all compelling. He has variously suggested that in this role he was a volunteer and a government employee. This employment is not reflected in his employment history and was not raised when the delegate questioned him about how he supported himself and occupied his time in Pakistan. He was quite young when he claims commenced in this role, and seemingly had no relevant skills or experience. He also claims he began this employment the same month that his two cousins were killed in a bombing, after which his mother decided he should leave the country. It causes me serious doubt that at the same time the applicant claims his family decided he should leave the country due to insecurity, he also suggests that he commenced employment which according to him attracted further risk from Sunni groups. I do not accept that the applicant ever undertook social work [as specified] in either a voluntary or government role.

Data Breach

11. In early 2014, the Department of Immigration inadvertently published on its details regarding a number of people in held immigration detention on 31 January 2014. The applicant was in immigration detention at this time, as such I accept that he may have been affected by this data breach.

Medical conditions

12. The applicant provided to the delegate a letter from a [specialist] dated 15 July 2021, which indicates the applicant [has specified medical conditions]. The [specialist] stated he has been treating the applicant for around three years. I note in April 2019 the applicant also provided a letter from a doctor which indicated he suffered from similar ailments. I accept that the applicant has these medical conditions.

Social media activities

13. During the interview with the delegate the applicant stated he engaged in activism online. Asked to elaborate, he stated that he posted about Pakistan on his [social media accounts] and that in 2019 one of his [social media] posts regarding the LeJ was reported and then blocked. The applicant claims that many supporters of the LeJ reported his post, then he received a message from [social media] saying the post was blocked. He stated that Shia are the minority and Sunni and Wahhabis are the majority in Pakistan, so if they see posts they do not like they report them and if there are many reports [social media] will block a post. After this he claims he did not use that particular [social media] account again, and created a new account in his name and has not had any issues since then. The applicant has offered no corroborative material in support of his claimed social media activities. He offered little detail about the nature or extent of his social media activities, other than stating he posts about 'things in Pakistan'. He has not identified any particular causes or issues that he advocates in support of online, despite describing himself as a social media activist. He made no mention of any social media activism in his 2017 visa application. There is no suggestion that any of his online activities has ever created any problems for his family in Pakistan. There is no suggestion that the applicant has ever been politically active in any other way. For instance, during his eight years in Australia he has not claimed to have attended any protests or been part of any activist groups. The applicant was reminded by the delegate of the need to provide evidence in support of his claims, and availed himself of the opportunity to do so by giving written submissions via his representative after the interview. However there is no corroborative material before me to support his claimed social media activism. On the limited information presented I am not satisfied that that applicant is politically active on social media at all, nor am I satisfied that he posted material on [social media] that may attract any adverse attention in Pakistan.

Returning asylum seeker

14. I accept that were the applicant to return to Pakistan he would do so after having resided in Australia for an extended period and after having requested asylum here.

Refugee assessment

15. 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

16. 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.

17. The security situation across Pakistan is fluid and subject to considerable regional variation. Credible sources have reported on the Pakistani government’s tough stance and relative success in combatting terrorism activities across Pakistan in recent years. Since 2014 the Pakistani government has taken significant measures to address sectarian and other violence, including by operations targeting terrorist groups such as the Taliban in Khyber Pakhtunkhwa.³ In January 2020 the Pakistan Institute for Peace Studies (PIPS) assessed that during 2019 Pakistan witnessed a further decline in the number of terrorist incidents (down 13 percent and resultant casualties (down 40 percent) compared to 2018 levels, which continued a downward trend since 2009.⁴ Campaigns by security forces and counterterrorism police are attributed with bringing about this change, however PIPS cautions that those figures do not suggest, in any way, that the threat of terrorism has been completely eliminated.⁵ DFAT ‘s most recent assessment, from 2019, is that the state of affairs is complex, volatile and affected by domestic politics, politically motivated violence, ethnic conflicts, sectarian violence, and international disputes.⁶

18. The applicant is of Pashtun ethnicity. DFAT confirms that Pashtuns are the dominant group in Khyber Pakhtunkhwa Province, and assesses that Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official

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

⁴ PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

⁵ PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758.

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

discrimination.⁷ In February 2019 DFAT noted the improved security situation in Kurram District, which is part of Khyber Pakhtunkhwa Province and the area from where the applicant originates, led to a trend of decreased reports of attacks against Pashtun Turis in 2018. While this trend was considered likely to continue in 2019, attacks and violence against Turis may still occur and as such DFAT assessed at that time that Turis in still face a moderate risk of sectarian violence because of their Shia faith.⁸

19. Adherents to Shia Islam such as the applicant continue to face a threat from anti-Shia militant groups in some areas of Pakistan. Sectarian violence in Pakistan has historically targeted individuals, places of worship, shrines and religious schools, and Shia have traditionally represented a higher proportion of the casualties. During 2017, militants carried out mass casualty attacks in Parachinar, including three bombings in Shia areas. Sunni extremist groups claimed responsibility and said that they had deliberately targeted Shia.⁹ In more recent times Shia casualties across Pakistan have remained low, with one Shia being killed in the second quarter of 2020 and four killed in the third quarter of 2020 across Pakistan due to sectarian related violence.¹⁰ Media reporting indicated increased hostility towards the Shia community during Muharram in 2020, including one death in an attack in Kohat and an attack on a procession in Okara.¹¹ However, Ashura commemorations overall have witnessed fewer serious incidents in recent years since the federal and provincial governments have undertaken extensive security planning and implemented a security presence to protect Shias during this period.¹²
20. I have accepted that the applicant will return to Kurram District, where his family continue to reside. A significant number of Pashtun Shia live in Upper Kurram, with around 80% of the population being Shia.¹³ I have accepted two of his cousins were victims of a sectarian attack in 2012, but there is no indication on the material before me that this imparted any profile of interest upon the applicant. Reports indicate there have been significant improvements in In relation to the security situation in Kurram District recent times. Following a spike in violence in Kurram during 2017, there was a significant decrease in such incidents in 2018, followed by a further decrease in 2019.¹⁴ DFAT reported that in 2019 due to improved security Pashtun Shia individuals (as opposed to groups) now feel safe to travel the Thall–Parachinar road during daylight.¹⁵ The Pakistan Institute for Conflict and Security Studies (PICSS) reported no militant attacks in Kurram during 2019.¹⁶ The FATA Research Centre reported that in 2020, a slight increase in militancy related incidents was observed largely as a result of escalation in land disputes in the district. Compared to one terrorism incident in 2019, three such incidents were

⁷ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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

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

¹⁰ Center for Research and Security Studies, 'Quarterly Security Report Q3, July-Sept 2020', 8 October 2020, 20201012113549.

¹¹ Express Tribune, 'Why are anti-Shia sentiments on the rise in Pakistan?' 14 September 2020, 20200915102018; Naya Daur, 'Long Live Yazeed' Slogans Chanted At Extremists' Rally In Karachi', 14 September 2020, 20200915111521.

¹² Dawn, 'Youm-i-Ashura observed nationwide amid tight security', 31 August 2020, 20200917161348; News International, '9th Muharram observed with solemn remembrance of Karbala', 29 August 2020, 20200917153538; Dawn, 'Entry of 37 clerics in Rawalpindi banned', 17 August 2020, 20200817115449; Dawn, 'Ashura observed peacefully amid tight security in KP', 23 September 2018, CXBB8A1DA35781; Dawn, 'Ashura being observed across Pakistan amid tight security', 21 September 2018, CXBB8A1DA35775; Geo TV 'Ashura processions culminate countrywide, majalis under way', 21 September 2018, CXBB8A1DA35780; Express Tribune 'Ashura processions culminate peacefully in different districts', 3 October 2017, CXC90406614861

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

¹⁴ EASO, 'Pakistan Security Situation', 30 October 2019, 20191031160110; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 20190220093409.

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

¹⁶ PICSS, '2019 Annual Security Assessment Report', 9 January 2020, 20200122140652.

recorded in 2020.¹⁷ Two of those incidents were in Upper Kurram; a blast from explosives hidden in garbage at Mazdoor Chowk in Parachinar injuring two people on 22 June 2020, and an explosion in Parachinar's Turi Bazaar injuring 17 people on 23 July 2020.¹⁸ In July 2021, as the applicant advised the delegate during the interview, two members of the Frontier Corps were killed in an operation in Zaimokhet, Kurram District to secure the release of kidnapped labourers from a telecommunication company.¹⁹

21. Much of the risk assessment in the material before me concerns the mass-casualty attacks in Parachinar in 2017. DFAT's 2019 assessment that Turis in Kurram District faced a moderate risk of sectarian violence from militant groups because of their Shia faith is now dated and is not borne out by the more recent detailed reporting on this area before me.²⁰ Reporting I have set out above does not demonstrate any increase in violence, or any ongoing or systematic attacks against Shias, Turis or Pashtuns in the Kurram District during 2018, 2019, 2020 or thus far during 2021, and the number and extent of violent incidents has remained low.²¹ I note that the applicant's parents and siblings share the same religious, tribal and ethnic profile as him, and they have remained in the same family home since the applicant left Pakistan and there is no suggestion they have been threatened or harmed in his absence. While the absence of recent attacks against Turis or other Shias and Pashtuns in Kurram does not preclude the possibility of future attacks, when I consider the frequency of such attacks, and the improved security situation, I consider the chance that the applicant will be targeted because of his tribal, ethnic, religious profile in the foreseeable future to be remote.
22. I have accepted that the applicant's father previously worked for the Frontier Corps. It is claimed that his father carried on this work for around 25 years, though there is no suggestion that the applicant or his mother or siblings were ever threatened or even contacted by any group in relation to this employment. During the interview with the delegate, the applicant stated his father moved back to Parachinar from [Country 1] in 2019 because his mother asked him to. He also stated that he would not be permitted to continue to work in [Country 1] past [certain age]. However in 2021, that applicant stated his father was only around [age] years of age, suggesting he was not required to cease his employment in 2019 when he decided to leave [Country 1]. I consider it unlikely that his father would return to Parachinar, or his mother would ask him to do so, if her continued to be of any interest to any Sunni extremist groups. There is no suggestion that any of his family have been threatened or harmed while the applicant has been in Australia, including since his father returned to Parachinar in 2019, and they continue to reside in the same family home the applicant grew up in. The delegate asked whether any of his family were threatened or harmed while he was in Australia, and the applicant replied that they were not because his father was overseas and his siblings were young and his uncle was caring for them. His father has now been back in Parachinar for a few years and there is no suggestion he has experienced any difficulties during this time. His siblings are now aged between [age] and [age], there is no suggestion that any of them, including those who are now adults, have ever been threatened or harmed including for any reason connected with their father's previous employment. The information before me does not support a conclusion

¹⁷ Irfan U Din and Mansur Khan Mahsud, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', FATA Research Centre, 7 January 2021, 20210113125205.

¹⁸ Dawn, 'At least 17 injured in IED blast in Parachinar's Turi Bazar', 23 July 2020, 20200724103731; Irfan U Din and Mansur Khan Mahsud, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', FATA Research Centre, 7 January 2021, 20210113125205.

¹⁹ Dawn, 'Security forces rescue 5 abducted labourers in operation in Kurram: ISPR', 15 July 2021, 20210716095300.

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

²¹ Irfan U Din and Mansur Khan Mahsud, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', FATA Research Centre, 7 January 2021, 20210113125205, PICSS, '2019 Annual Security Assessment Report', 9 January 2020, 20200122140652. PIPS, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 2019022009340.

that the applicant's father or any of his family currently have a profile of interest with any group because of his father's previous role in the Frontier Corps, and I am not satisfied that applicant would be of any interest in the foreseeable future because of his father's past employment.

23. I have accepted that the applicant has [medical conditions]. He has not claimed to fear being targeted for harm in Pakistan for any reason related to any of his medical conditions, nor has he suggested he may be denied medical treatment on a discriminatory basis. He advised the delegate during the interview that he will require on going treatment, however the level of treatment available in Pakistan will not be at the same level as in Australia. DFAT reports 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.²² The material before me does not suggest that persons with conditions such as his are targeted for harm or that the applicant's access to any necessary medical treatment would be denied on any discriminatory basis in the foreseeable future in Pakistan.
24. I have accepted that the applicant was affected by the data breach, as such I accept his residency in and asylum request from Australia could possibly become known in Pakistan. There is a large Pakistani diaspora in various nations. Over six million Pakistanis live outside Pakistan, with significant numbers in Saudi Arabia, the United Kingdom, the United Arab Emirates and the United States. 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 country. The applicant suggest persons who have resided overseas for some time are assumed to be rich and therefore face a risk of kidnap, though such a conclusion is not supported in the material before me. I note that his father worked in [Country 1] for around 15 years, and there is no suggestion that he has been subject to any such threat since his return. The material before me does not support a conclusion that Pakistanis of any religion, ethnicity or tribe who return from overseas are targeted for reasons of their residence abroad or because they unsuccessfully request asylum in another country.²³
25. The applicant expressed general fears about the Taliban's expanding control in neighbouring Afghanistan leading to insecurity and to a return to conflict in Kurram District. I accept that historically Sunni groups such as the Taliban have exerted influence into, and launched attacks on Kurram District from Afghanistan. Cross border tensions resulted in Pakistan building a fence on the Afghan border at Kurram District in recent years to prevent the movement of militants.²⁴ The material before me does not suggest that recent developments in Afghanistan have spilled into Pakistan generally or Kurram District specifically, or that they necessarily will in the foreseeable future. Given the Pakistan government's efforts to combat cross border threats, that the border is now much less permeable than in previous years, and that the situation in Afghanistan has only escalated very recently, I consider the potential for risk to this applicant in Kurram to arise out of Afghanistan in the foreseeable future to be speculative and remote.
26. I am not satisfied that the applicant faces a real chance of any harm in the foreseeable future for any reason in Kurram District. This includes for any reason related to his religion, tribe, ethnicity, father's employment, or residence and asylum request in Australia.

²² DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 2019022009340.

²³ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 2019022009340; EASO, 'Pakistan Security Situation', 30 October 2019, 20191031160110.

²⁴ EASO, 'Pakistan Security Situation', 30 October 2019, 20191031160110.

Refugee: conclusion

27. 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

28. 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

29. 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.

30. 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.

31. The applicant claims that were he to return to Pakistan in the foreseeable future, medical treatment he may require would not be at the same level as what is available in Australia. If the treatment he is able to access is not at the same standard as in Australia, country information indicates that this would be due to a lack of resources within the Pakistani health system. While health care is free for Pakistani citizens, public facilities are of a poor quality and public spending on health is low.²⁵ Cruel or inhuman treatment or punishment, and torture, involve an act or omission intended to inflict severe pain or suffering, or pain and suffering that could reasonably be regarded as cruel or inhuman. Degrading treatment or punishment involves an act or omission intended to cause extreme humiliation. The material before me does not support a conclusion that the applicant would be prevented from accessing appropriate health services in Pakistan due to any intentional act or omission. I am satisfied even the medical care he receives in Pakistan is inferior to that he currently receives, that there would not be an intent by the medical professionals or the Pakistani government to inflict pain or suffering or cause extreme humiliation. There is no indication that the applicant may be subjected to any other form of significant harm in connection to seeking medical care in Pakistan. I am satisfied that there is not a real risk of the applicant the applicant will suffer significant harm in connection to seeking medical treatment in Pakistan in the foreseeable future.

32. I have found above that the applicant does not face a real chance of harm for any other reason in Kurram District in the foreseeable future. This includes for any reason related to his religion,

²⁵ DFAT, 'DFAT Country Information Report Pakistan', 20 February 2019, 2019022009340

tribe, ethnicity, father's employment, the situation in Afghanistan, or residence and asylum request in Australia. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.²⁶ Based on the same factual findings and country information above, I am not satisfied that he faces a real risk of significant harm in Kurram District for these reasons.

Complementary protection: conclusion

33. 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.

²⁶ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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