



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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PAKISTAN  
IAA reference: IAA21/09958

Date and time of decision: 24 November 2021 11:11:00  
M Currie, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a Pakistani citizen of Pashtun ethnicity and an adherent of the Shia faith. He arrived in Australia in July 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in July 2017. In September 2021, a delegate of the Minister for Immigration decided under s.65 of the *Migration Act 1958* (the Act) to refuse the visa, finding that Australia did not owe protection obligations to the Applicant. On 23 September 2021, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
2. This is a *de novo* decision, not a review of the delegate's decision or reasoning. My task is to consider the applicants claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of Act.
4. In October 2021, the applicant sent three emails to the IAA. These emails contained several attached documents, said by the applicant to be relevant to his claims for protection. These were: (a) a four-page submission written by the applicant; (b) a photograph of what appears to be the front of a Newspaper, written in Urdu; (c) a photograph of a second page from the same Newspaper, also written in Urdu; (d) a photograph of a third page of from the same newspaper, also written in Urdu; (e) a document, said to be a translation of an article from the Newspaper dated 15 October 2021; and (f) a second translation, dated 16 October 2015 also said to be of the same article, but which differs slightly from the first translation.
5. The four-page Submission to the IAA contains a request for the IAA to reconsider the applicant's claims on a purely Humanitarian basis; an assertion that the applicant only provided genuine documents to the Department during the period his case was under assessment by the Department; statements expressing his desire to remain in Australia and his deep love for this country and its people; and assertions that he is still genuinely fearful of returning to Pakistan. To the extent that the Submission is argument, I have considered it.
6. The Submission to the IAA also contains a new claim, that his family in Pakistan was driving to [Location 1] in Islamabad, when his vehicle was fired upon by unknown culprits. The applicant asserts that this incident demonstrates the continuous insecurity in Pakistan, the risks faced by activists such as his father (and himself), and the likelihood that he may face similar violence upon return. The three newspaper clippings he provided<sup>1</sup> are said to be evidence in support of this new claim, though the translations apparently only relate to the second and third news clipping<sup>2</sup> and the first clipping is untranslated. Both of the translations<sup>3</sup> of the new articles provided to the IAA indicate that the article relates to an incident in early October 2021, where a man in Pakistan, who has the same name as the applicant's father, was shot at while driving to [Location 1] in Islamabad. On its face, these translated news articles are supportive of the applicant's new claims.

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<sup>1</sup> Documents: (b) – (d)

<sup>2</sup> Document: (c) & (d)

<sup>3</sup> Documents: (e) & (f)

7. The new claim relates to events in 2021, after the date of the delegate's decision. The newspaper article was published after the date of the decision. I am satisfied that this claim could not have been provided to the Minister prior to the date of the delegate's decision and so s.473DD(b)(i) is met. On its face, the Newspaper clippings and translations support the new claim and so I am satisfied that this new claim is credible personal information which may have affected consideration of his claims for protection and so s.473DD(b)(ii) is also met. The applicant's central claim is that his activities as a community activist in Pakistan would lead him to be targeted by the Taliban or other Sunni extremists. He says his father is also a community activist and the articles describe the victim of the shooting as a man who "*takes part in welfare quite vehemently*". In the circumstances, I am satisfied that there are exceptional circumstances to justify considering this new claim, and the evidence offered in support of the claim<sup>4</sup> and so s.473DD(a) is met and I have done so.

### **Applicant's claims for protection**

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8. The applicant has advanced his claims for protection in his SHEV Application, in his Protection Visa Interview, in a June 2021 Statutory Declaration, in a Post-Interview Submission to the Department, and in his Submission to the IAA. His claims can be summarised as follows:

- He is a Pakistani citizen of Pashtun ethnicity, and a member of the Bangash tribe. He adheres to the Shia faith. He was born in [year] in Parachinar, a city in the Kurram District of what is now the Khyber Pakhtunkhwa Province of Pakistan. He lived in Parachinar with his family.
- In Pakistan his father was well known within the Parachinar Shia community as an activist. His father had a role in organising traditional Shia religious activities in Parachinar.
- After completing his schooling, the applicant was employed as a [Occupation 1]. He also worked a [Occupation 2]. He was a Shia cleric and like his father, the applicant himself was also a community activist who helped to organise Shia religious activities.
- Between 2000, and his departure for Australia in 2013, he also volunteered with [Organisation 1], and [Organisation 2]. In 2007/08, he also worked on the campaign of a Shia candidate for election.
- His employment as a [Occupation 1]/[Occupation 2], and his volunteer work with the [Organisation 1], and [Organisation 2], his Shia religious activities and his work on the election campaign all brought him to the attention of the Taliban. Throughout the period 2002, until 2012, he regular received threats on his life.
- He was married in 2008. After their marriage, he and his wife lived in his family home in Parachinar.
- He was fearful due to the threats he received. In mid-2010, the applicant went to work in [Country 1] for one year. He returned to the family home in Parachinar in mid-2011. After his return to Pakistan, he resided in the family home in Parachinar as he had done previously. He opened a [shop] upon his return to Pakistan.
- He departed Pakistan in 2013 after concluding that he was no longer safe in that country. His wife, parents and siblings remain in Pakistan and still live in the same family home in Parachinar.

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<sup>4</sup> Documents: (b) – (f)

- In October 2021, unknown persons tried to kill his father and family as they were travelling in Pakistan. He believes that this is because of his father's profile in Pakistan. He fears that if he was to return to his home country, he would also be a target.
- He says that in Pakistan, Shia are not safe from Sunni extremists. Bangash Shia are said to oppose the Taliban. He believes the Taliban, or other Sunni extremist groups would target him and that if returned to Pakistan, he fears his Shia religion, and his Bangash Pashtun ethnicity would lead to him being targeted in Pakistan.
- He says that Pashtun culture emphasises a duty of retaliation for past slights. As a consequence, he fears that even now, some eight years after he departed Pakistan, he would face harm in that country due his past activities.
- He fears harm due to being 'highly educated' and says that the Taliban seek to harm those who have been educated, since they do not conform with, or support, the Taliban ideology.
- He has spent time in a western country and has adopted a westernised lifestyle and attitude. He fears his long presence in Australia will lead to him being imputed with pro-Western, anti-Taliban ideology and that he would be targeted as an opponent of the organisation.
- He fears that as a Bangash Shia in Pakistan, he would be considered to hold pro-Iranian and pro-American political views, and that this would lead to him facing harm in that country.
- He says that Kurram District borders Afghanistan and is affected by the situation in that country. He asserts that the withdrawal of US forces from Afghanistan will lead to instability in Afghanistan, and in the neighbouring Kurram valley (location of Parachinar) and further outbreaks of anti-Shia violence will occur.
- He asserts that relocation to another part of Pakistan would not be safe for him.

### **Factual findings**

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9. In order to establish his identity, the applicant has provided copies of a number of identity documents as part of his SHEV Application. This includes a copy of his Pakistani Passport, his Pakistani Drivers Licence, and his Pakistani National ID Card. He has provided accredited translation for the National Identity Card. A Departmental assessment of his Pakistani Passport found that the Passport was genuine.
10. During the course of his application, he has also provided several other documents which, on their face, offer further evidence for his identity. These were several certificates from his school, two religious certificates a Drivers Licence from [Country 1], a Pakistani Marriage Certificate, a Pakistani Domicile Certificate, and a Pakistani Police Character Clearance Certificate. Together, these documents provide consistent identity information, which is also consistent with the applicant's verbal claims.
11. I note that as part of his SHEV Application, the applicant has provided a travel document from Afghanistan. This document refers to him being a member of the Turi Tribe, not the Bangash Tribe as he claims. The applicant has explained that in Afghanistan, his tribe is referred to as 'Turi-Bangash' and that Afghan officials do not distinguish between the two groups. He continues assert he is a Bangash. I accept this explanation.

12. I have reviewed all of this material. The applicant has established his identity to my satisfaction. I accept that he is a Pakistani citizen, of Pashtun ethnicity who adheres to the Shia faith, as he claims. I accept that he is a member of the Bangash tribe, and that he was born on [date] in Parachinar, a city in the Kurram District of what is now the Khyber Pakhtunkhwa Province of Pakistan. For the purposes of this decision, I find that Pakistan is his receiving country.

*[Country 1] Visa, s.57*

13. This applicant departed Pakistan in 2013. He travelled to Australia via [Country 2] and [Country 1]. The passport he provided to the Department contains copies of entry visas for both of those countries. An examiner from Department's Document Examination Unit (DEU) reviewed the Passport provided by this applicant. The DEU examiner concluded that though his Passport and the [Country 2] visa were genuine, the [Country 1] visa [was] counterfeit.

14. In correspondence dated 11 August 2021, issued under s.57 of the Act, the applicant was invited to comment on the DEU examiners findings. The applicant responded to the s.57 invitation by indicating that while making his way to Australia, he had followed directions given to him by his agent. He indicated he had given his Passport to the agent, and that it had been returned containing the [Country 1] visa. He said he was uncertain whether the [Country 1] visa was genuine nor not. During his earlier Protection Visa Interview, he had put forward a similar explanation. In summary then, the applicant asserts he did not know the [Country 1] visa in his Passport was not genuine, and that he provided it to the Department in good faith.

15. Section 91WA(1) of the Act, provides that a person who provides a bogus document as evidence of their identity, nationality or citizenship must be refused a visa. Section s5(1) of the Act, defines a bogus document, as 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.

16. On the evidence before me, the applicant's [Country 1] visa is counterfeit and it is a bogus document. Section s.91WA(2) of the Act, provides that s.91WA(1) will not apply if a delegate is satisfied that the applicant: (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and (b) either: (i), provides genuine documentary evidence of their identity, nationality or citizenship; or (ii), has taken reasonable steps to provide such evidence.

17. The applicant claims he was unaware that the [Country 1] visa was counterfeit and that he provided it in good faith. There are reasons to doubt this account, since, he says that he obtained the visa without filling out any forms or signing anything. Given that he had earlier obtained a genuine [Country 2] visa, going through the normal processes of acquisition, it might be inferred that he knew that the procedures he followed to obtain the [Country 1] visa were suspect. I have doubts he is being entirely forthcoming.

18. Nevertheless, in the absence of any direct contradictory evidence, I am willing to accept that he did not know the [Country 1] visa was counterfeit. I am satisfied he has a reasonable explanation for providing the bogus [Country 1] visa and that he has provided other evidence of his identity, nationality or citizenship and so s.91WA(1) does not apply.

*[Body part] injury/workers compensation & employment*

19. As part of his SHEV Application this applicant provided a copy of two document related to a workers compensation claim he had made while in Australia. These related to injuries suffered to his [body part] in the workplace in Australia in 2017. The applicant was, briefly, questioned about this issue during his first Protection Visa Interview and indicated that this issue was unrelated to his claims for protection about Pakistan, but has indicated that due to his injury, he is unable to perform labour intensive employment.
20. I have some observations about this assertion. I note that the documents do not indicate that this applicant's [body part] injury prevent him from working. In fact, the document clearly indicates that after a doctor examined his injuries, though he has a limited range of movement and that he requires some physiotherapy, he still retained the capacity to work. The documents do not indicate the applicant has any further problems, or any ongoing complications arising from this event. The documents do not indicate he still requires any treatment now, some four years later. In the circumstances, I am not satisfied that this applicant is unable to perform physical labour, and I will not consider this issue, or these documents further.

*Life in Pakistan – cleric, [Occupation 1], community activist, threats from the Taliban*

21. The applicant says that in Pakistan his profile led to him being targeted by the Taliban. Prior to coming to Australia, the applicant lived most of his life in Parachinar. He says that in Parachinar he worked as a [Occupation 1] at a [workplace] in Parachinar (2000 – 2007), a [Occupation 2] in his home (2001 - 2006), a [Occupation 3] (2000 – 2004) and a [shop owner] (2011 – 2012). He also lived in [Country 1] for a year (mid 2010 – mid 2011) where he worked as a [Occupation 3].
22. Throughout his adult life in Pakistan, he says he also acted as community activist in the Parachinar area. He volunteered with two non-Government organisations (NGO), the [Organisation 1] (1996 – 2013) and the [Organisation 2] (2000 - 2013). He was also a Shia cleric and was involved in a range of Shia religious activities during this period, such as processions during the Muharram period.
23. According to information he provided during his two 2021 Protection Visa Interviews<sup>5</sup>, he spent much of his spare time during this period of his life volunteering for [Organisation 1], or [Organisation 2]. In addition to his Shia religious activities, his work with these organisations included providing [details deleted], raising money for poor orphans, first aid, organising and attending rallies and other volunteer work. As [Occupation 2] he had provided [services] to poor children. He says that these activities increased his profile within the local Parachinar community and that he was well known for his 'social work'. He says his father also had a similar profile as a community activist.
24. He says that in 2007 and 2008, he worked, intermittently on the election campaign for [Mr A] who was seeking [election]. He would speak to local persons on behalf of the candidate attend rallies and other, electioneering activities. He says he was almost killed in a bomb blast outside the candidate's [office].
25. He asserts that these activities brought him to the attention of the Taliban and other extremists who were operating in the Parachinar area. He says a friend of his fathers told him he was on a Taliban "hit list". Throughout his two Protection Visa Interviews, while giving his explanations the applicant seemed to conflate the many reasons, he says the Taliban would

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<sup>5</sup> This applicant attended two Protection Visa Interviews. His first was held on 25 May 2021 and his second on 8 June 2021.

harm him. He says that the Taliban objected to his religious activities, his [Occupation 2], and his work with the NGO organisations. On many occasions this devolved into conflict and intimidation. He was beaten by supporters of the Taliban on several occasions. At other times, his house was surrounded, and stones were thrown at him. Over the years, he says he received multiple direct threats from the Taliban in relation to his activities including threatening phone calls, and letters. He received many threatening phone calls during the period, the first in 2002, and the last was received in 2013. In the end, he simply refused to answer phone calls from numbers he did not recognise and advised his family to do the same.

26. He says that Shia faced many problems in Pakistan during the period 2007 to 2012, as the Taliban was present in the Parachinar area, and seeking to attack Shia. He says Parachinar and the surrounding areas were so dangerous, that he travelled to Peshawar via Afghanistan, rather than by travelling through Kurram District. He says that in 2010, fearful for his life, he departed Pakistan and went to [Country 1], where he worked for around one year, before returning to Pakistan. After his return to Pakistan, he opened a [store] in Pakistan. In 2013, still receiving threats and believing he was unsafe, he departed Pakistan for Australia.

27. As evidence of his claims the applicant has provided documents to the Department. These were:

- A 1999 Certificate from a [school] in Parachinar and a translation of the certificate. A second 1999 Certificate from the same [school].
- A membership card for the [Organisation 2] which had been issued [in] July 2006.
- A letter addressed to him from the Taliban, dated 5 September 2006, which identifies the applicant's engagement with [Occupation 1] sector, his involvement with human rights, his social work and other anti-Islamic activities as being against the Taliban's agenda. It asserts he should cease participating in these activities.
- An Afghan travel permit issued [which] permits the applicant, his father and an unidentified lady to travel through the province [in] April 2010.
- A second Afghan travel permit [which] indicates that five residents of Kurram, led by the applicant's father, were permitted to travel through the province between [date] January 2010 and [date] January 2010.
- A letter dated 29 August 2013 from the Chairman of the [Organisation 1] indicating the applicant was a [member], and that he had participated in the activities of the [Organisation 1].
- A [Certificate] from a [workplace] in Parachinar dated [date] May 2021, which indicates he worked as [Occupation 1] at the [workplace] between 2000 and 2007.
- A letter dated [date] May 2021, from the [position] of the [Organisation 2] indicating the applicant had joined the organisation in 2006 and was an active member thereafter.
- Three Statutory Declarations written by personal friends of Pakistani descent. These Statutory Declarations were each dated 20 June 2021 and all three indicate that the three authors have known this applicant since he was young in Pakistan. They assert that in Pakistan the applicant was known as a [Occupation 1] and organiser in the Parachinar area, and that in Australia he had organised for Shia religious activities to be held at his NSW home in during the COVID-19 lockdown in 2020.
- A series of photographs of the applicant, and his three friends who authored the Statutory Declarations, participating in Shia activities in his home in NSW in 2020.

- A 10-page Statutory Declaration from the applicant dated 22 June 2021. This Statutory Declaration provided further evidence and explanations about the applicant's ethnicity and tribal affiliation; his role as a cleric and participation in religious processions in Pakistan; his volunteer work at [Organisation 1] and the [Organisation 2]; his involvement with [Mr A] and his 2008 election campaign; his work as a [Occupation 1] and [Occupation 2]; the beatings he suffered in Pakistan; threats received by the Taliban including the 2006 letter; his practice of Shia Islam in Australia; his employment and volunteering work in Australia; and, his fears about returning to Pakistan.
28. On their face, these documents are supportive of the applicant's claims. However, it should be noted that not all of his claims are supported by these documents since:
- The membership card, and the letter from the Chairman of the [Organisation 2] indicate the applicant joined the organisation in 2006, not 2000 as asserted in his Protection Visa Application.
  - There is no indication from any these documents he ever worked as a [Occupation 2].
  - Though he says he reported these issues to the Pakistani police, he has not provided any evidence of such police reports. He has not provided any independent evidence about receiving threatening phone calls from the Taliban or anybody else.
  - He has not provided any independent evidence for his claims to have worked with the election campaign of [Mr A].
29. Country information before me does indicate that in the period 2007 - 2012, there was serious conflict in the Parachinar area as the Taliban sought to establish control over the Kurram valley (where Parachinar is located), and secure a land route between Afghanistan and Pakistan<sup>6</sup>. During this period, the mostly Shia residents of the Parachinar area fought against Taliban control and there was a high level of sectarian violence<sup>7</sup>.
30. I have considered all the evidence the applicant has provided about these issues in his SHEV Application, his two Protection Visa Interviews, and in post interview submissions to the Department. In light of the [Certificate], I accept that the applicant was employed as [Occupation 1] between 2000 and 2007 at a [workplace]. I am willing to accept that he was a [Occupation 2], until 2006 as he says. However, I have some doubts about the scope of the applicant's remaining claims.
31. As part of his SHEV Application, the applicant has provided a threat letter he says the Taliban gave to him in 2006. He says he obtained this document after he had stopped providing [Occupation 2 services]. He has provided a translation of this document. The translation indicated that it was written on [date] September 2006. On its face, the letter is supportive of the applicant's claims, and indicates that the applicant's engagement with [workplace] staff, social work, and involvement with anti-Islamic activities such as the Human rights party had

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<sup>6</sup> Pakistan Security Research Unit (PSRU), 'Sectarian Violence in Pakistan's Kurram Agency', Chandran, S, 1 September 2008, CIS16789; "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>7</sup> Pakistan Security Research Unit (PSRU), 'Sectarian Violence in Pakistan's Kurram Agency', Chandran, S, 1 September 2008, CIS16789; UK Home Office, 'Pakistan COI Report', 9 August 2013, OGCOD145414; DFAT, "Pakistan Country Information Report", 1 September 2017, 01 September 2017, CISED50AD5515; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409; "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402



brought him to the attention of the Taliban. The letter advised him to cease his association with international organisations.

32. However, there are other elements of the letter that cause me to have some doubts. For example, it indicates that he works for [Organisation 3], a claim that he himself had not made. It also indicates that the Taliban had made “attempts to capture you alive” to behead him, but that he had been accidentally saved. The applicant had not made any claims about attempts to abduct him or behead him in his SHEV Application or in his earlier arrival interview. When asked about this, he said that he had been ‘challenged’ by the Taliban, to meet a Taliban person at an appointed time, and at an appointed place. He said that this ‘challenge’ was what the letter referred to. He said that in Pashtun culture, such a challenge to a person’s manhood, would usually lead to a confrontation, he said he had avoided these confrontations, because he knew that the Taliban would kill him if he attended. This explanation, in my opinion, was not persuasive, and does not squarely address the several attempts to abduct or behead him mentioned in the letter. Overall, I have doubts about the genuineness of this letter and I note that document fraud is frequent in Pakistan.
33. I further note that the applicant asserts he received the letter in 2006, some seven years prior to coming to Australia. At interview and in his SHEV Application, he also asserted he received regular threats from the Taliban between 2002 and 2013. He says he was on a Taliban “hit list”. Throughout this period, except for the time he spent in [Country 1], he lived in the same house he always had, a house he says the Taliban knew about. He also says that he left the house frequently due to his employment, and his volunteer work during this period. He says that during this period he had several confrontations with the Taliban, which resulted in him being beaten, or harassed in other ways, such as having stones thrown at his house. Given all of these factors, it would seem that as the Taliban knew where he lived and worked for around seven years, that if the Taliban genuinely wanted to kill him, they could have done so at any time. Taking all of these matters into account, I am willing to accept that the Taliban threatened the applicant by letter in 2006. However, given that the applicant was not killed by the Taliban, even noting the content of the letter, I am not satisfied that he was of anything more than a person limited interest to that organisation.
34. This applicant did not describe himself as a Shia cleric when he first arrived in Australia and did not claim to be a Shia cleric in 2017, when he submitted his Protection Visa Application. His first mention of himself as a cleric came in his Statutory Declaration of 22 June 2021, almost eight years after his arrival in this country. In that Statutory Declaration, he said he led Shia religious processions during events such as Muharram and Ashura. The applicant had not made claims to be a Shia religious cleric during either of his two Protection Visa Interviews, which were conducted in the month prior to the date of the Statutory Declaration. The two religious certificates he has provided do indicate that he has received some religious training in Pakistan. However, these certificates are from March 1999, when he was only [age] and they do not indicate what amount of training he had. Neither of the translated certificates indicate that he has qualified as a Cleric, and neither certificate describes him in those terms. The applicant has provided Statutory Declaration from three friends, all dated 20 June 2021, and all of which attest to his religious status. Several photos of him, apparent participating in Shia religious activities in NSW in 2020 have also been provided. These photos appear to show the applicant and his three friends. I accept that in the photos, the applicant is participating in a Shia event and this is consistent with his claimed religion, but I do not accept that the photos show him to be a Shia cleric. Given the three Statutory Declarations provided were written by his friends at his request, on the same day, I am not satisfied that can be said to be independent and objective evidence in support of his claims, and I give them little weight.

35. His Protection Visa Application indicates that between 1995 and April 1999 he was completing his [education], not training as a cleric. I am not satisfied that the applicant ever trained as a cleric or was recognised as such in Pakistan. Given that he only ever completed his studies up to year 12, I am also not satisfied that he would be considered 'highly educated' in Pakistan and targeted for this reason. I am willing to accept that as a member of the Shia community, he participated in Shia religious activities such as processions and rally's, but I am not satisfied that he was a leader, or a anything more than a participant in such activities.
36. At interview, the delegate questioned him about his membership of [Organisation 2], noting that his SHEV Application indicated he had been a member since 2000, while his membership card indicated he was a member from 2006. He explained that as indicated on the membership card, he only became a member of [Organisation 2] in 2006, however, he says he had been doing volunteer work for the organisation prior to becoming a member. This explanation indicates that the applicant's original claim to have been a member since 2000, had been, somewhat, exaggerated. Nevertheless, considering his membership card, and the letter from [an official] of the organisation, I do accept that the applicant worked as a part time volunteer for the [Organisation 2] while he was in that country. I also accept, that in Pakistan, he volunteered with the [Organisation 1]. However, I note that neither the letter from [an official] of the [Organisation 2], nor the letter from the Chairman of the [Organisation 1] indicate that this applicant ever faced any problems in Pakistan associated with his volunteer work for these organisations. Given that these letters are purported to relate to his central claims about his profile, were written at the applicant's request and postdate his claims about events in Pakistan, the failure of either author to mention such problems is, in my view, a surprising and telling omission. Overall, noting again the lack of any independent supporting evidence, I am not satisfied that he did face any problems in Pakistan due to his volunteer work with the [Organisation 2], or the [Organisation 1].
37. According to the Statement of Claims which accompanied his Protection Visa Application the applicant claims that he worked "*intermittently*" for the election campaign of [Mr A], who sought election in 2008. He says he received verbal threats due to his campaign work, and that he was almost killed when a bomb targeted the campaign's office. He has not provided any independent supporting evidence about his work for the campaign. In my view, the applicant's claims about this period lack detail. He says he received verbal abuse frequently. He says he reported this harassment to the authorities, but they would not interfere in a political matter. Overall, his claims about this event were not persuasive. I am willing to accept that the applicant worked, intermittently, on behalf of the campaign. However, this was in 2008 five years prior to his departure for Australia. He says, after the campaign ended, he did not suffer any more problems arising from his participation, and so, on his own evidence, this issue would not seem to be a problem for him at any time after the campaign ended.
38. I have accepted that this applicant was of some limited interest to the Taliban around 2006. At interview, the applicant stated that in Pashtun culture, enmity between individuals, and families, requires retribution and that Pashtun culture emphasises payback and revenge. He says that even though time has passed, his former activities ([working in Occupation 1 and Occupation 2], participation in religious activities, electioneering, and volunteering) would not be forgotten and that that would still be of interest to the Sunni extremists. He says they would still seek revenge against him for the events of the past, even though he has been here for almost a decade. However, if that was the case, it would seem that the Taliban could have killed him at any time between 2006 and 2013 when he departed Pakistan for Australia. They did not. Nor, on his own evidence, was there any direct attempt to kill him at this time. Rather, he says that he underwent threats, and confrontations, and harassment. His post-interview submission to the IAA clearly indicates that he claims to have been beaten twice, once in

2003/04, and once in 2007. The submission states that after these incidents, he was told to stop his 'social work', but on his own evidence, he did not stop.

39. While this harassment and confrontation may have been difficult and uncomfortable for him, they do not amount to attempts at killing him. The applicant says he received regular phone threats while he lived in Pakistan, and in the end, he avoided these by simply not answering the phone, or hanging up whenever the Taliban made a threat. It does not seem plausible, that the Taliban, if they really wanted to kill him, would be put off by such simple ploys. I am not satisfied that if the Taliban really wanted to kill a person, the risk could be avoided by merely not answering the phone, or by merely hanging up the phone. I am not satisfied that the applicant continued to receive phone threats from the Taliban.
40. Overall, I am not satisfied that this applicant has been entirely forthcoming about his time in Pakistan. He seems to have substantially exaggerated the scope of his activities in that country, and the consequences he faced for his activities. I have accepted that the Taliban sent him a threatening letter in 2006, and I am willing to accept he was beaten in 2007. However, whatever provoked that letter, I am not satisfied that the Taliban ever wanted, or attempted to kill him at any time thereafter.
41. In summary, though I do accept that he is Shia, and that he participated in Shia community religious activities such as processions and rally's, I am not satisfied that the applicant was a Shia cleric in Pakistan. I also accept that he worked as a [Occupation 1] and as a [Occupation 2] until around 2007. I accept he assisted the campaign of [Mr A], and that he volunteered with two NGO's, [Organisation 2] and [Organisation 1]. I accept that these factors brought him to the attention of the Taliban, and that he received a threat letter in 2006 and was beaten twice, first in around 2003/04, and again in 2007 as asserted in his Post Interview Submission. I am also willing to accept he had confrontations with Taliban supporters and suffered occasional harassment in Parachinar at times. However, I concluded that whatever interest the Taliban had in this applicant, it had passed by 2007, after he was beaten for the second time. I am not satisfied that the Taliban was seeking to threaten him, harm him or kill him at any time after this. I am not satisfied that he departed Pakistan in 2010 (for [Country 1]) or in 2013 (for Australia) in fear of his life.

#### *2021 Attack on Family*

42. In his Submission to the IAA, the applicant put forward a significant new claim; that in October 2021 his family was attacked by gunmen in Pakistan. He says this occurred while his father was driving the family car to Islamabad. He says other, unspecified family members were in the car at the time. He says the vehicle was fired upon by unknown persons. The applicant asserts that this event demonstrates that his father is still well known for his community service activities, and that he was targeted for this reason. He says that as he personally has a similar 'community activist' profile in Pakistan, he would also be targeted upon return to that country.
43. As evidence of this claims, the applicant has supplied three clippings from a Pakistani newspaper. He has provided two separate translations of these clippings. The translations indicate that the newspaper contained an article relating to a shooting in Pakistan, said to have occurred in early October 2021. In the shooting, the victim was driving his car to Islamabad. The translations indicate that the victim of the shooting has the same name as the applicant's father. On their face, these translations support the applicant's claim that his father had been the victim of a recent shooting in Pakistan. However, as I have noted, the applicant has provided two versions of this translation, and though at first glance, they appear to be exact duplicates, the translations do differ in one aspect:

- The first translation, dated 15 October 2021, refers to the victim of the shooting as a retired “Major”.
  - The second translation, dated 16 October 2021, refers to the victim of the shooting as a retired “Manager”.
44. Both Translations were certified by the same NAATI accredited Translator. Neither the applicant’s Submission to the IAA, nor any of the three emails he sent to the IAA, mention the differing translations of the news article. It would appear that the second translation was submitted to the IAA in order to replace the first, but this is not certain. The applicant has not identified which of the two translation is erroneous, nor which of the two translations is to be preferred, or why.
45. While seemingly a minor error of little importance, in my view, this issue is of some relevance, since it might be expected that the security profile of a retired ‘Major’ in Pakistan would differ somewhat from that of a retired ‘manager’. According to the applicants SHEV Application his father had worked in a [Workplace 1], he was not a member of the Pakistani military, the Police force, or any other security service in Pakistan. That is to say, his father did not have any security role and was not a ‘Major’. According to the applicant’s Statement of Claims, his father stopped working for the [Workplace 1] in 2000, however, the references to the applicant’s father in his Statement of Claims do not refer to him as the ‘manager’ of the [Workplace 1]. To my mind, these factors cast some doubt on the applicant’s new claim.
46. Another factor of some concern is the timing of this event. It is said to have occurred in early October 2021, around ten days after the date of delegate’s decision. Though the applicant had mentioned his father in his 2017 Statement of Claims (as a [Workplace 1] employee) he had not indicated that this father was the victim of any particular security incident, beyond saying that his father suffered from risks associated with his status as a well-known Shia and had been compelled to stop working at the [Workplace 1] for this reason in 2000. It is quite coincidental that the applicant’s father was a victim of this type of violence, apparently for the first time in 21 years, only ten days after the applicant’s visa was refused. In my view, the timing of this event is suspicious, and to my mind, casts further doubt on the veracity of this new claim.
47. In his Submission to the IAA, he says the Newspaper is the ‘[name deleted]’, an Urdu paper from Pakistan. He argues that the newspaper articles are reliable, because the Editor-in-Chief of the newspaper is a “*well known and well reputed honest journalist*” in Pakistan. The Editor-in-Chief is also said to be “*very close*” to the Pakistani Minister of Information and Broadcasting and the IAA is invited to contact the Editor-in-Chief to confirm the story. In my view, these are not persuasive arguments and under the Act, the applicant is obliged to provide evidence to the IAA, not request the IAA to obtain evidence on its own.
48. The incident itself, is said to have occurred in Islamabad, approximately 300 kilometres east of Parachinar. The applicant has not explained why this event occurred, who was responsible, why his father was in Islamabad, or which other family members were involved. The incident occurred over a month ago, and the applicant has not provided any further information about it, other than the brief remarks in his Submission to the IAA.
49. Overall, I have real doubts about this new claim. In my view, the timing of this event is particularly of concern, as is the absence of any real detail in the article, or in the applicant’s explanation as to who was responsible, how and where it happened, who was present, why it happened, and what happened afterwards. The applicant has not provided any further explanation about this incident in the month and a half since it happened, nor has he indicated his father, or any other family member has faced similar problems. He has not provided any

other evidence about this incident, or any further corroborative documents, such as police reports, witness statements or photos of the damaged vehicle, or anything else which might corroborate these new claims. Given that the applicant maintains regular contact with his family in Pakistan, who all live together in the same house, I think the absence is telling. Though I have serious doubts, in light of the news article, am willing to accept that this incident happened. However, in the absence of further details and supporting evidence, I am not satisfied that this event was anything more than an isolated incident of violence. I do not accept that this was a targeted attack on the applicant's father or his family, or that it was related to his father's profile in Pakistan. I am not satisfied that it has anything at all to do with this applicant, or that the attack can be attributed to the Taliban, or any other extremist group.

## **Refugee assessment**

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50. 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**

51. 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.

52. I have found that this applicant is a citizen of Pakistan and that Pakistan is his receiving country. Prior to travelling to Australia, this applicant lived his entire life in Parachinar, except for around one year which he spent living and working in [Country 1]. After returning to Pakistan from [Country 1], he returned to Parachinar. His family continues to reside in the same family home in Parachinar including his parents, his siblings and his wife. I conclude that if returned to Pakistan, the applicant would return and reside in Parachinar with his family, as he did previously.

*Bangash, Pashtun, Shia from Parachinar, past activities and employment, interest from the Taliban and other extremists*

53. The applicant says he would face harm due to his religion (Shia), his ethnicity (Pashtun Bangash), his history of past humanitarian and social work, and that this harm would come from the Taliban, or other extremists.
54. In a post interview submission to the Department, the applicant has put forward a number of arguments about why he could not safely return to Pakistan. He says that the security situation in Pakistan is unstable, that the recent withdrawal of US forces from Afghanistan, and complications arising from the COVID-19 pandemic will increase the instability in Pakistan, especially in the Kurram district which borders Afghanistan. He says that Shia are not safe in Pakistan, especially Bangash Shia from Kurram who oppose the Taliban, and who are especially vulnerable. He says that Bangash Shia are perceived to be pro-Iran, and at the same time, pro-United States. Shia are said to be victims of recent hate campaigns on social media and harassment through the use of blasphemy laws. He says that anti-Shia extremists have an increasingly international focus and a global reach, and these factors have led to a growing violence towards Shia in Pakistan. He says the Government of Pakistan suppresses information about sectarian violence in Pakistan. All of these factors are said to mean that the applicant could not relocate safely to any other part of Pakistan. I have considered all the arguments and country information in the applicant's post interview submission to the Department.
55. Pakistan has the sixth largest population in the world with over 200 million citizens. Muslims comprise 96.28 per cent of the population of Pakistan. Shia comprise between 10 to 15% of the total population of Pakistan<sup>8</sup> and Pakistan is the second largest Shia country in the world<sup>9</sup>. Most Shia in Pakistan adhere to the Twelver school of Shia Islam<sup>10</sup>, as does the applicant. Shia populations can be found throughout Pakistan, including Karachi, Lahore, Rawalpindi, Islamabad, Peshawar, Multan, Jhang and Sargodha, but Shia do not constitute a majority in any of Pakistan's four provinces<sup>11</sup>, though they are a majority in the Parachinar area. Parachinar has been described as a Shia stronghold<sup>12</sup>. Shia and Sunni communities are generally well integrated in Pakistan and most Pakistani Shia are not physically or linguistically distinguishable from Pakistani Sunnis<sup>13</sup>. Shia are mostly identifiable during religious events or at places of worship<sup>14</sup>. Historically relations between the Sunni and Shia populations of Pakistan were cordial with ethnic, tribal and linguistic differences being more problematic. However, the so called 'Islamisation' of Pakistan, during the Presidency of Zia-ul-Haq, a Sunni, led to an increase in tensions between the two communities<sup>15</sup>. The Shia faith in Pakistan is not confined to specific ethnic, linguistic and tribal groups<sup>16</sup>. Shia are well represented in parliament and

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<sup>8</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>9</sup> "'It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>10</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>11</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>12</sup> Mansur Khan Mahsud, New America Foundation, 'The Battle for Pakistan: Militancy and Conflict in Kurram', 1 April 2010, CIS18543

<sup>13</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>14</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>15</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409; "'It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>16</sup> "'It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

regularly contest elections for mainstream political parties. DFAT assesses that there are no barriers preventing Shia from actively participating in democratic processes in Pakistan due to their sectarian affiliation<sup>17</sup>. Despite Pakistan having a majority Sunni population, Shias have always held prominent and powerful positions and influenced the structure and development of the Pakistani state<sup>18</sup>.

56. Parachinar is the capital of Kurram District<sup>19</sup>, which is part of the Khyber Pakhtunkhwa Province. The Province shares its western borders with Afghanistan. In the east, Kurram borders Orakzai District and Khyber District and North Waziristan District in the south. It is divided into three administrative units; Lower Kurram, Upper Kurram and Central Kurram<sup>20</sup>. Shia are said comprise around 40 per cent of the population of Kurram District, but the administrative unit of Upper Kurram is estimated to be around 80 per cent Shia<sup>21</sup>.
57. Pashtuns comprise an estimated 15.4 per cent of the population of Pakistan, making them the second-largest ethnic group in the country<sup>22</sup>. Pashtuns traditionally live among their own tribes and sub-tribes in Khyber Pakhtunkhwa<sup>23</sup>. Pashtun-majority areas have historically experienced high levels of tribal, intra-communal and politically motivated violence, and as a consequence, Pashtun areas have been the site of a high number of military operations. However, the overall security situation for all Pakistanis, including Pashtuns, has improved in line with increased security across Pakistan<sup>24</sup>. Pashtuns in Pashtun majority areas or locations where individuals have family or social connections face a low risk of official discrimination<sup>25</sup>.
58. The Bangash are a Pashtun tribe, with Sunni and Shia members. The Bangash are the second biggest tribe in Kurram<sup>26</sup>. All the Bangash of Upper Kurram are Shia<sup>27</sup>. They live alongside the Shia Turi tribe, which is the majority in Kurram valley, with around 500,000 members<sup>28</sup>. There are tensions between the Shia and Sunni Tribes in Kurram<sup>29</sup>. The Bangash are hostile towards the Taliban and have reportedly asked for government forces to assist them in removing Taliban and other militants from Kurram<sup>30</sup>.

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<sup>17</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>18</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>19</sup> Mansur Khan Mahsud, New America Foundation, 'The Battle for Pakistan: Militancy and Conflict in Kurram', 1 April 2010, CIS18543

<sup>20</sup> Mansur Khan Mahsud, New America Foundation, 'The Battle for Pakistan: Militancy and Conflict in Kurram', 1 April 2010, CIS18543

<sup>21</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>22</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>23</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>24</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>25</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>26</sup> Pakistan Security Research Unit (PSRU), 'Sectarian Violence in Pakistan's Kurram Agency', Chandran, S, 1 September 2008, CIS16789

<sup>27</sup> "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>28</sup> "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>29</sup> Naval Postgraduate School, Program for Culture and Conflict Studies, 'Tribe: Turi', 1 January 2011, CIS20497; "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>30</sup> "It's Just a Sunni-Shiite Thing": Sectarianism and Talibanism in the FATA of Pakistan', Abou Zahab, M in 'The Dynamics of Sunni-Shia Relationships: Doctrine, transnationalism, intellectuals and the media' edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

59. Article 20 of the Constitution provides that ‘subject to law, public order, and morality, —(a) every citizen shall have the right to profess, practise and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions’<sup>31</sup>. The Constitution establishes Islam as the state religion (Article 2). Articles 41(2) and 91(3) of the Constitution require that the president and the prime minister be Muslim<sup>32</sup>. Nevertheless, religious intolerance is said to be growing in Pakistan, and minorities, including Shia, face societal discrimination and attacks from extremist groups<sup>33</sup>. Blasphemy laws do exist in Pakistan, and over the last decade, there have been occasional high-profile cases. The consequences for contravening Pakistan blasphemy laws include punishments up to and including the death penalty for defiling Prophet Muhammad<sup>34</sup>. Some blasphemy cases have sparked criticism of the use of these laws in Pakistan<sup>35</sup>. In practice, blasphemy laws can be misused to settle personal or property disputes. According to DFAT, following an accusation, police will automatically detain the alleged blasphemer—usually in solitary confinement—ostensibly for their own safety<sup>36</sup>. Attempts to reform blasphemy laws in the past have met with resistance<sup>37</sup>. Violence against those accused of blasphemy is common<sup>38</sup>. The applicant submission argues that in Pakistan, there has been an increase in the use of blasphemy laws to target adherents of the Shia faith and online campaigns have begun to target Shia in this way. The applicant’s submission reports that the European Union Parliament criticised Pakistan due to blasphemy law abuse and argues that traditional Shia beliefs are being legally banned. This applicant has not encountered this type of problem personally in Pakistan, nor has he reported any member of his family facing this kind of harm. I have found that though he participated in Shia activities, he was not a cleric and that he would return to Parachinar, a part of Pakistan where Shia are in the majority. In these circumstances, it hardly seems like that that applicant would be affected by these types of problems.

60. There are a number of armed Sunni extremist groups operating in Pakistan. Including the Pakistani Taliban (TTP), who this applicant claims to fear. Despite a strong security presence over the last decade, Parachinar is not free of violence. There is a history of community tensions in the Parachinar area leading to sectarian violence in the past<sup>39</sup>. Some attacks on Shia in the Parachinar area recorded in the applicant’s June 2021 Submission to the Department. These occurred in 2017, 2018 and an attack in 2020. Other country information before me also reports these, and other attacks in Parachinar during this period<sup>40</sup>. In 2017, deaths from terrorist attacks in Kurram District spiked. DFAT reported three attacks targeting in Parachinar during the first six months of 2017, targeting Shia due to their faith, including an attack on a Shia Mosque, and marketplaces which lead to increased number of casualties at that time, however in 2018 the numbers fell back to previous levels<sup>41</sup>. Occasional incidents sectarian

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<sup>31</sup> DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

<sup>32</sup> DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

<sup>33</sup> DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

<sup>34</sup> UK Home Office, ‘Pakistan COI Report’, 9 August 2013, OGCOD145414; DFAT, “Pakistan Country Information Report”, 1 September 2017, 01 September 2017, CISED50AD5515; DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

<sup>35</sup> DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409; UK Home Office, ‘Pakistan COI Report’, 9 August 2013, OGCOD145414

<sup>36</sup> DFAT, “Pakistan Country Information Report”, 1 September 2017, CISED50AD5515

<sup>37</sup> UK Home Office, ‘Pakistan COI Report’, 9 August 2013, OGCOD145414

<sup>38</sup> UK Home Office, ‘Pakistan COI Report’, 9 August 2013, OGCOD145414; DFAT, “Pakistan Country Information Report”, 1 September 2017, 01 September 2017, CISED50AD5515; DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

<sup>39</sup> “It’s Just a Sunni–Shiite Thing”: Sectarianism and Talibanism in the FATA of Pakistan’, Abou Zahab, M in ‘The Dynamics of Sunni–Shia Relationships: Doctrine, transnationalism, intellectuals and the media’ edited by Marechel, B and Zemni, S, Hurst & Company, 2013, CIS29402

<sup>40</sup> DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409

<sup>41</sup> DFAT, “DFAT Country Report: Pakistan”, 20 February 2019, 20190220093409



violence is still a problem in Parachinar, even though Parachinar is a Shia majority city<sup>42</sup>. Other anti-Shia violence occurs in other parts of Pakistan also. This applicant family continues to reside in Parachinar, in the same house they lived in when this applicant was in Pakistan. I have found he would return and reside with his family. At interview, the applicant said the Taliban cannot operate inside Parachinar because the city is controlled by Shia.

61. The Pakistani military has sought to combat terrorism and extremist and sectarian violence by conducting a series of large scale, long-term security operations. These operations targeted extremist groups, including the Pakistani Taliban (TTP) throughout the former FATA areas of Khyber Pakhtunkhwa, including in Kurram District<sup>43</sup>. These operations have been ongoing for many years and have resulted in a significant reduction in the number of violent and terrorism related attacks in Pakistan<sup>44</sup>. Country information before me indicates that, the Khyber Pakhtunkhwa Province has also seen a significant reduction in sectarian violence in recent years<sup>45</sup>. As part of these operations, the Pakistani military has implemented a 20 - 30 square kilometre security zone around Parachinar<sup>46</sup>. According to a 2018 reporting, the security situation in Pakistan is improving and there has been a steady decline in the number of deaths<sup>47</sup>. More recent reporting also indicates that, despite occasional episodes of violence, security in the Kurram District has substantially improved<sup>48</sup>. There were only three violent incidents in Kurram District in 2020, and only one person was killed<sup>49</sup>. DFAT has assessed that Shia in the former FATA areas of Khyber Pakhtunkhwa face a low risk of sectarian violence, within the context of a moderate level of militant and criminal violence across the region while Shia may face a moderate risk of sectarian violence.
62. The applicant asserts that no Pashtun, Bangash, Shia is safe in Kurram District, or any other part of Pakistan. However, the country information I have cited above suggests there are around 20 – 30 million Shia residing throughout Pakistan and that they have full political, economic and social rights in the country. Furthermore, there are around 500,000 Pashtun Shia in Pakistan, the vast majority of whom live in Kurram Valley and who are concentrated in Upper Kurram. The applicant's verbal evidence at interview indicates that he mostly lived in Parachinar in Upper Kurram until the time of his departure and that his Pashtun Bangash Shia family continue to reside in the same house. In light of these factors, the arguments offered about persons of his profile (Pashtun Shia Bangash) are unpersuasive. The weight of evidence before me indicates that while there were significant sectarian problems like those the applicant described in the past, but over recent years, the Government of Pakistan has taken serious steps to prevent extremist violence throughout Pakistan, and especially in the former areas of the Federally Administered Tribal Areas, like Kurram District where large security presence has existed for around a decade<sup>50</sup>. Overall, the security situation in Kurram is said to have markedly improved in recent years. A security zone around Parachinar extends for 20 –

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<sup>42</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>43</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>44</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>45</sup> Pakistan Institute for Peace Studies, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; FATA Research Centre, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', Irfan U Din and Mansur Khan Mahsud, 7 January 2021, 20210113125205; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>46</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>47</sup> Pakistan Institute for Peace Studies, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758

<sup>48</sup> FATA Research Centre, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', Irfan U Din and Mansur Khan Mahsud, 7 January 2021, 20210113125205

<sup>49</sup> FATA Research Centre, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', Irfan U Din and Mansur Khan Mahsud, 7 January 2021, 20210113125205

<sup>50</sup> Pakistan Institute for Peace Studies, 'Pakistan Security Report 2018', 6 January 2019, 20190121110758; FATA Research Centre, 'Khyber Pakhtunkhwa Tribal Districts Annual Security Report 2020', Irfan U Din and Mansur Khan Mahsud, 7 January 2021, 20210113125205; DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

30 kilometres; the applicant's home is located inside the security zone. The applicant would return to this area as a member of the majority ethnicity (Pashtun) and the majority religion (Shia). He would be returning to reside with members of his family, and to the home where he lived previously. His family would be able to support his return and assist him with reintegration. The last time he returned from abroad, he resumed his life in Pakistan and was able to establish a [shop] in Parachinar. In the circumstances I am not satisfied that the applicant would face a real chance of harm as a Bangash Pashtun Shia from Kurram if returned to Pakistan. Given the widespread reports about improvements in security, I am also satisfied that he would be able to return to safely to his home.

63. The applicant argues that he would be imputed with adverse political opinion by the Taliban and other extremist groups. However, I am not satisfied that the applicant was not of any further of interest to the Taliban, or any other extremist groups after 2008. I do not accept that he has a profile of interest now, some 13 years later. I do not accept that he would be of any interest to any extremist group (including the Taliban) if returned to Pakistan. On the whole, I am not satisfied that the applicant would be identified as an opponent of extremists or imputed with any such political opinion. I am not satisfied he would face a real chance of harm for this reason.
64. The applicant has argued that the Government in Pakistan suppresses the local media in order to downplay the true level of sectarian violence in Pakistan and that DFAT reporting about a reduction in the level of sectarian violence should be given little weight. These are not persuasive arguments. Apart from DFAT, I have cited a number of independent credible sources in the preceding paragraphs, all of which report that the level of sectarian violence has dropped significantly over the last decade in Pakistan. Moreover, the applicant's June 2021 Submission to the Department, and the delegates decision cite dozens of articles about the security situation in Pakistan. I am not satisfied that the level of sectarian violence has been underreported or suppressed.
65. He argues that the recent takeover of Afghanistan by the Taliban, after the withdrawal of US forces in that country, will lead to instability in Pakistan, especially in border areas like Kurram. This is a speculative claim and in my view, the applicant's argument about this issue is unpersuasive, since it does not take into account any of the Pakistani Government's security commitments in Kurram or the surrounding areas which I have considered in this decision.
66. The applicant submission says Shia are perceived to be agents of Iran and that if returned to his country, this perception would lead to harm, as he would be considered pro-Iran. DFAT reporting does indicate some concern about Iranian influence linked to Turi Shia<sup>51</sup>, however, the applicant has not provided any examples of this problem from his time in Pakistan, and he has not indicated that any family member who remained in Pakistan or any other person who he knows from Pakistan has been imputed with Pro-Iran sentiments. The applicant has never claimed to have travelled to Iran nor has he put forward any information which would suggest he has real or perceived links to that country. He did not mention this issue in his SHEV application or in his Protection Visa Interview. During his Protection Visa Interview, he was asked if he had any further claims and he denied that he did. In the circumstances, I have some doubts that this claim has been genuinely articulated by the applicant. In any case, in the context of this applicant's circumstances, I did not find this claim persuasive.
67. The applicant's various submissions also argue that he would be considered to be Pro-United States. However, as with his claim about Iran, the applicant has not provided any examples of

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<sup>51</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

how this problem affected him from his time in Pakistan. He did not mention this in his SHEV application or his Protection Visa Interview. He has not indicated that any family member who remained in Parachinar or any other person who he knows has been imputed with real or perceived Pro-United States sentiment. The applicant has never claimed to have travelled to the United States nor has he put forward any other links to that country which might lead to the suspicion that he was a supporter of America. On the whole, I found this claim unconvincing.

68. Country information which I have summarised above indicates that in the years since this applicant arrived in Australia, the security situation in Pakistan, and in Kurram District, has improved substantially. I do not accept that this applicant would be of interest to the Taliban, or anybody else due to his past experience as a [Occupation 1], a [Occupation 2], or his volunteering or electioneering. I am not satisfied that the applicant, a Pashtun Shia Bangash would face a real chance of harm arising from his Tribe, his ethnicity or his religion. I am not satisfied that the applicant would face anything more than a remote, and therefore not a real chance of harm for sectarian violence in Pakistan. I am not satisfied that recent events in Afghanistan, would lead to him facing a higher chance of harm in Pakistan. I am not satisfied that the applicant will face a real chance of any harm in Pakistan because of his individual profile, his cumulative profile, his past experiences and background as set out in his claims or for any other reason or combination of reasons in the reasonably foreseeable future. I am not satisfied that he would face a real chance of persecution.

*Failed asylum seeker, time in the West, westernised lifestyle & attitude*

69. According to his June 2021 Submission to the Department, the applicant fears that his status as a man who has spent time in the west, and his adoption of a westernised lifestyle and attitude are reasons to fear harm upon return.
70. The applicant has self-evidently spent the last eight years living in Australia and I accept he has spent time in the West. However, though he claims to have adopted a “*westernised lifestyle and attitude*”, he has not offered any explanation for what he means by these terms, nor has he provided any examples of what actions, attitudes or activities constitute his “*westernised lifestyle and attitude*”. As I have noted above, the applicant has provided some photographs of himself in Australia, but in these images, he is wearing traditional Shia attire, and participating in traditional Shia religious activities and so they do not offer any support for his claim to have adopted a “*westernised lifestyle and attitude*”. Neither his June 2021 Submission to the Department, nor his October 2021 Submission to the IAA offered any other evidence in relation to these factors. While I accept, he has spent the last eight years living in Australia, the applicant has not provided any information on how he has been westernised, or, how this westernisation would be discernible to other persons, or how his westernisation might distinguish him in Pakistan, and in the absence of any supporting evidence, or even an explanation, he has not satisfied me that he can fairly be said to have adopted a westernised lifestyle, or a westernised attitude, whatever he means by those terms.
71. During his Protection Visa Interview, the delegate asked the applicant why his time in the West would be a problem for him upon return to Pakistan. In response, the applicant explained that the Taliban does not accept “*Western Ideology*” and believed that the ‘West’ has an anti-Taliban ideology. At the end of the second Protection Visa Interview, the applicant’s former representative explained that his time in the West meant he would be considered a person who opposes the Taliban. This explanation amounts to little more than having spent time in the West, he would naturally be assumed to oppose the Taliban.

72. The applicant has not claimed that he would take any active measures to oppose the Taliban if returned to Pakistan. He already concedes he does not support the Taliban, and to some extent, all of his protection claims revolve around this issue. He was not a supporter of the Taliban while he lived in Pakistan. As an adherent of the Shia faith who resided in Parachinar, he would be very unlikely to be a supporter of the Taliban, or any Sunni other extremist group in Pakistan and so it would appear that his time in the West would do little to alter his profile upon return. Given his circumstances, I accepted he might be imputed with anti-Taliban views. However, country information I have cited above, indicates that this is common to the Shai community in Parachinar, which sought Government assistance against the Taliban and so his circumstances would not be particularly unusual in Parachinar, nor would they distinguish him from other residents. I have already found he would not be of any interest to the Taliban, or other extremist groups upon return to Pakistan. I am not satisfied that his time in the West would lead to any harm.
73. On his own evidence, this applicant departed Pakistan legally on a genuine Pakistani Passport. This Passport has not expired and is still valid for use. The evidence before me suggests that as a returnee he may come to Government attention upon his return, and he would likely face questions about his departure<sup>52</sup>. Every returnee is interviewed by Pakistani officials upon arrival at the port of entry; however, in general, returnees are considered 'victims' and not 'offenders'. Pakistani citizens turned back because of violating other countries' rules of residence or overstaying or being refused entry are not prosecuted, since there would have been no violation of Pakistani laws. They are interviewed upon arrival and have to fill out a form but, in general, are free to go<sup>53</sup>. Given his legal departure, the applicant has not committed any crime in Pakistan and would not be detained. Returnees are typically able to reintegrate into Pakistani community without repercussions stemming from their migration attempt. 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<sup>54</sup>. There is no evidence before met to support his assertion that returning asylum seekers, including those of the applicant's profile, face a real chance of harm for seeking asylum or for their association with the West. I am not satisfied that he would face any harm as a failed asylum seeker in Pakistan.

### **Refugee: conclusion**

74. I have considered the applicant's claims for protection individually and cumulatively. I am not satisfied that any combination of his claims for protection would lead to him facing a real chance of any harm in Pakistan. I am not satisfied he has a well-founded fear of persecution.
75. 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**

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76. 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.

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<sup>52</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>53</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

<sup>54</sup> DFAT, "DFAT Country Report: Pakistan", 20 February 2019, 20190220093409

### **Real risk of significant harm**

77. 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.

78. 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.

79. I have found that this applicant would not face a real chance of harm arising from any of his claims for protection. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that he would not face a real risk of significant harm for these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

### **Complementary protection: conclusion**

80. 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**

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

## Applicable law

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### **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.