

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76191

AT AUCKLAND

Before: B L Burson (Member)
Counsel for the Appellant: C Curtis
Appearing for the Department of Labour: No Appearance
Date of Hearing: 7 July 2008
Date of Decision: 12 August 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a citizen of Afghanistan.

INTRODUCTION

[2] In essence, the appellant claims that, if returned to Afghanistan, he has a well-founded fear of being persecuted by the Taliban and/or their sympathisers because of comments his father made whilst there and because he has lived abroad for a number of years.

[3] What follows is a summary of the appellant's evidence in this regard. An assessment will follow thereafter.

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THE APPELLANT'S CASE

[4] The appellant was born in X, a small rural village comprising some 300 households, in Logar province in Afghanistan in the late 1970s. He is a Pashtun. He is the eldest of six children born to his parents.

[5] For as long as the appellant can recall, his father was chosen by the local community to be a community elder. This vested the appellant's father with authority in the village. He was often called to attend *jirga* (village councils) at which disputes between families in the village were mediated. He commanded much respect in the village.

[6] Originally working as a farmer, by the 1980s, the appellant's father had saved sufficient funds to open a textile shop in Kabul and was able to provide a better standard of living for the family. The appellant's father's shop was destroyed in the early 1990s during the civil war which erupted following the collapse of the Najibullah government. As the civil war intensified and the general level of insecurity grew, the appellant's father decided to take the family from X for their safety. In approximately 1992 they, along with the appellant's uncle and his family, travelled to the village of Y, and then to a larger town near to Kabul. They stayed in this town for some months but were again forced to move by increasing levels of generalised insecurity. The appellant's family and the uncle's family then moved together to Jalalabad.

[7] During the mid-1990s, the Taliban emerged in south-eastern and eastern Afghanistan and increasingly made their presence felt on the streets of Jalalabad. The appellant's father was opposed to the Taliban and their strict interpretation of Islam. He was particularly opposed to their insistence that educational opportunity be denied to women. Also, he did not agree with the type of religious education allowed by them. When the Taliban emerged in Jalalabad, the appellant's family, in common with many other inhabitants of the city, suffered minor harassment from them. Eventually, in 1995, the appellant's father decided the situation was only going to worsen and moved with the family to Pakistan. The appellant's uncle and the uncle's family travelled with them.

[8] In Pakistan the appellant's father tried to gain entry to an established refugee camp. Unable to afford the bribes necessary to be admitted to the camp, they set up a house in the area immediately surrounding the established refugee

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camp. Many other Afghan refugees did likewise. The appellant's family remained living in this location for approximately the next ten years. The appellant's father supported the family by selling vegetables at a roadside stall. The appellant began working as a butcher's assistant being paid in meat. In 1996, the appellant began receiving an education and was issued with a Baccalaureate in 2002. After gaining his Baccalaureate he was employed by a cousin, CC, in CC's textile shop which was situated in a nearby town. The appellant was paid between 2,000-2,500 *rupees* per month which was used to sustain the family.

[9] In 2004, the appellant married a New Zealand citizen. While together in Pakistan the appellant's wife became pregnant. The appellant applied to come to New Zealand as the spouse of a New Zealand citizen. Not wanting to give birth in Pakistan the appellant's wife returned to New Zealand. The appellant's daughter was born in March 2005. However, the appellant's visa had still not been issued and he remained in Pakistan. In June 2006, the appellant was finally issued with a visitor's permit and he came to New Zealand shortly thereafter. Towards the end of 2006 financial and personal pressures, caused by the appellant's legal inability to work, caused a strain in the marriage and the couple separated.

[10] As a result of what had been happening in New Zealand, the appellant was desperate to speak to his father. The appellant had endeavoured to stay in contact with his family in Pakistan since his arrival but it was expensive and difficult. He did so by contacting CC who would then pass on messages to his family. Very occasionally, his family members would telephone him from a public telephone booth, near to the refugee camp, and speak to him from there.

[11] Toward the end of 2006, the appellant became concerned that his father seemed, unusually, never now able to talk. Sensing that something was wrong, in January 2007, the appellant pressed CC to give him some news. Nothing was said in that conversation but soon thereafter CC telephoned the appellant and told him what he knew based on his own discussions with the appellant's father. CC told the appellant that his father had gone to Afghanistan in order to lodge a complaint about the killing of the uncle who had travelled with the appellant's family from X (the uncle) and his son (the cousin). CC told the appellant that the appellant's father, together with the appellant's brother, DD, his uncle and cousin, had returned to Afghanistan to try and rebuild their family home which had been destroyed in the civil war. The appellant was aware that his father might return to

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Afghanistan to do this because the possibility of doing so had been a topic of discussion prior to his departure to New Zealand. CC told him that his cousin and uncle had been killed while in X. The appellant was told that, after returning to X, his father had made public statements that it was a good thing that the new government was providing educational and other services for the country. His father had been warned by someone in the village to be careful about saying such things in public because there was a Taliban presence in that area. Despite this, the appellant's father had persisted in expressing these views to various people in the village, believing he was saying nothing wrong.

[12] CC told him that his father and brother only escaped death because his father had become unwell on the night in question and was unable to go to someone's house for dinner as invited. He had suggested that the appellant's uncle, cousin and brother go in his place. DD had decided to stay and look after his father but his uncle and cousin went. They were shot and killed on the way home. The appellant has no doubt that their killers assumed that his father and brother were with them. He was told that the same night, letters were distributed around the village warning that anyone who made statements in support of the Afghan government would meet the same fate.

[13] CC also informed the appellant that, after burying the bodies of the uncle and cousin in X, the appellant's father and DD returned to Pakistan for their safety. However, the appellant's father had then returned to Kabul to try and seek some redress for this killing and that this was where he was at that time.

[14] Some three or four months after the telephone conversation the appellant spoke to his father, who by then had returned to Pakistan. His father confirmed what CC had said as to what had happened. His father told him that when he went to Kabul to complain, the officials he saw said that because there were incidents of this nature happening all over Afghanistan there was nothing that could be done about the killing of the uncle and cousin. The appellant believes his father may have returned to Kabul briefly on another occasion to deliver some papers. However, nothing has happened about this complaint.

[15] [...]

[16] Approximately six months prior to the hearing the appellant again rang his family. He had again been troubled by the fact that whenever he was trying to

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have some contact with his family, he was never able to speak to his father. Eventually during one telephone call his sister broke down. His brother then picked up the telephone and told him that their father had died of natural causes some months earlier.

[17] The appellant is concerned for his safety if returned to Afghanistan. He believes he would be a target for Taliban sympathisers if he returned to X. They would see him as someone who shared the views of his father and supports the efforts of the government. Indeed, the appellant has been brought up to believe in his father's ideals of freedom. He does not agree with the strict dress and social codes that the Taliban favour. Were he to try and lead anything like what he considers to be a normal life he would become a target for them. He would be forced to conform to their very traditional views or be killed.

[18] The appellant believes he would be particularly at risk at night. During the night people who are Taliban sympathisers who live in rural villages kill people who do not conform to the Taliban's wishes. This is happening throughout Afghanistan. He could not live in Kabul. He has no relatives there and no means of supporting himself or paying rent for even basic accommodation. His mother and siblings remain in Pakistan. His mother is very ill and the family have had to move out following the death of his father because they cannot afford the rent. The appellant's mother and five siblings now live in a one-room accommodation of a basic nature where they do not have to pay rent. What money they earn pays for their basic subsistence and his mother's hospital bills. The appellant cannot join them because he does not have any formal right of entry into Pakistan.

The evidence of Hashem Slaimankhel

[19] The Authority heard evidence from Dr Hashem Slaimankhel. Dr Slaimankhel is an Afghani national who fled Afghanistan to Pakistan in the late 1970s where he remained for approximately a decade before coming to New Zealand as a refugee in the late 1980s.

[20] Dr Slaimankhel is a qualified doctor and is currently employed as the refugee community health worker by the Auckland District Health Board. He is on the board of trustees of the Auckland Regional Migrant Service, is chairman of an Islamic trust and is a member of the executive council of the New Zealand Muslim

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Association. He is the liaison officer for the Muslim Association for the Afghan community.

[21] In his capacity as liaison officer, Dr Slaimankhel endeavours to meet all the Afghans who arrive in New Zealand in order to provide them with the necessary support to assist them in making the transition to life in New Zealand. Dr Slaimankhel stated that, in his experience, it is often very difficult for Afghans to adjust as their life experiences in either Afghanistan, or typically in refugee camps in Pakistan, are substantially different from that which they encounter in New Zealand and this can pose problems.

[22] It was in this context that Dr Slaimankhel first met the appellant. This was some time around September 2006. At the time, the appellant appeared to be physically well and seemed happy. He was neatly dressed. In early 2007, Dr Slaimankhel again met the appellant after being contacted by the appellant's lawyer. [...] When he saw him again, he was shocked to see the negative change in the appellant's physical appearance. He talked with the appellant and learnt that he had separated from his wife and had been deeply affected by this. The appellant also informed him that a close relative had been killed in Afghanistan and this also was causing him much anguish and distress. He described the appellant as "not being in a good space". [...]

[23] Dr Slaimankhel further explained that, viewed from the perspective of Afghani customs, it was normal that his family would not tell him about the deaths of his father, uncle and cousin as a matter of course. He explained that it was not unusual for family members who were not present in the country where the death occurred to not be informed. The geographical separation meant that there was little the family member could do to provide support for the grieving family members who were present in the place where the relative died and so they often were not informed. Dr Slaimankhel explained that this is exactly what he himself had done in relation to his own father's death. When his father had passed away here in New Zealand, he did not contact his sisters or other close family members who were living in Pakistan to inform them of his death for many months. It was only when, some months later, he travelled to Pakistan that he informed them that their father had passed away.

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[24] Dr Slaimankhel stated that when he learnt of the appellant's father's death from the appellant some months prior to the hearing he arranged for the elders in the Afghani community to hold a prayer session for the appellant's father, in the appellant's presence, in order to ease his pain.

[25] Dr Slaimankhel also told the Authority that the last time he returned to Pakistan, in late 2007, he did not return to his home province in Afghanistan. Although he wished to do so, he believed from what he had heard that it was too dangerous for him to be present in his home province. He told the Authority that within the Afghan community it is generally well known that persons who return to more rural areas from Western countries are quickly identified in their local community. There are reports of persons who have returned from Western states who have been targeted by Taliban sympathisers on the basis that they are perceived to be supporters of the countries who have a military presence in Afghanistan. For that reason, he decided that it was unwise for him to attempt to return to his home village to see the state of his family's land holdings even after a lengthy time away.

[26] Dr Slaimankhel stated that it would be very difficult for a person like the appellant to move to another village or even Kabul to escape any problems he had in his own village. Afghan villages and even suburbs in cities are closed communities and outsiders are generally treated with suspicion and mistrust. There is a real possibility that they would be considered to be government spies by persons loyal to, or sympathetic with, Taliban or Taliban-like movements. Dr Slaimankhel explained that he would not feel safe moving from his home village into another village in the event he faced any trouble in his own village.

Documents and submissions

[27] On 7 April 2008, the Authority received a memorandum of counsel dated that day. [...]

[28] [...]

[29] On 1 July 2008, the Authority received a letter from counsel enclosing a medical certificate in relation to the appellant confirming that he suffers from depression and the medication he had been prescribed in respect of that diagnosis. During the hearing counsel addressed the Authority orally in respect of

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the appellant's entitlement to refugee status and provided the Authority with a partial copy of the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum Seekers dated December 2007 ("UNHCR Guidelines").

[30] On 23 July 2008, the Authority received further submissions from counsel together with further country information relating to Taliban activity and sympathies in the Pakistani North Western Frontier province and in Peshawar.

[31] All of this material has been taken into account in reaching a decision in respect of this case.

THE ISSUES

[32] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[33] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[34] The Authority accepts the appellant is a credible witness. His evidence was generally consistent with that which he had given previously. While the appellant did have some difficulty in recalling dates and times with precision, this is entirely

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consistent with the appellant's personal background and medical problems as presented in the medical notes produced to the Authority. The Authority also notes the evidence of Dr Slaimankhel regarding the cultural practices surrounding informing close relatives of deaths when they are overseas. Weighing everything in the round, the Authority concludes that the appellant has given truthful evidence with such clarity as he is presently able to provide. His account is accepted in its entirety.

A well-founded fear of being persecuted

Country information as to deterioration in security generally

[35] In her closing submissions, Ms Curtis cited the Authority's recent decision in *Refugee Appeal No 76190* (3 July 2008), where the situation in southern and eastern Afghanistan was considered. Ms Curtis submits that, although this appellant is from a different province from that of the appellant in *Refugee Appeal No 76190*, the general country conditions described therein are relevant to the assessment of the risk to this appellant. The Authority relevantly noted in that case:

"[29] The general security situation in Afghanistan has deteriorated during 2007. It is reported in "UNHCR's Eligibility Guidelines for Assessing the internal protection needs of Afghani asylum-seekers", UNHCR (December 2007) that violence linked to armed conflict has escalated along with the reduction in the reach of governmental influence and control in many parts of the country:

"In 2007, violence linked with armed conflict was the worst since the fall of the Taliban in 2001 and is increasingly affecting civilians. In 2007 indiscriminate insurgency-related attacks were reportedly at least twenty per cent higher than in 2006. An average of 548 incidents per month were recorded in 2007 compared to an average of 425 per month in 2006. By the end of September 2007, there have been over 100 suicide attacks compared to 123 in the whole of 2006."

and elsewhere at page 62 (*supra*):

"The re-emergence of previous and new militia commanders in many parts of the country and escalating violence due to the insurgency require particular consideration of possible risks emanating from non-State actors. The reach of the central Government in a number of provinces in the eastern, southeastern, southern, central and western parts of the country has been significantly reduced due to the growing number of armed attacks and reported *de facto Taliban* control. Furthermore, in the northern part of Afghanistan factional violence and criminality continue to pose significant challenges to the authority of the government in a number of areas."

...

[31] The number of refugees returning from Pakistan has reduced because of greater insecurity in Afghanistan. In "UN prepares for repatriation of over half a million refugees" *IRIN News* (5 December 2007) it is reported that:

"The security situation and a lack of economic opportunities are two major concerns which have affected repatriation trends to Afghanistan in the past two years, Afghan officials and the UNHCR said.

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Insecurity and lack of land, shelter and livelihoods in Afghanistan are the main obstacles to return for refugees said the Appeal, which was released on 4 December.

Insecurity is also hampering aid agencies access to volatile parts of the country.

Almost half of Afghanistan's 652,225 square kilometre territory is considered 'extremely risky' by UN agencies, according to a leaked aid map of Afghanistan published by a British newspaper, *The Times*."

[36] Additional country information sourced by the Authority for the purpose of this appeal confirms the general picture painted in *Refugee Appeal No 76190*. Jane's *World Insurgency and Terrorism Report: Taliban* (16 April 2008) (the Jane's report) at page 2, clearly establishes that the insurgency being conducted by the Taliban against the NATO-led International Security Assistance Force (ISAF) substantially increased – from 176 in 2005 to 322 in 2006. In 2007, this figure further increased to 559.

[37] A similar trend is noted in the recent declaration by the Agency Coordinating Body for Afghan Relief (ACBAR), the institution comprising 100 national and international non-governmental organisations carrying out humanitarian and development work in Afghanistan. The *Statement on the Protection of Civilians in Afghanistan* (1 August 2008) ("the ACBAR statement") provides a graphic picture of the extent to which the security situation is worsening and is worth setting out in full. The ACBAR statement reads:

"WE, the 100 national and international NGO members of ACBAR, express our grave concern about the deteriorating security situation in Afghanistan and the serious impact on civilians. There has been a surge in the number of civilian casualties caused by all sides, a spread of insecurity to previously stable areas, and increasing attacks on aid agencies and their staff.

So far this year the number of insurgent attacks, bombings and other violent incidents is up by approximately 50 per cent on the same period last year. The number of insurgent attacks for each of the months of May (463), June (569) and July is greater than the number of such attacks in any other month since the end of major hostilities following the international intervention in 2001. Prior to May 2008, the highest number of insurgent attacks in a single month was 405 in July 2007.

This year 2,500 people have reportedly lost their lives in the conflict and whilst exact figures are not yet available, this could include up to 1,000 civilians. According to initial estimates, there have been over 260 civilian casualties in July of this year, which is higher than any other month in the last six years.

Around two-thirds of the reported civilian casualties can be attributed to insurgent activities, especially the increasing use of suicide bombings and other indiscriminate attacks in civilian areas and the use of civilian property from which to launch attacks. The increased number of air strikes by international military forces, which are up by approximately 40 per cent on last year, has also contributed to the rising civilian death toll.

Searches conducted by Afghan and international forces have on some occasions involved excessive use of force, extra-judicial killings, destruction of property and/or mistreatment of suspects.

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In the south, south-east and east of the country insurgents are mounting an increasingly vigorous, systematic terror campaign of threats, abductions and executions aimed against members of the civilian population.

Insecurity has spread to areas which were previously relatively stable in parts of north, northwest and central Afghanistan, such as Badghis, Ghor, Farah and Kunduz, including to provinces close to and bordering Kabul, such as Ghazni, Logar and Wardak.

The escalating violence has forced the closure of a large number of schools and health facilities in the south; is hindering the implementation of vital development projects; and has caused significant levels of internal displacement.

Aid organizations and their staff have been subject to increasing attacks, threats and intimidation, by both insurgent and criminal groups. This year there have been over 84 such incidents, including 21 in June, more than in any other month in the last six years. So far this year 19 NGO staff have been killed, which already exceeds the total number of NGO workers killed last year.

This situation has forced many aid agencies to restrict the scale and scope of their development and humanitarian operations. With a severe drought in some parts of the country and dramatically increased food prices, over four million Afghans are facing extremely difficult circumstances. Young children, and pregnant and breastfeeding women are at especially high risk. Increasing and spreading insecurity is jeopardizing the delivery of essential humanitarian assistance to these people and threatening their lives and livelihoods." (Footnotes omitted)

[38] The Taliban campaign against the Afghani National Government and ISAF is well known. Less understood is that the insurgency is not a homogenous enterprise. While certainly, the insurgency is driven to some extent by a hard-core radical Islamic ideology linked to the old Taliban regime of the 1990s, as a report by the Senlis Council, an international non-governmental organisation, *Afghanistan – Stumbling into Chaos: Afghanistan on the Brink* (11 November 2007) makes clear, this aspect of the insurgency is substantially complimented less ideologically driven concerns. This second aspect is described at page 31 as being:

"... a grassroots, opportunistic insurgency, driven not by political or religious concerns but mainly by economic incentives and grievances held against the government and the international community. Structural unemployment and extreme poverty provide an ideal recruiting ground for the grassroots insurgency.

As a disparate assemblage of several different groups, this second insurgent movement has no clear political purpose and lacks the ideological fervour of its counterpart. The ferocious fighting undertaken by this group is occupying the majority of NATO-ISAF assets, preventing it from undertaking its core mission. As well as unemployment and poverty, there are many other factor propelling people to join the Taliban."

[39] The Jane's report, at page 5, also noted that apart from recruiting among Afghan refugee camps and *madarssah* students in Pakistan:

"Coalition sources point to financial rewards as a major factor in the insurgents' ability to recruit fighters in impoverished areas with little employment. A senior member of the coalition told Jane's in Mid-2006: There are kids they recruit for a

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week or so who are no more than Taliban mercenaries. They are not particularly ideologically driven, they are just persuaded on the day. “

[40] The essential point that emerges is that, *at the present time*, both the radical-Islamic and grassroot aspects to the insurgency are in an escalatory phase as ideology, poverty and a sense of grievance increasingly combine and fuel violent conflict. As a result, areas of Afghanistan previously unaffected are becoming caught up in the fighting between the Afghani National government and ISAF forces on the one hand, and the various insurgent groups, including but not limited to the highly radicalised Taliban fighters, on the other. Civilians are increasingly being caught up in the fighting in both a targeted and indiscriminate manner.

Country information as to Logar province

[41] As to the extent to which Logar province is affected by the increase in insurgent activity, the ACBAR statement lists Logar as one previously peaceful area now caught up in the conflict. Similarly, the Jane’s report, at page 5, describes the Taliban areas of operation in the following terms:

“In the period 2002-2003, the Taliban confined its operations against US forces to the east and south east of Afghanistan. Having re-grouped and expanded since then, it is demonstrating a capability to mount attacks elsewhere. It is unlikely to spread its activities to the extreme west or the north, but most other areas of the country now appear to be under threat.

Afghan and coalition officials believe that Taliban leaders based in Pakistan have divided their operations in southern Afghanistan into three areas of control. From Quetta, operations are directed in Kandahar, Helmand, Uruzgan and sometimes Farah province. From Miranshah, leaders direct operations in Khost, Paktia and Paktika. From Peshawar, they direct operations in Jalalabad, Kunar, Logar and Laghman. Pakistan denies providing safe-haven or support to the Taliban.”

[42] In UNHCR *Afghan Security Update Relating to Complimentary Forms of Protection* (31 March 2008) (“the UNHCR security update”), the UNHCR advocate for complimentary forms of protection to be considered by refugee receiving states for persons originating from areas in which a number of incidents linked to the insurgency, are reported to have taken place within the previous months. At page 2, Logar is included on this list and the update describes the affected area of Logar as being:

“The entire province apart from the highway from Kabul to Gardez is assessed as being insecure.”

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[43] The Authority further notes concern that Logar province is becoming increasingly embroiled in the anti-government insurgency is recorded in *The Situation in Afghanistan and its implications for International Peace and Security: Report of the Secretary General United Nations General Assembly UN Doc A/62/7222* (6 March 2008) at paragraph 18.

[44] As for the types of incidents being reported in Logar and other named provinces, the UNHCR security update refers, at page 1, to:

“Systemic acts of intimidation, involving arbitrary killings, abductions and other threats to life security and liberty by anti-government elements and by regional war lords, militias, commanders and criminal groups including on the highways.”

This picture is confirmed by the Jane’s report at page 8:

“Intimidation plays an important role in the Taliban insurgency by deterring local populations from co-operating with the government. Intimidation tactics have included listing potential targets and carrying out executions to discourage links with the government and coalition. Local Mullahs and provincial governors and councillors are particularly vulnerable to intimidation as the key figures in influencing Afghan communities, and the Taliban has threatened, and in some cases killed, those who have shown support for the government. A suicide bomber killed Abdul Hakim Tasniwal, the governor of Paktia province, on 10 September 2006. The Taliban claimed responsibility for the attack, which occurred outside Tasniwal’s office in Gardez.

Night letters (unsigned leaflets sent clandestinely) have also been a popular means of propaganda among Taliban fighters. Such letters often carry orders or threats, but in some cases the messaging has been sophisticated and designed to capitalise upon feelings of disillusionment with the government.”

[45] The distribution by Taliban of warning letters is reported by the UNHCR Guidelines at page 72:

“In Logar province, leaflets showing the photo of a victim who worked with a rural development NGO (DACAAR) killed in Gazni province were found with threatening statements. In November 2003 leaflets were also found in Wardak province that warned Afghans of the consequences of working with NGOs.”

[46] The report by the Senlis Council, at page 36, also observes in relation to the Taliban:

“A central part of their propaganda campaign consists of regular visits, threats (eg through “night letters”) and pamphlet distributions through southern Afghanistan’s most remote areas. In addition Taliban media spokespersons continuously report their claims of victories or of inflicted enemy casualties, and refute claims of ISAF and the Afghan government.”

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Country Information as to the importance of family

[47] In *Refugee Appeal No 76190*, the Authority noted at paragraph [34] the importance of family and community structures:

“[34] ...The importance of family and community structures and the resettlement of those returning from outside the country is highlighted by the UNHCR (*supra*) at page 60:

“The traditional family and community structures of the Afghan tribal system constitute the main protection and coping mechanism. The support provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence. Return to places other than places of origin or previous residence, may therefore expose Afghans to insurmountable difficulties, not only in sustaining and re-establishing livelihoods but also to security risks. Security risks may include, *inter alia*, arbitrary detention and arrest, targeted killings based on ethnic rivalries and family-based conflicts.”

Application to the facts

[48] After weighing everything in the round, the Authority is satisfied that should the appellant return to Afghanistan he has a well-founded fear of being persecuted.

[49] Country information and the evidence of Dr Slaimankhel make clear that, in Afghanistan, family connection is everything. The only place where the appellant has any familial connection is the village of X where he would inevitably be associated with his late father, a village elder who was forced to flee the village following his repeated statements to other villagers praising the efforts of the Karzai government. The appellant’s claim that, as the eldest son, he would be considered by Taliban sympathisers to be the inheritor of his father’s views seems plausible in the context of rural Afghanistan. In such a society, judged against the background of worsening insurgency-related violence in Logar, the idea that the appellant may be threatened by Taliban sympathisers in X because of his father’s public declarations of support for the government and former position as a village elder cannot be dismissed as far-fetched or speculative.

[50] Moreover, having regard to the evidence of Dr Slaimankhel, the Authority also finds there is some force in Ms Curtis’ submission that the fact he has chosen to live in a country (New Zealand) which has military forces engaged in ISAF activities, albeit in another province, may also serve to increase the suspicion with which he is viewed by local Taliban sympathisers and add to the risk profile his familial connections and history creates.

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[51] For the above reasons, the Authority therefore answers the first principal issue in the affirmative.

Convention ground and nexus

[52] As explained in *Refugee Appeal No 72635* (6 September 2002) at [173], the Convention ground must contribute to the appellant's predicament – that is, to his risk of being persecuted. In this case there can be no doubt that the appellant's predicament is contributed to by his familial relationship to his father. His membership of this family constitutes a particular social group. The second principal issue is also answered in the affirmative.

[53] That, however, is not the end of the matter. It is necessary on the facts of this case to consider whether the appellant has a viable internal protection alternative available to him away from X in another part of Afghanistan. The only realistic option for assessment is to consider whether the appellant has a viable internal protection alternative available to him in Kabul. It is to this issue the Authority now turns.

Internal Protection Alternative (IPA)

[54] Because the issue of internal protection arises in this case, the decision of this Authority in *Refugee Appeal No 71684/99* (29 October 1999) requires a third and final issue to be addressed:

(a) Can the appellant genuinely access domestic protection which is meaningful?

In particular:

- (i) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (ii) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (iii) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

This is an abridged version of the decision. Some particulars have been removed from or summarised in the decision pursuant to s129T of the Immigration Act 1987. Where this has occurred, it is indicated by square brackets.

[55] The Authority notes that the appellant's familial connections are limited to X. There is no reason to find that this profile would be known in Kabul. While Taliban attacks do take place in Kabul, unlike rural areas, the Taliban do not enjoy such a measure of *de facto* territorial control so as to be able to operate with impunity in Kabul against persons perceived to be opposed to them. There is no country information before the Authority to show that persons such as the appellant are being targeted by Taliban sympathisers in Kabul. His profile is substantially lower than that of the appellant in *Refugee Appeal No 76190*.

[56] While it may be the case that by moving to Kabul the appellant may remove himself from the attentions of the Taliban sympathisers in his village, his being in Kabul is likely to expose him to a real risk of suffering further serious harm. He has no family support available to him in Kabul. When his father went to Kabul he had to stay in a hotel because of the absence of family links. The Authority further notes country information establishing that the current upswing in the insurgency since 2006 has increased the numbers of internally displaced persons (IDPs) coming to Kabul which, in turn, has placed strain on the city's capacity to provide them with basic levels of social welfare. The Report by the Internal Displacement Monitoring Centre *Afghanistan: Fighting in the south sets of new displacement* (22 December 2006) notes:

"In general, the biggest challenge meeting Afghan families when they return home is the widespread poverty in their home areas. Most of those who returned to Afghanistan during 2002 and 2003, as well as many internally displaced, headed for Kabul and the main cities. While the absence of economic opportunities in rural areas and the reality of urban migration suggest that this trend will continue, the absorption capacity of urban areas, in particular Kabul, is reaching its limits (AREU, 2 November 2006). Since late 2001, Kabul's population has increased from 1.5 million to an estimated 4.5 million people. During the same period, the physical size of Kabul has expanded by only 35 percent (USAID, 3 May 2006).

The massive growth of urban slum areas might hide significant numbers of returnees who have found it impossible to reintegrate in their former home areas and ended up in a situation of renewed internal displacement. The Afghan Independent Human Rights Commission (AIHRC) concludes in a study that a lack of basic economic and social rights is the primary cause of ongoing displacement and the main obstacle to durable integration of internally displaced persons (AIHRC, May 2006)."

See also in this regard C Gall "As the Fighting Swells in Afghanistan, So Does a Refugee Camp in its Capital" *New York Times* (3 August 2008).

[57] The likelihood that the appellant would end up in an IDP camp in Kabul is all too real. In no way does this provide meaningful protection to him. [...]

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[58] Given these factors, the Authority is satisfied that there is no viable IPA available to the appellant.

CONCLUSION

[59] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B L Burson"

B L Burson
Member