

**Asylum and Immigration Tribunal**

MI (Hazara – Ismaili – associate of Nadiri family) Afghanistan CG [2009] UKAIT 00035

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 18<sup>th</sup> December 2008**

**Before**

**SENIOR IMMIGRATION JUDGE ALLEN  
SENIOR IMMIGRATION JUDGE SPENCER**

**Between**

**MI**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the appellant: Mr M Symes, counsel, instructed by IAS (Tribunal Unit)  
For the respondent: Mr J Gulvin, Home Office presenting officer

*A person of Hazara ethnicity or of the Ismaili faith or who is associated with the Nadiri family is not likely to be at a real risk of serious harm in Afghanistan by reason of any of these factors alone or a combination of any of them, although different considerations would apply if an Ismaili's own home area were to be in an area controlled by the Taliban, given the large scale massacre of Ismailis which took place when the Taliban took over the province of Baghlan in 1998. In such a case, however, he would ordinarily be safe in Kabul.*

## **DETERMINATION AND REASONS**

### The background

1. The appellant is a citizen of Afghanistan, born on 1<sup>st</sup> January 1977, who arrived in the United Kingdom on 1<sup>st</sup> May 2002. His appeal against the decision of the respondent, made on 28<sup>th</sup> August 2004, to remove him from the United Kingdom to Afghanistan, following the refusal of his asylum and human rights claims, was dismissed on asylum grounds and on human rights grounds after a hearing before an adjudicator, Mr N P Dixon, in a determination promulgated on 7<sup>th</sup> January 2005.
2. On 14<sup>th</sup> March 2005 the appellant was given leave to appeal to the IAT and in a determination promulgated on 24<sup>th</sup> May 2006 the AIT found that the original Tribunal did not make a material error of law. On 11<sup>th</sup> October 2006 Pill LJ granted the appellant leave to appeal to the Court of Appeal. Before the Court of Appeal it was agreed by the parties that neither the adjudicator nor the Tribunal gave adequate reasons for concluding that the appellant was not at risk on return despite the circumstances in which he was forced to leave Afghanistan and that the position of Jamiat-i-Islami was not properly considered in assessing the risk faced by the appellant on return to Afghanistan. It was agreed that the appeal should be allowed to the extent of remitting it to a differently constituted tribunal of the AIT for a full reconsideration. On 4<sup>th</sup> January 2007 by consent the Court of Appeal quashed the decision of the AIT and ordered that the appeal be remitted for reconsideration before a differently constituted tribunal of the Asylum and Immigration Tribunal. Thus the matter came before us.
3. Mr Symes did not call the appellant to give evidence. He relied upon the findings of fact made by the adjudicator, which were not challenged. He also relied upon an expert report of Dr Antonio Giustozzi, dated 30<sup>th</sup> September 2008. Mr Symes indicated that Dr Giustozzi was unwilling to attend to give oral evidence. He relied upon a skeleton argument, dated 12<sup>th</sup> December 2008, and various items of background evidence together with a schedule of citations from the country evidence. Mr Gulvin relied upon the COIR on Afghanistan, dated August 2008, and the determinations of the Tribunal in PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089 and RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013. Since the hearing we have become aware of the publication of a recent COIR on Afghanistan, dated 26 June 2009, but it is not significantly different in content in relation to any of the issues which arise in this appeal as to make it necessary to reconvene the hearing or invite further submissions from the parties' representatives.
4. In paragraph 20 of his determination the adjudicator said that he found the appellant to be a credible witness. In paragraphs 9, 10 and 11 he set out a summary of the appellant's claim. The appellant claimed that he would face mistreatment on return to Afghanistan due to his religion as a Shia Ismaili, his ethnicity as a Hazara and his political opinion as a supporter of Sayed Jaffar Nadiri and a member of Fidayan Hassan Sibah. In 1995 the appellant was a medical student in Mazar-i-Sharif when the spiritual leader of the Ismaili sect, Mr Sayed Mansoor Nadiri, asked him to devote himself to his service in the Kayan valley in the province of Baghlan. In 1996 the appellant was appointed head of the Fidayan Hassan Sibah group. The appellant

had direct contact with Mr Sayed Mansoor Nadiri, his son and his deputy. His task was to encourage their friends to become members of the Fidayan group, which was responsible for preaching about the Ismailia sect to people, for distributing religious material in books and encouraging people to pay their allegiance to the spiritual leader. After the Northern Alliance forces were defeated by the Taliban, the area of Kayan came under the control of the Taliban. The appellant's family were killed in a Taliban massacre in 1998 and the appellant was imprisoned and tortured by the Taliban from 1998 to 2000 because they wanted to know about the activities of the Fidayan group. A senior member of the Taliban, a Mr Molavy Bahreem, had arrested the appellant, although allowing him to travel to Pakistan and obtain treatment for his injuries. The appellant returned to Afghanistan in 2001 after the fall of the Taliban. Jamiat-i-Islami had taken over the area but the former governor, Sayed Jaffar Nadiri, fought back and asked for the assistance of the appellant's Fidayan group. Mr Nadiri's forces were defeated, the appellant's house was raided and people from his group were killed. The appellant went to stay with a relative in another part of Baghlan before leaving Afghanistan.

#### The evidence of Dr Antonio Giustozzi

5. In his report Dr Giustozzi said that the Ismaili community in Afghanistan was composed of two different ethnic groups: Hazaris, who were the majority, and Tajiks, also known as "mountain Tajiks" because other (Sunni) Tajiks saw them as a separate ethnic group. The mountain Tajiks and Ismaili Hazara had a long history of suffering marginality and discrimination in Afghanistan. There were few Ismailis living in Kabul and they tended to be from the wealthiest households so they were not quite so vulnerable to discrimination. In Kabul too, however, access to employment would be limited for an Ismaili. Dr Giustozzi said that Hazaras in general, regardless of their faith, had long been discriminated against in Afghanistan and had limited access to jobs in the state administration and in the armed forces and to higher education. Hazaras had distinctive facial features (Mongoloid), which made them easy to distinguish from most other ethnic communities. Kabul had a large Hazara community which was the poorest among the various ethnic communities of the city. They were largely confined to menial jobs and were almost completely excluded from the security services. After 2001, however, the conditions of the Hazara community in Afghanistan in general and in Kabul in particular had greatly improved; much of the new emerging intelligentsia and middle class was Hazara, mainly because Hazaras invested heavily in the education of their offspring in the 1980s and 1990s and now reaped the benefits of this strategy of survival. It could not be said that Hazaras were discriminated against in Kabul, at least not to a major extent. The situation remained more critical in Baghlan.
6. Dr Giustozzi said that Ismaili Hazaras faced discrimination not just because they belonged to the Hazara ethnic group but also, as Ismailis, even at the hands of their fellow Hazaras, who belonged to the mainstream Twelver Shia community. Many Sunni fundamentalists, especially if they leaned towards the Wahabi brand of Islamic fundamentalism tended to dislike Shia Muslims but others, like those belonging to Jamiat-i-Islami, were more conciliatory towards them. He said that among Sunni fundamentalists of all persuasions there was a widespread dislike for Ismailis, which sometimes, in Dr Giustozzi's words, took the form of an explicit invitation to violence. It was in part for this reason that in 1998, when the Taliban took over the province of

Baghlan, they carried out large scale massacres of the local Ismaili population. Dr Giustozzi said that the leadership of Jamiat-i-Islami was not per se overtly hostile to Ismailis and at times reached local alliances with some Ismaili factions, but within its rank and file many had a more aggressive attitude towards Ismailis, whose religious practice differed radically from that not only of Sunni Muslims but also from that of Twelver Shias.

7. Many Sunni fundamentalists considered the Ismailis not to be Muslims at all and labelled them as infidels. The recent involvement of the Aga Khan Foundation (an international Ismaili organisation) in reconstruction activities in Afghanistan had led to an improvement of the image of the Ismailis among the Afghan elite, but at the same time might have exacerbated resentment among grassroots fundamentalist groups. The hostility of fundamentalists towards the Ismailis was exacerbated by the fact that many Ismailis, as a reaction, had openly supported secularist parties and politics. Ismailis were also weakened by the fact that none of them was a member of the current government nor did they hold significant positions in the administration or the police. During the 1979 to 1992 period, when Afghanistan was ruled by Communists, many educated Ismailis joined the ruling party, being attracted by its secular policies and by the fact that new avenues of social advancement were open to them. Many Ismailis joined the pro-government militias and fought on the Communist side during the period up to 1992 when the Communist regime fell and a civil war among the factions started.
8. Starting from 1992 many Ismailis joined the party of General Rashid Dostom, Junbesh-i-Melli (National Front), attracted by its secularist stance. At that time all other parties active in Afghanistan belonged to various strands of Islamic fundamentalism. As a result, Ismailis were suspected by many Islamic fundamentalists of leaning towards the left wing and secular parties, a fact that reinforced their hostility towards them. Even when their religious identity was concealed, often Ismaili Hazaras attracted hatred from both Islamic fundamentalists and Pashtun nationalists in Afghanistan, due to a history of conflict. During the civil war, the largest Hazara party, Hizb-i-Wahdat (Unity Party), was aligned against the coalition led by Jamiat-i-Islami (Islamic Society), a Sunni fundamentalist party, which was the main power within the current administration. Although Hizb-i-Wahdat was also part of the current administration, its ministers occupied positions of little significance both in political and financial terms, which had a negative impact on their patronage and *clientelist* politics and on its lobbying power within the government. Inside Kabul, Wahdat and Jamiat had often clashed, even after the fall of the Taliban and Jamiat supported a number of small parties and factions among the Hazaras, which opposed Hizb-i-Wahdat.
9. Dr Giustozzi said that in the past Ismailis had suffered discrimination even from members of Hizb-i-Wahdat. Ismailis as a result were excluded from occupying high positions within the party although many of them fought in its ranks and occasionally achieved positions of leadership in the party militias. Recently the clerical leadership of Hizb-i-Wahdat had taken initiatives to bridge the gap with the Ismailis, offering to guarantee a role for them within the ranks of the party. Among many lower level clerical leaders of the party, however, there was still reported to be hostility towards the Ismailis and it was unlikely the Ismailis would be able to rely on Hizb-i-Wahdat for support in the near future.

10. Dr Giustozzi said that after the fall of the Taliban regime the Ismaili community split internally. A faction led by the Nadiri family tried to reassert its leadership and claim back the governorship of Baghlan province at the end of 2001. The claim was rejected by the Jamiatis who felt they were in a position to dominate Baghlan entirely. After some initial scuffles Nadiri responded by launching an armed assault on the town of Pul-i-Khumri in Baghlan province in late 2001. The attempt was defeated but renewed clashes were reported in the following months between supporters of the Nadiri family and those of a new leader appointed by the central government, whom the Nadiri accused of being a puppet.
11. Dr Giustozzi said that there were in Afghanistan three layers of discrimination against the Ismailis: ethnic, religious and political, of which the religious one was the most important. With the important exception of Ittehad-i-Islami (Islamic Union), the parties which held real power in Kabul nowadays did not actively pursue a policy of discriminating against the Ismaili community as such. Some groups within the community, however, might be targeted because of their opposition to the authorities appointed to lead their community and because of their ethnic-nationalistic feelings. Apart from any risk of persecution at the hands of rogue individuals within the government security agencies, prejudice against the Ismailis was deeply embedded amongst the rank and file of Islamic fundamentalist parties and it would take a long time to eradicate these prejudices, even in the presence of an active policy promoting reciprocal coexistence of different communities in Afghanistan, which at present did not exist. As a result, Ismailis were practically excluded from public office in Afghanistan but in the cities there were no reports of direct attack or harassment of Ismailis. This might be due in part to the fact that few Ismailis lived in any city; their only urban presence was in Faizabad in Badakhshan and in Pull-i-Khumri.
12. Dr Giustozzi said that the legacy of war remained and tension between ethnic communities was the highest in Baghlan in north-eastern Afghanistan. After 2001 no governor had been able to handle the situation successfully and all had been replaced by President Karzai after short periods in office. In 2003 Nadiri put forward his candidature to the constitutional Loya Jirga but was forced to step down by a riot organised by conservative Islamist groups, who almost lynched him at the polling station where the selection of the candidates was taking place. During the parliamentary elections of December 2005, in which Sayed Mansur Nadiri was a candidate, attempts were made to prevent the mobilisation of the Ismailis in his favour. Dr Giustozzi was sent by UNAMA to reassure the Ismailis of the Kayan valley in April 2004 that they would be registered for the elections but on the way he was first stopped by the state security and then by the police and warned not to travel to Kayan, despite the fact that the Bonn Agreement explicitly allowed the UN to travel everywhere without the need to request any authorisation. After he visited Kayan valley the police raided the villages and Ismaili houses in Pull-i-Khumri, arresting several people and beating and harassing others. Nonetheless under UN protection Nadiri was this time able to run in the elections, emerging as the most voted for candidate in Baghlan and obtaining a large majority of the Ismaili vote.
13. As a result the presence of the Nadiris and their followers was re-established in Baghlan. Dr Giustozzi said that tension remained, however, as the Ismailis had not been able to reclaim any influence in the provincial administration. While in 2004 President Karzai started appointing Pashtun governors, Hazaras had been kept out

of positions of power and had little influence over the government of Baghlan. In 2005, moreover, signs started emerging that the Taliban were infiltrating Baghlan again. Attacks on peacekeepers had been reported since that year. In December 2006 23 suspected insurgents were arrested in Kunduz and were said to be part of a network extending to Baghlan province too. Such networks included 250 activists of the Taliban according to security officials. According to UN sources small groups of Taliban were active among the Pashtuns of northern Baghlan and among the Tajiks of Andarab. The worsening security situation in Baghlan contributed to raised tension in the province. He said Afghan police in Pull-i-Khumri (the administrative capital of Baghlan) which were dominated by the Jamiat-i-Islami would have little sympathy for the appellant and little interest in protecting him. The Baghlan environment remained highly unstable with occasional flares of violence and particularly weak law enforcement and it was not recommended that the appellant return there even if his family was likely to own property there. Dr Giustozzi said that it was clear that there would be a significant risk to the appellant if he returned to Baghlan.

14. Dr Giustozzi said that in terms of relocation to a major city like Kabul, he thought that the risk to the appellant would be much lower as few Ismailis lived in Kabul and their presence was hardly noted. The appellant, however, would not be able to hide as his whereabouts and personal background were likely to become known, as he would have to give references and details about his family and place of origin when seeking rented accommodation or looking for a job. He expressed the opinion that Jamiatis would not actively seek him out in Kabul given the current situation. They were happy to keep Nadiri's followers as weak as possible in Baghlan, but they were not bent on persecuting them individually. The threat to the appellant was one of harassment and mistreatment by Sunni religious zealots, whose influence and activism was on the rise because of the spreading insurgency and xenophobia - a risk present in Kabul too. Dr Giustozzi said that from late 2004 policing of Kabul started deteriorating again following the sacking of a number of officials within the ministry. A spate of attacks against NGOs occurred in Kabul, some carried out by men in police uniforms. Men in uniforms manning roadblocks were widely reported to ask for money from passing cars. As early as 2003 a report by Amnesty International detailed abuses and corruption in the police but the situation appeared to have worsened since then. A detailed and very critical report from AREU (Afghan Research and Evaluation Unit) appeared in July 2007 which said:

"A major failure of reform efforts for the past five years has been the lack of political will to proceed beyond recognising and talking about the problem of a corrupt, factionalised and criminalised Ministry of Interior. Donors should make their assistance more conditional on comprehensive top down reform of the MOI, without which their contributions towards police reform efforts are likely to be wasted."

15. Another report detailing inefficiencies and abuses by Afghan police was released by the International Crisis Group in August 2007, while the press had been repeatedly reporting the issue. The Afghan Independent Commission for Human Rights received 775 complaints of human rights violations by the Afghan security forces in the Kabul region in the year to June 2003, 881 in the year to June 2004, 488 in the year to May 2005 and 410 to May 2006. No member of the security forces had been punished for any of these violations. Dr Giustozzi said that as far as the security forces were concerned information had become available on the NDS (Afghan Security Service)

over the last year which confirmed that their activities remained characterised by widespread abuses.

16. Dr Giustozzi said that given the extremely bad security situation in Baghlan the appellant would have to relocate to a major city like Kabul. He would be unlikely to face a specific security risk in Kabul but would experience very serious personal difficulties in finding accommodation and a job. Unemployment was estimated varyingly at 40% to 70%. The population of Kabul had doubled in twelve months, due to the massive return of refugees from Pakistan and rents shot up from 2002 to 2004. Four to six fold increases were reported to have taken place over the last eighteen months. In May 2007 rents had moved even higher as the building industry failed to meet demand. Poor Afghan families coped with the situation by sharing one or two rooms and relying on more than one income to pay the cost. Given the appellant's educational skills and knowledge acquired in Britain he might well rise up the social ladder relatively soon, although in his case he would also be likely to stand out and attract the attention of Sunni religious extremists. (This seems to be at odds with his opinion that the appellant would experience very serious personal difficulties in finding accommodation and a job.) Although he had been out of the country for almost seven years he did not think that this would have a major impact on his personal situation. He said that to the extent that there was hostility and harassment of Ismailis, he would of course be affected regardless. His allegiance to Sayed Mansur Nadiri would still be a problem if he returned to Baghlan because it would be assumed that his return was politically motivated. In Kabul his links to Sayed Mansur Nadiri would not cause a direct threat to him.

#### The submissions on behalf of the appellant

- 17 Mr Symes began his address to us by reminding us of the relevant facts in relation to the appellant's activities and experiences in Afghanistan. He then turned to Dr Giustozzi's report. He drew our attention to the qualifications and expertise of Dr Giustozzi, pointing to the length of time that Dr Giustozzi had spent in Afghanistan, the papers that he had presented and his standing with the Tribunal, drawing our attention to the statement made in PM and Others (PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089) to the effect that the Tribunal had received extremely helpful evidence from him, that he had spent a considerable amount of time in Afghanistan and only recently returned from there and that both sides accepted that factually he was an extremely helpful and reliable witness. He drew our attention to passages in the report of Dr Giustozzi which described the Ismaili community in Afghanistan and the physical characteristics of Hazaras. He submitted that Dr Giustozzi seemed to be saying that the appellant would have the worst of both worlds. He drew our attention to background material which showed that Ismaili Shias were estimated to make up 2% of the total Muslim population in Afghanistan. That was a matter referred to by the adjudicator in paragraph 21 of his determination by reference to paragraph 6.80 of the then current CIPU. He referred us to the IAS Research Analysis which set out extracts of various items of background material, particularly in relation to the situation of Hazaras.
- 18 He referred us to a section in the analysis which quoted from an article in the New York Times dated 13<sup>th</sup> December 2001 which described the fighting between troops loyal to Sayed Jaffar Nadiri, the former governor of Baghlan province, and forces of

the Northern Alliance stationed in Pull-i-Khumri in December 2001. The article said that Sayed Jaffar Nadiri's family not only were feudal leaders of the Ismaili people in Afghanistan but traditionally their family had held the position of governor of Pull-i-Khumri. Sayed Mansur Nadiri, the leader of Afghanistan's Ismaili community, lived abroad and filled the role of governor when the Northern Alliance was in power between 1992 and 1996. Sayed Jaffar Nadiri was his American educated son. The article said that he did not present a great military threat. It said that he was no battle hardened warlord and his bid for power had been swiftly crushed.

- 19 Mr Symes referred us to a RefWorld query and response, dated 7<sup>th</sup> April 2004, which quoted a Guardian newspaper article which stated that an expert noted that Nadiri's forces drew their numbers from the small Ismaili community in Baghlan. For the most part smaller ethnic-based militias in Afghanistan, such as Nadiri's, tended to remain within their traditional region of control, unless there was a compelling reason for them to fight. The expert pointed out that Baghlan province did not border Kabul and that the community of Ismailis in Kabul comprise only a small number of families, not enough to draw Nadiri and his fighters to Kabul in order to establish influence and/or defend the Ismailis there. The article quoted an expert saying that Baghlan, particularly the Pull-i-Khumri area, was a strategically important area in regard to travel through the north of the country. The expert said that General Dostom was likely to require some kind of alliance with the Nadiris in order to move freely through the Pull-i-Khumri area. The expert said that while Sayed Jaffar Nadiri was an important leader in the Northern Alliance and that "certainly no Northern Alliance leader is blameless" in supporting, committing and/or permitting human rights abuses in Afghanistan, he had not heard that the Ismailis had been involved in Dostom's more notorious purges of Taliban fighters or Pashtun civilians in areas such as Kabul, Mazar-i-Sharif and other areas heavily populated by Pashtuns. Mr Symes submitted that this showed that the influence of Nadiri was local but that the area in which he operated was not merely a rural area but a location of strategic importance.
- 20 Mr Symes also drew our attention to paragraph 8.64 of the COIS Report which said that an UNHCR security update on 23<sup>rd</sup> June 2008 noted that Baghlan was among the areas in the north-west and north-east of Afghanistan which were assessed as being insecure.
- 21 In relation to the evidence of the attitude towards Ismailis Mr Symes drew our attention to an excerpt from an article whose source was the Library of Congress Studies (1997), taken from About.com entitled "Agnosticism/Atheism, Religion in Afghanistan, Ismailis undated" in which it was said that the Ismaili communities in Afghanistan were less populous than the Imami who considered the Ismailis heretical. They were found primarily in and near the eastern Hazarajat in the Baghlan area north of the Hindu Kush, among the mountain Tajik of Badakhshan and among the Wakhi in the Wakhan Corridor. The article said that Ismailis in Afghanistan were generally regarded with suspicion by the ethnic groups and for the most part their economic status was very poor. Although Ismailis in other areas such as the northern areas of Pakistan operated well-organised social welfare programmes including schools, hospitals and cooperatives, little had been done among Afghan Ismaili communities. He drew our attention to a Radio Free Europe/Radio Liberty article, dated 7<sup>th</sup> August 2007, entitled "Hazara Minority Becomes Unlikely Success Story in Afghanistan" which referred to the liberation of the Hazara minority post-Taliban Afghanistan. The article said that



Hazaras were now members of President Karzai's cabinet, provincial governors and had access to higher education. The article went on to quote a Herat University Professor who said that years of abuse by the Taliban ensured that the Hazaras would never reconcile with the Taliban. Mr Symes submitted that that did not mean that Hazaras would not have problems with Taliban who were now on the rise.

- 22 He drew our attention to a Voice of America News report, dated 30<sup>th</sup> November 2008, in connection with the resurgence of the Taliban, which stated that Afghanistan had experienced a surge in Taliban attacks this year but in Kabul in recent months locals expressed as much concern over a rise in criminal activity as terrorist attacks. Kabul's police chief told reporters that there was solid evidence of links between some of the capital's criminal gangs and Taliban militants. He referred to the report of the UN Secretary General, dated 23<sup>rd</sup> September 2008, which stated that the security situation had deteriorated markedly and the number of security incidents rose to 983 in August, which was the highest since the fall of the Taliban in 2001. The influence of the insurgency had expanded beyond traditionally volatile areas and had increased in provinces neighbouring Kabul. He referred to a BBC Monitoring South Asia Report, dated 15<sup>th</sup> September 2008, which stated that the conflict had escalated unusually as the Taliban had arrived at Kabul's gates.
- 23 In relation to the question of state protection he referred to the COIS Report of August 2008 which quoted an Institute for War and Peace Reporting report, dated 1<sup>st</sup> June 2006, which stated that corruption was a growth industry for Afghanistan's police. It reported the provincial governor of the northern province of Balkh saying that high level corruption in the police force meant that the Balkh authorities were unable to provide security for residents. An Institute for War and Peace Reporting article also said that Afghans brushed aside the notion that trained police were any improvement over the old force and analysts tended to agree, saying that despite the best efforts of the international community, the police system was riddled with corruption and nepotism. He referred to the COIS Report of August 2008 which quoted from an article by Dr Giustozzi, dated 28<sup>th</sup> June 2006, which said that former warlords appointed as chiefs of police would appoint their own foot soldiers in the police, who therefore were often reappointed each time there was a change of power in an area. As a result there were few professional police and it was very difficult to enforce standards or agree crime reporting standards – hence some sections in Kabul reported zero crime rates out of a desire to avoid communicating bad news. Mr Symes also referred to the report of the UN Secretary General, dated 23<sup>rd</sup> September 2008, which said that insufficient numbers of police officers and a lack of training and equipment had contributed to a very high casualty rate among the members of the Afghan National Police. There were credible reports of police positions, particularly in lucrative transit and drug trafficking corridors being “sold” for large amounts of money.
- 24 In relation to internal relocation Mr Symes referred us to paragraph 20.20 of the COIS Report, dated August 2008, which showed that the Hazaras were physically distinct from the remaining population of Afghanistan. He submitted that Dr Giustozzi's view was that the appellant would not be able to keep a low profile to avoid recognition by fundamentalists. He referred to the US State Department Report for 2008 which said that Hazaras had been reported being asked to pay bribes at border crossings where Pashtuns were allowed to pass freely and the report of the UNHCR (6<sup>th</sup> October 2008) which identified a number of districts in the province of Kabul which were assessed as

being insecure. The report of the UNHCR entitled “Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers”, dated 3<sup>rd</sup> January 2008, stated that Afghans relied upon traditional extended family and community structures for their safety and economic survival including access to accommodation and an adequate level of subsistence. The protection provided by families and tribes was limited to areas where family or community links existed. Mr Symes submitted that, as for the Ismailis in Kabul, the opportunities for assistance for the appellant would be limited.

- 25 In relation to material additional to that contained in the appellant’s original bundle, Mr Symes drew our attention to an Institute for War and Peace Reporting entitled “Afghan Police Part of the Problem”, dated 1<sup>st</sup> June 2006, which quoted the governor acknowledging in Mazar-i-Sharif that much of the new Afghan National Police was made up of former Mujahideen. He also referred us to a statement by Professor Philip Olston, a Special Rapporteur, who reported that an international military commander stated bluntly that the police in his area of operations were corrupt and predatory and that the people had no experience of the police delivering services. He stated he examined a recent incident in which police were alleged to have massacred a group of men from a rival tribe. He said the point was that no-one in the government had any interest in investigating, much less prosecuting, those responsible.
- 26 Mr Symes drew our attention to an Interpress Service News Agency Report titled “Afghanistan: Return of the Uzbek Warlord”, dated 5<sup>th</sup> June 2007, which said that ugly riots and police firing which resulted in the deaths of at least a dozen people in northern Jowzjan province in the last week of May, were being seen as signs of a rebellion against the government of President Hamid Karzai by the warlord General Abdorrashid Dostom and his Uzbek community. Mr Symes submitted any association with General Dostom was likely to cause problems.
- 27 In relation to the law Mr Symes drew our attention to Article 7 of the Qualification Directive (Council Directive 2004/83/EC) which said that protection could be provided by the state parties or organisations, including international organisations, controlling the state or a substantial part of the territory of the state. He submitted that it was questionable whether the state in Afghanistan was in meaningful control. He submitted that the police militias were likely to be composed of people with whom the appellant had been fighting.

#### The submissions on behalf of the respondent

28. Mr Gulvin submitted that the way in which Mr Symes had developed his case was that it was a combination of factors which demonstrated a real risk to the appellant. Mr Gulvin expressed great regret that Dr Giustozzi had not appeared as an oral witness. He said that it was by agreement with the Home Office but he himself would not have agreed. He submitted that the expert’s review was well-founded and supportive of the view taken by the Secretary of State but there were elements that had been left in the air. Mr Gulvin proceeded to address passages contained in the skeleton argument. He noted that paragraph 8 referred to the determination of the Tribunal in No 32 v Secretary of State for the Home Department [2002] UKIAT 08360, in which it was accepted that the policing in Kabul was essentially done by Jamiat militia. He said that the only reference to the composition of the police in Dr

Giustozzi's report was in paragraph 15, but that was limited to the makeup of the police in Pull-i-Khumri, which was dominated by Jamiat-i-Islami. Mr Gulvin said that he was unable to find in the background evidence any support for the proposition that Jamiat-i-Islami dominated the police in Kabul. He questioned whether that could be so now that there was an Afghan police force. He submitted that it would be surprising if the police in Kabul were dominated by Jamiat militia, having regard to passages in the COIR which referred to the efforts made to establish and reform the Afghan National Police.

29. Mr Gulvin drew our attention to paragraph 13 of Mr Symes' skeleton argument in which it was asserted that the appellant was prominent because of certain factors. He had been personally invited to devote himself to spiritual leader Sayed Mansur Nadiri. He was enlisted to bring the Fidayan to fight the Jamiat by Sayed Mansur Nadiri's son Jaffar. His prominent role was in relation to the Nadiri family, who had long held the position of governor of Pull-i-Khumri. Having discovered the importance of the Fidayan from their intelligence services, the Jamiat killed some members of the Fidayan and searched for the appellant, raiding his home several times. Baghlan province remained of supreme strategic importance and was a hotbed of tension and assessed by UNHCR as insecure. Mr Gulvin pointed out, however, that in paragraph 23 of his report Dr Giustozzi said that the appellant's link to Mansur Nadiri would not cause a direct threat to him in Kabul. Mr Gulvin submitted that it was ludicrous to say that the appellant had any prominence. He submitted that if the appellant were to land in Kabul, not one person would know of him by his name and say to himself "There is a prominent person returning".
30. In the light of Dr Giustozzi's evidence that a person arriving in Kabul would not be able to keep his identity a secret, Mr Gulvin questioned what people would be able to find out about the appellant, apart from the fact that he had been a moderately important official in the Ismaili sect six or seven years before, who had had some personal dealings with the Nadiri family and who led a modest group called the Fidayan, about which there were no reports in any of the background material. Mr Gulvin submitted that having regard to the appellant's education and background and given that the smattering of Ismailis in Kabul were the wealthiest and that the Nadiri family might also be there, there was no reason to think that the appellant would not have a network of assistance. It might very well be that he had an extended family. The evidence was silent about that. We knew that his father and brother had been killed but there was a reasonable likelihood that he would have lines of assistance to families in Kabul. Mr Gulvin submitted that there was no evidence of any personal prominence on the part of the appellant. He might be associated with a group that extremist Sunnis did not like but that was all. He submitted that in other country guidance cases distinctions had been drawn between persons of high and low profile. He conceded that the appellant was somewhere in-between. It would be wrong to describe the appellant as prominent.
31. Mr Gulvin drew our attention to the fifth paragraph of the head note of the determination of the Tribunal in RQ which was added to the list of country guidance cases on 26<sup>th</sup> February 2008. There it was said that where the risk to the particular appellant was confined to his home area, internal relocation to Kabul was in general available. It said that it would not be unduly harsh to expect an appellant with no individual risk factors outside his home area to live in Kabul and assist in the

rebuilding of his country. In paragraph 109(7) the Tribunal said that where there was individual risk not local to the home area, the safety of internal relocation to Kabul would be a question of fact, based on the particular history of that individual appellant and of the warlord or factions seeking to harm him. The country guidance evidence did not as yet suggest that domestic protection in Kabul was sufficient to meet the Horvath (Horvath v. Secretary of State for the Home Department [2000] UKHL 37) standard where an individualised risk existed.

32. Mr Gulvin submitted that it was important to judge whether there was an individual risk for the appellant. He referred to paragraph 14 of the skeleton argument which asserted that the appellant was at risk from the Taliban because he was thought of sufficient interest by the Taliban to warrant keeping him in detention and then under house arrest. It was argued that the Taliban were now on the rise again and had a significant network in Baghlan and their presence created a risk for the appellant from other forces who might don the guise of the Taliban insurgency to cover their activities and the Taliban had connections increasing influence in Kabul. Mr Gulvin submitted that there was no evidence whatsoever of any real risk from the Taliban in Kabul. The Taliban were guilty of some atrocities in Kabul but to talk of a risk from the Taliban was wrong. Mr Gulvin submitted that the only risk on the basis of Dr Giustozzi's report that the appellant ran was from Sunni fundamentalists of which many were not associated with the Taliban.
33. Mr Gulvin referred to paragraph 15 of the skeleton argument which submitted that the appellant faced risk as an Ismaili. As they had a very limited urban presence, the appellant would not be able to secure protection since they suffered discrimination even from the Hazaras and they had been massacred by the Taliban in the past. The Hazaras would never be reconciled with the Taliban. Sunni fundamentalists and the rank and file of Jamiat-i-Islami would be hostile. Mr Gulvin drew our attention to paragraphs 12 and 18 of Dr Giustozzi's report. In paragraph 12 he said that the parties that held the real power in Kabul nowadays did not actively pursue a policy of discriminating against the Ismaili community as such and that in the cities there were no reports of direct attacks or harassment of Ismailis. He submitted that there was nothing to show there was any threat to the appellant by being linked to Nadiri and there were no reports of attacks on Ismailis or on Hazaras.
34. In relation to the position of the appellant as a Hazara in paragraph 5 of his report Dr Giustozzi said that it could not be said that Hazaras were being discriminated against in Kabul, at least not to a major extent.
35. In relation to the issue of what would happen if the appellant were to move to Baghlan, Mr Gulvin submitted that there might be a greater risk to the appellant there than in Kabul but it was not possible to say that there would be a real risk based on the limited knowledge of what the situation was like in Baghlan, apart from the evidence of the Taliban being more active and Baghlan being a place of strategic importance.
36. In relation to other factors Mr Gulvin drew our attention to paragraph 18 of the skeleton argument in which it was said that the Jamiat militia have had a policing role in Kabul. He submitted that "have had" was the correct way of putting it. It was asserted that the appellant could not avoid detection in Kabul but Mr Gulvin asked rhetorically whether anybody in Jamiat-i-Islami would be interested in him. In

paragraph 18 of his report Dr Giustozzi said that he did not think that Jamiatis would actively seek him out in Kabul. The remaining question was whether the level of risk from Sunni zealots which Dr Giustozzi referred to in paragraph 6 of his report would amount to a real risk of serious harm. He submitted that it would not amount to a real risk.

37. Mr Gulvin conceded that there was unemployment in Kabul but we were dealing with a former medical student who had spent seven years in the United Kingdom and was highly educated. Those qualifications would help him to get a job above the menial level. Mr Gulvin submitted that he had not been able to find a case where it had been decided that, in the absence of risk in Kabul, relocation there would be unduly harsh or amount to a breach of a person's rights under article 3 of the ECHR. Mr Gulvin submitted that if Nadiri was able to be safe then the appellant would be safe.

#### The submissions on behalf of the appellant in reply

38. In reply Mr Symes said that it was not easy to work out the precise composition of the police force now. He submitted, however, that the report of the IWPR, dated 1<sup>st</sup> June 2006, referred to in the COIS Report, did quote the provincial governor of the northern province of Balkh saying that much of the new Afghan National Police was made up of former Mujahideen. In relation to the issue of whether the appellant was prominent or not, he submitted that he was an interesting person. His role in the Fidayan would have raise eyebrows in Afghanistan. In relation to the risk to the appellant from Sunni extremists, the expert's report made inferences. Dr Giustozzi was entitled to express an opinion as an expert and was not obliged to draw attention to particular items of background evidence. Although the appellant was at medical school he was young when he left. In relation to the issue of family links, there had been cases where the Tribunal found an appellant was not credible but it would be difficult to establish that he could not relocate. In this appeal the appellant was entirely credible. His brother and father had been killed. There were few Ismailis who lived in urban areas. The appellant was not obviously well off and it would be amazing if he had any family in Kabul.

#### Our conclusions

39. By virtue of paragraph 23 of the Tribunal's Practice Directions we treat the grounds of appeal as including grounds that the appellant is entitled to humanitarian protection under paragraph 339C of HC 395, as amended. Mr Symes did not suggest that if the appellant failed to succeed in his asylum grounds of appeal there was any basis upon which his humanitarian protection claim or his human rights claim under article 3 of the ECHR could succeed. Therefore we regard the issue in this appeal as being whether the appellant can show that there are reasonable grounds for believing that if he were returned to Afghanistan there would be a real risk that he would suffer serious harm for a Refugee Convention reason so as to entitle him to refugee status. In reaching our decision we have taken account of all of the evidence placed before us whether specifically mentioned or not.

#### A short appraisal of the expert evidence and background material

40. The reports of Dr Giustozzi are generally held in high regard by the Tribunal. In this particular appeal there is much in his report which is not contentious. We find his

general analysis of the position of persons of Hazara ethnicity and of the Ismaili faith reliable. The issues appear to be limited to whether the appellant would be at a real risk of serious harm on return to his own home area of Afghanistan and whether, if so, it would be unduly harsh to expect him to relocate to Kabul.

41. After the hearing we were sent written post-hearing submissions by Mr Symes in which he suggested that Mr Gulvin had wrongly argued that we should give less weight to the report of Dr Giustozzi as he did not attend the hearing and give oral evidence, given that the respondent had not opposed his non-attendance. It was open to Mr Symes to make these submissions in his reply to Mr Gulvin's submissions at the hearing and therefore we propose to disregard them. We do, however, share with Mr Gulvin his disappointment that Dr Giustozzi was not able to give oral evidence before us. This is because there is a certain lacuna in his report. We find the picture presented by Dr Giustozzi relating to what would be the appellant's position on return to Afghanistan not to be satisfactory in some respects. A number of unanswered questions arise from his report. Since in paragraph 23 of his report he said allegiance to Mansur Nadiri would still be a problem if he returned to Baghlan because it would be assumed that his return would be politically motivated, we understand him to be saying that because of increased tensions in Baghlan, notwithstanding the concentration of Ismaili Hazaras there and notwithstanding the fact that Sayed Jaffar Nadiri represents the inhabitants in parliament, nonetheless his return would be a sign of renewed effort on the part of Nadiri to seize control from Jamiat forces, which would attract the adverse attention of Jamiat-i-Islami. He has not explained why the appellant's arrival would have this effect when apparently the renewed political activity of Sayed Jaffar Nadiri himself has not had the same effect.
42. In relation to the issue of internal relocation, the evidence of Dr Giustozzi that the appellant would be at a serious personal disadvantage in Kabul, as will be seen, seems to be inconsistent with a previously expressed general opinion of his, referred to in the COIR.
43. Therefore while we accept that in general terms any opinion of Dr Giustozzi is entitled to considerable respect, we have not hesitated to disagree with his opinion where it seems to us that there is good reason to do so.
44. The background material presented to us overall paints a fairly consistent picture in relation to the issues we have had to determine. Those reports which we have quoted are from reputable sources, which we therefore feel able to accept. This is not a case where each party relies upon background evidence not in step with that relied upon by the other. The resolution of the issues which we have identified require conclusions to be drawn from the background material which to a large extent is "all one way", in the light of those parts of the report of Dr Giustozzi which we feel able to accept.

#### The situation of Hazaras in Afghanistan

45. Paragraph 20.20 of COIR dated 29<sup>th</sup> August 2008 says this:

"There are approximately 2.8 million Hazaras in Afghanistan (CIA World Factbook 2007). They were once the largest Afghan ethnic group constituting nearly 67% of the total population of the state before the 19th century. More than half were massacred in

1893 when their autonomy was lost as a result of political action. Today they constitute approximately 9% of the Afghan population. The origin of Hazara are (sic) much debated, the word Hazara means 'thousand' in Persian but given the Hazaras features, current theory supports their descent from Mongol soldiers left behind by Genghis Khan in the 13th century.

The majority of Hazaras live in Hazarajat (or Hazarestan), land of the Hazara, which is situated in the rugged central mountainous core of Afghanistan with an area of approximately 50,000 sq. km, with others living in the Badakhshan mountains. In the aftermath of Kabul's campaign against them in the late 19th century, many Hazaras settled in western Turkestan, in JauzJan and Badghis provinces. Ismaili Hazaras, a smaller religiously differentiated group of Hazaras live in the Hindu Kush mountains. The most recent two decades of war have driven many Hazaras away from their traditional heartland to live on the fringes of the state in close proximity to Iran and Pakistan. There is also a large cross-border community of Hazaras who make up an influential ethnic group in the Pakistani border city of Quetta."

46. Paragraph 20.21 says that at national level Hazaras tend to be more progressive concerning women's rights to education and public activities. Educated Hazara women, in particular ones who returned from exile in Iran, are as active as men in civic and political arenas. Hazara families are eager to educate their daughters. U.N. officials in Bamian, twenty miles to the east, say that since the collapse of Taliban rule in late 2001, aid agencies have scrambled to build schools and have succeeded in attracting qualified female teachers to meet the demand. Paragraph 20.24 quotes the Pakistan Tribune in a report on the position of Hazaras in Bamian, dated 29<sup>th</sup> July 2004, saying that armed with a new constitution that guaranteed equal rights to minority groups, Hazaras were engaged in an intense campaign to obtain some power and lift themselves from the bottom of Afghan society. Paragraph 20.26 quotes the Institute for War and Peace Reporting in a report, dated 27<sup>th</sup> October 2004, saying this:

"Hazaras are the third largest ethnic group in the country, and now live mainly in the central and north of the country. They have historically suffered discrimination. Yusuf Waezi, manager of the main Hazara party, Hizb-e-Wahdat-e-Islami, said, 'Hazara people are the most oppressed community and their only job was being porters. An Hazara child wasn't allowed to study more than the six grade [13 years] and there wasn't any school in majority of the areas this community lived in,' he said. But he said that conditions had improved significantly under the transitional government. 'After the fall of the Taleban, the rights of the Hazara people became satisfactory,' he said."

47. A report of Radio Free Europe/Radio Liberty entitled "Hazara Minority Becomes Unlikely Success Story in Afghanistan", dated 7<sup>th</sup> August 2007, says that an overlooked success in post-Taliban Afghanistan is the liberation of the Hazara minority, who suffered discrimination and ethnic cleansing under the Islamist militants' rule as reported by the Christian Science Monitor on 6<sup>th</sup> August 2007 which quoted Abdul Arhad Farzan, a human rights activist saying, "The interim administration [in 2001] was the start of a golden period for Hazaras". Centuries of abuse dissolved into opportunities; now Hazaras were members of President Karzai's cabinet, provincial governors and were accessing higher education. The rise of the Hazara community as one of the most liberal Muslim sects in Afghanistan was viewed as a positive change in Afghan society from a Western perspective.

48. In paragraph 5 of his report Dr Giustozzi stated that Hazaras in general, regardless of their faith, had long been discriminated against in Afghanistan and had limited access to jobs in the state administration and in the armed forces and to higher education. In Kabul the large Hazara community was the poorest among the various ethnic communities of the city. Hazaras in Kabul were largely confined to menial jobs and were almost completely excluded from the security services. After 2001, however, the conditions of the Hazara community in Afghanistan in general and in Kabul in particular greatly improved; much of the new emerging intelligentsia and middle class was Hazara, mainly because Hazaras invested heavily in the education of their offspring in the 1980s and 1990s and now reaped the benefits of this strategy of survival. He said it could not be said that Hazaras were being discriminated against in Kabul at least not to a major extent. Although in paragraph 9 of his report Dr Giustozzi said that outside Kabul Hizb-i-Wahdat and Jamiat-i-Islami had often clashed even after the fall of the Taliban and Jamiat supported a number of small parties and factions among the Hazaras which opposed Hizb-i-Wahdat, nonetheless we find that the effect of his opinion read as a whole and of the background material to which we have been referred is that a person of Hazara ethnicity is not likely to be treated by reason of that fact alone in Afghanistan in a way which would amount to persecution or a breach of his rights under article 3 of the ECHR.

#### The situation of Ismailis in Afghanistan

49. An article by Mumtaz Ali Tajjdin on Ismaili.net entitled "Ismailis in Afghanistan" accessed on 2<sup>nd</sup> December 2008 says that unofficially there are over 200,000 Ismailis in Badakhshan and the majority of the people there were of Tajik ethnic origin. Apart from Badakhshan almost 90% of the Ismailis in Afghanistan belonged to the Hazara ethnic group while 2% belonged to the Tajik ethnic group. A report from Global Security.org on Baghlan accessed on 2<sup>nd</sup> December 2008 said that the Pir or leader of Afghan Ismailis comes from the Sayed family of Kayan, located near Doshi, a small town at the northern foot of the Salang Pass in western Baghlan province. They were generally regarded with suspicion by other ethnic groups and for the most part their economic status was very poor. In the 8<sup>th</sup> century their leaders rejected the heir designated by the sixth Imam and chose to recognise his eldest son, Ismail, as the seventh Imam and the Shia community split into two branches.
50. In paragraph 4 of his report Dr Giustozzi said that the few Ismailis living in Kabul tended to be from the wealthiest households and were not quite as vulnerable to discrimination. In paragraph 6 of his report he said that Ismaili Hazaras faced discrimination not just because they belonged to the Hazara ethnic group but also as Ismailis even at the hands of their fellow Hazaras, who belonged to the mainstream Twelver Shia community. He said among Sunni fundamentalists of all brands there was a widespread dislike of Ismailis, which sometimes took the form of an explicit invitation to violence. He pointed to the fact that in 1998 when the Taliban took over the province of Baglan they carried out large-scale massacres of the local Ismaili population. He went on to say in paragraph 7 of his report that the leadership of Jamiat-i-Islami was not per se overtly hostile to Ismailis and at times reached local alliances with some Ismaili factions but within its rank and file many had a more aggressive attitude towards Ismailis. Many Ismailis were suspected by many Islamic fundamentalists of leaning towards left wing or secular parties, which reinforced their hostility towards them. In paragraph 12 of his report he said that with the important



exception of Ittehad-i-Islami (Islamic Union), the parties which held the real power in Kabul nowadays did not actively pursue a policy of discriminating against the Ismaili community as such. He went on to say that in the cities there were no reports of direct attacks or harassment of the Ismailis. In fact our attention was not drawn to any reported attacks on Ismailis elsewhere in Afghanistan.

51. Although it is clear that Ismailis are resented by Sunni extremists and to a large extent, although not exclusively as we shall see, are excluded from public office in Afghanistan, nonetheless on the evidence that has been placed before us we are not satisfied that it can be said that Ismailis as such face a real risk of treatment in Afghanistan which amounts to persecution and/or a breach of their rights under article 3 of the ECHR.

#### The Nadiri family

52. There are a number of items of background material which deal with Sayed Mansur Nadiri and his son Sayed Jaffar Nadiri. An Afghannet.com report entitled "Nadiri, Sayed Jaffar", dated 9<sup>th</sup> September 2005, says that Sayed Jaffar Nadiri is the son of Sayed Mansur Nadiri, leader of the Ismaili community in Pull-i-Khumri, Kayan and Dowshi in Baghlan province. The report makes it plain that he was allied with General Dostom's militias, serving under the Communist regime, but he defected to the Mujahideen in 1992 and followed Dostom thereafter. Sayed Mansur Nadiri used to be the governor of Baghlan. A Ref World query and response, dated 7<sup>th</sup> April 2004, says that a 1993 Amnesty International Report listed former Afghan army general, Sayed Jaffar Nadiri, as governor of Baglan province at that time. The report says information garnered by the RIC indicated that the Nadiri family was forced to flee from Baghlan during the reign of the Taliban in Afghanistan. They lived in Uzbekistan while the Taliban were in power. The report says that there were clear indications that Sayed Mansur Nadiri and his son did form an alliance with Afghan general, Abdul Rashid Dostom, who at the time of the report was Deputy Defence Minister in Hamid Karzai's interim government. An article in the New York Times entitled "A Nation Challenged: Dissension; Anti-Taliban Factions Clash in North", dated 13<sup>th</sup> December 2001, states that Sayed Jaffar's family not only were feudal leaders of the Ismaili people in Afghanistan but traditionally their family had held the position of governor of Pull-i-Khumri. Sayed Jaffar represented his father, Sayed Mansur, who lived abroad and filled the role of governor when the Northern Alliance was in power between 1992 and 1996. It is plain from the background evidence that the Nadiris failed in their attempt to seize back the governorship of Baglan province. It was of course the defeat of Nadiri's forces at this time which provided the reason for the appellant to leave Afghanistan and seek asylum in the United Kingdom.
53. Dr Giustozzi mentions his own personal involvement in the preparations for the parliamentary elections of September 2005 when he was stopped by the state security and then by the police on his journey to Kayan. It is evident, however, from what he said in paragraph 14 of his report that under UN protection Nadiri was able to run in the elections and emerge as the most voted for candidate in Baghlan obtaining the large majority of the Ismaili vote. The final sentence of paragraph 14 of his report says this:

"As a result, the presence of the Nadiris and their followers was re-established in Baglan."

54. In paragraph 18 of his report Dr Giustozzi said that the Jamiatis are happy to keep Nadiri's followers as weak as possible in Baghlan but they were not bent on persecuting them individually. Therefore we are not satisfied that an association with the Nadiri family would attract a risk of persecution either in Baghlan or anywhere else in Afghanistan.

#### A summary of our general conclusions

55. A person of Hazara ethnicity or of the Ismaili faith or who is associated with the Nadiri family is not likely to be at a real risk of serious harm in Afghanistan by reason of any of these factors alone or a combination of any of them, although different considerations would apply if an Ismaili's own home area were to be in an area controlled by the Taliban, given the large scale massacre of Ismailis which took place when the Taliban took over the province of Baghlan in 1998. In such a case, however, he would ordinarily be safe in Kabul.

#### The appellant's case

##### The position of the appellant in his own home area of Afghanistan

56. In reaching our conclusions we have regard to what we have said in paragraph 41 above, about the absence of an explanation from Dr Giustozzi as to why the appellant's arrival in Baghlan would attract the adverse attention of Jamiat-i-Islami, given that apparently the renewed political activity of Sayed Jaffar Nadiri himself there has not had the same effect.
57. In paragraph 15 of his report Dr Giustozzi mentioned the increasing Taliban activity in Baghlan and said that the worsening security situation in Baghlan contributed to raising tension in the province. He said that the Afghan police in Pull-i-Khumri were dominated by Jamiat-i-Islami, that in sum the Baghlan environment remained highly unstable with occasional flares of violence and particularly weak law enforcement and it was not recommended that the appellant return there, even if his family was likely to own property there. In paragraph 17 he went on to say that in his view it was clear that there would be significant risks to the appellant if he returned to Baghlan. Given that Dr Giustozzi has acknowledged that in the cities, one of which of course is Pull-i-Khumri, where the Ismailis have an urban presence, there are no reports of direct attacks or harassment of Ismailis and given that the Nadiris have re-established themselves in Baghlan province, it is difficult to see precisely why the appellant would be at risk there having previously been an associate of Nadiri in his quest to seize control of Baglan province. If Jaffar Nadiri is able to take his seat in the Afghan parliament and represent his constituents, it is difficult to see why the appellant himself would be at risk.
58. In these circumstances we are not satisfied that the appellant would be at a real risk of serious harm of he were to return to his own home area of Afghanistan.

#### Internal relocation

59. In case we are wrong in reaching the conclusion about it being safe for the appellant in his own home area of Afghanistan, we go on to consider the option of internal relocation. Dr Giustozzi has made it plain that the Jamiatis would not seek the

appellant out in Kabul and his links to Sayed Mansur Nadiri would not be the occasion of a direct threat to him there. The only other risk identified by Dr Giustozzi is from Sunni fundamentalists but, as he himself conceded, there was no evidence of attacks on Hazaras or Ismailis in Kabul and, as he stated in paragraph 22 of his report, the appellant would not face a specific security risk in Kabul. In these circumstances we are not satisfied that even if there were a real risk of serious harm to the appellant in his own home area of Afghanistan that risk would extend to Kabul. In these circumstances the issue of whether the appellant would be able to seek adequate protection from the state authorities does not arise.

60. The remaining question, therefore, is whether it would be unduly harsh for the appellant to relocate to Kabul. Our starting point in this regard must be the determination of the Tribunal in RQ. In paragraph 109(5) of their determination the Tribunal said this:

“Internal relocation to Kabul is not in principle impossible. Conditions in Kabul are not pleasant but they do not approach the AH [Secretary of State for the Home Department v. AH (Sudan) & Ors [2007] UKHL 49] level and unless there are particular reasons not to do so, it would not be unduly harsh to expect an appellant with no individual profile to live in Kabul and assist in the rebuilding of his country.”

61. In paragraph 22 of his report, as previously mentioned, Dr Giustozzi indicated that the appellant would have very serious personal difficulties in finding accommodation and a job. Unemployment in Kabul was high and rents had increased. He indicated that the appellant would not have the option of sharing a room with members of his family as he did not have a family in Kabul. He would have to earn a living which would allow him to rent at least a room for himself, which seemed difficult in the current circumstances. He said that as he would have to operate in an environment where he was not networked and had no friends or acquaintances and his family would command no particular respect, he would have to content himself with humble and low paid jobs. He said it was obvious that the appellant would at least initially not be able to relocate in any of the well-off neighbourhoods and that he would have to settle in the poorest suburbs, where sanitation, electricity and running water were lacking. He said that given his educational skills and the knowledge he had acquired in Britain, he might well rise up the social ladder relatively soon, though in that case he would also be likely to stand out and attract the attention of Sunni religious extremists. We take the view that, in the light of Dr Giustozzi’s acknowledgement that the appellant might well rise up the social ladder relatively soon, it was his opinion that the appellant would be able to surmount the difficulties he would encounter in finding accommodation and a job. Even if this was not in fact the underlying logic of his opinion, we take the view that this is in fact likely to be the case.
62. We cannot be satisfied that the appellant would have no contacts that he could use in Kabul. As Mr Gulvin submitted, and we accept, it is likely that Jaffar Nadiri has some sort of presence in Kabul, given that he was elected to the Loya Jirga. The appellant’s case is that he was personally invited by Sayed Mansur Nadiri to devote himself to his service and was then appointed head of the Fidayan Hassan Sibah. He had direct contact with Mr Sayed Mansur Nadiri. In these circumstances, having regard to his loyalty to the Nadiris, we take the view that it is likely that he could look to them, directly or indirectly, for assistance in re-establishing himself in Kabul.

Moreover paragraph 29.24 of the COIR dated 29<sup>th</sup> August 2008 quotes a passage in a report from Dr Giustozzi, dated 26<sup>th</sup> June 2006, as follows:

“A person with language skills, especially English, and a good level of education would have good prospects of finding work in Kabul; otherwise only people like doctors and a few other professions which are in short supply might expect to find work. The unskilled will have serious difficulties, because the returnees to the country are mostly of working age, unemployment is high and there is a recession which is beginning to hit the building trade which is the main source of employment for cheap labour.”

63. It is perfectly evident to us that the appellant, having been in the United Kingdom since May 2002 will have acquired skills in the English language. He has a good level of education because he enrolled as a student at the Faculty of Medicine in the University in Mazar-i-Sharif before he left to devote himself to the service of Mr Sayed Mansur Nadiri. In these circumstances we are satisfied that he would have good prospects of finding work in Kabul and we take the view that it would not be unduly harsh to expect him to relocate there.
64. For the reasons given, therefore, we are not satisfied that the appellant would be at a real risk of serious harm on return to Afghanistan and in these circumstances his appeal on asylum grounds, on humanitarian protection grounds and on human rights grounds under article 3 of the ECHR is dismissed.

Signed

Senior Immigration Judge Spencer

## APPENDIX A

### LIST OF BACKGROUND MATERIAL BEFORE THE TRIBUNAL

1	Undated	IAS Research Analysis
2	Undated	h) Civilian deaths
3	Undated	Ismaili.net: <i>Ismailis in Afghanistan</i> [Accessed: 2 December 2008]
4	Undated	Globalsecurity.org: <i>Baglan</i> [Accessed: 2 December 2008]
5	Undated	About.com: <i>Agnosticism/Atheism, Religion in Afghanistan, Ismailis</i> [Accessed: 2 December 2008]
6	Undated	<i>Major Afghan Mujahideen Groups: A Profile</i> [Accessed: 2 December 2008]
7	Undated	Pediaview: <i>Sayed Jaffar Nadiri</i> [Accessed: 2 December 2008]
8	29 May 1997	New York Times: <i>Afghan Force Ousts Taliban From City in North</i>
9	13 December 2001	New York Times: <i>A NATION CHALLENGED: DISSENSION; Anti-Taliban Factions Clash in North</i>
10	16 December 2001	New York Times: <i>Afghanistan is famous for its ancient ruins and its millions of ever present KILLER WASPS Can you dance the Ismaili?</i>
11	9 August 2002	IWPR: <i>Local Hopes Riding on Khalili</i>
12	11 October 2002	IWPR: <i>Badakhshis Change Allegiances</i>
13	7 April 2004	Ref World: <i>Query and response, Afghanistan: Information on Activities of Ismailis Loyal to Sayed Kayan</i>
14	9 September 2005	Afghanet.com: <i>Nadiri, Sayed Jaffar</i>
15	16 November 2005	CACI Analyst: <i>AFGHANISTAN'S ELECTIONS: DEMOCRACY WITHOUT PARTIES?</i>
16	30 November 2005	IWPR: <i>Killing Sparks Fears of Unrest in North</i>
17	30 January 2007	Institute for War and Peace Reporting (UK): <i>New Film Opens Old Wounds in Afghanistan</i>
18	12 March 2007	British Agencies Afghanistan Group (BAAG): <i>Afghanistan: Monthly Review February 2007</i>
19	5 June 2007	Inter Press Service News Agency (IPS): <i>Afghanistan: Return of the Uzbek Warlord</i>
20	7 August 2007	Radio Free Europe/Radio Liberty: <i>Hazara minority becomes unlikely success story in Afghanistan</i>
21	11 August 2007	RFE/RL: <i>Suspicion High After Deadly Attack On Afghan Lawmakers</i>
22	31 October 2007	Statefailure.blog: <i>Baghlan's Special Warlords</i>
23	November 2007	Al Jazeera: <i>Afghanistan mourns bomb victims</i>
24	8 November 2007	Asia Times Online: <i>Afghanistan rocked by northern bombing</i>
25	29 November 2007	Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD): <i>Country Report: Afghanistan (Excerpt)</i>
26	3 January 2008	United Nations High Commissioner for Refugees (UNHCR): <i>UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers (Excerpt)</i>

27	18 February 2008	Integrated Regional Information Networks News (IRIN): <i>Afghanistan: Kuchi nomads seek a better deal</i>
28	2 June 2008	Voice of America News: <i>Afghan Refugees Return Home to Uncertain Future</i>
29	8 July 2008	The Independent (London): <i>Kabul suicide bomber kills 41 in worst attack since fall of Taliban; Suspicion falls on Pakistani intelligence after embassy blast</i>
30	24 July 2008	Inter Press Service News Agency (IPS): <i>Afghanistan: Taliban Encroach On Karzai's Turf</i>
31	27 July 2008	San Francisco Chronicle: <i>Returning Afghans survive in tent camps</i>
32	3 August 2008	The New York Times: <i>As the Fighting Swells in Afghanistan, So Does a Refugee Camp in Its Capital</i>
33	13 August 2008	BBC: <i>Taliban at Kabul's doorstep</i>
34	14 August 2008	Inter Press Service News Agency (IPS): <i>Afghanistan: Security Fears Paralyse Kabul</i>
35	19 August 2008	BBC: <i>Life in Afghanistan: City life</i> (Excerpt)
36	29 August 2008	Global Insight: <i>Afghan Military Assumes Control over Security in Capital</i>
37	29 August 2008	UK Home Office Country of Origin Information Service: <i>Afghanistan COI Report August 2008</i> (Excerpt)
38	8 September 2008	Integrated Regional Information Networks News (IRIN): <i>Afghanistan: Minister disputes call to boost refugee returns</i>
39	15 September 2008	BBC Monitoring South Asia: <i>Weekly wants urgent change of US strategy on Afghanistan</i>
40	19 September 2008	US Department of State: <i>International Religious Freedom Report 2008: Afghanistan</i>
41	22 September 2008	Inter Press Service News Agency (IPS): <i>Afghanistan: Severe Hunger Can Help Taliban</i>
42	23 September 2008	United Nations: <i>The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General</i>
43	1 October 2008	HJT Research: <i>US general says insurgents are gaining in Afghanistan</i>
44	6 October 2008	United Nations High Commissioner for Refugees (UNHCR): <i>Afghanistan Security Update Relating to Complementary Forms of Protection</i>
45	14 October 2008	IRIN: <i>Medical waste poses health risk in urban areas</i>
46	14 October 2008	United Nations News: <i>Top UN envoy warns deadly Afghan attacks on increase as situation worsens</i>
47	20 October 2008	United Nations News: <i>Current crises threaten to plunge more Afghans into poverty, warns UN official</i>
48	24 October 2008	INSI, (International News Service Institute): <i>Afghanistan – Security, AKE Security Briefing</i>
49	25 October 2008	Voice of America News: <i>Three Shot Dead in Afghan Capital</i>
50	28 October 2008	Internal Displacement Monitoring Centre (Norwegian Refugee Centre): <i>Afghanistan: Increasing hardship and limited support for growing displaced population</i> (Excerpt)
51	30 October 2008	Voice of America News: <i>Taliban Claims Responsibility for Kabul Suicide Bomb</i>

52	3 November 2008	Voice of America News: <i>Foreign Aid Worker Kidnapped, Afghan Killed in Kabul</i>
53	3 November 2008	Amnesty International: <i>Afghanistan, Amnesty International Submission to the UN Universal Periodic Review: Fifth session of the UPR Working Group of the Human Rights Council</i>
54	10 November 2008	United Nations High Commissioner for Refugees (UNHCR): <i>Afghanistan at the crossroads: Drought, food crisis drive Afghans out of villages</i>
55	17 November 2008	Voice of America News: <i>Afghanistan's Taliban Reject Offer for Peace Talks</i>
56	18 November 2008	EurasiaNet: <i>Afghanistan: Refugee Returns Should No Longer Be A Cause For Celebration In Kabul</i>
57	18 November 2008	United Nations High Commissioner for Refugees (UNHCR): <i>Afghanistan at the crossroads: Invest in Afghan returns or risk further displacement, cautions UNHCR</i>
58	27 November 2008	Voice of America News: <i>Car Bomb Kills 4 Near US Embassy in Kabul</i>
59	27 November 2008	International Rescue Committee (USA): <i>Press Release – Afghanistan: Aid Agencies Ask the UN Security Council for Assistance to Reach Communities and Avoid Humanitarian Crisis</i>
60	30 November 2008	Voice of America News: <i>Suicide Bomber Kills 3 in Afghan Capital</i>
61	26 June 2009	UK Home Office Country of Origin Information Service: <i>Afghanistan COI Report June 2009</i>