

LSH
Heard at Field House
On 2 September 2002
Dictated 2 September 2002

APPEAL NO HX51796-2000
16 (Return - Kabul - Pashtun)
Afghanistan CG [2002] UKIAT
06507

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

....13.02.2003....

Before:

Mr H J E Latter (Chairman)
Mr T Davey
Mr A Jeevanjee

Between

THE SIXTEENTH MAN

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Decision: Appeal dismissed

Appearances:

For the appellant: Mr N Oakeshott, Refugee Legal Centre
For the respondent: Mr Blundell, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Afghanistan of Pashtun ethnicity, appeals the decision of the respondent who refused the appellant's asylum claim on 26 February 2000. The appeal was made under the Asylum and Immigration Act 1993 Section 8(1). The appellant arrived along with a number of other persons on an Ariana airlines flight which was subject of a claimed hi-jack leading to the arrival in the United Kingdom on 7 February 2000. The appellant is not identified by name at the request of the parties and to some extent it would appear that part of the basis of his claim, namely, a fear of the Taliban, has in the events that have occurred, been superseded.

2. In any event at the hearing of the appeal the Tribunal considered the appellant's claim entirely afresh hearing evidence from the appellant together with a written statement and oral evidence from Mr Peter Marsden who is an information co-ordinator for BAAG (British Agencies Afghanistan Group).
3. The appellant's claim, before a legal panel of Adjudicators led by His Honour Judge Dunn QC, was rejected. The claim then made was on two main bases. First some 40 years previously the appellant's father had killed two family members and injured a third for which he was sentenced to and served 10 years imprisonment. Although these matters occurred before his birth, the appellant feared a vendetta or blood feud against himself by certain relatives. Secondly the appellant had a fear of the Taliban following his detention by them in August 1999.
4. The appellant claimed to be of interest to the Taliban because of his father's employment as a soldier in the army controlled by Najibullah's government: the evidence accepted was that the appellant had never supported that regime. The appellant claims that after being detained and ill-treated for 15 days in 1999 by the Taliban his release had been secured on the strength of representations of local villagers who knew his true background and who persuaded the Taliban that there was no need to have any interest in him.
5. Before the panel of Adjudicators the appellant had also claimed that the Taliban had come searching for him some 10 times: the panel rejected the credibility of that element of the claim albeit they accepted on the face of it that he had been the subject of interest on that one and only occasion. Thus, on the face of the chronology as accepted by the panel not only had the incident of the father murdering other family members occurred, 40 years, previously, but his father's 10 years imprisonment for murder had been served and that thereafter the father had "worked" for Najibullah for some 10 years until some 8 or 9 years prior to the hearing before the panel in 2000. The appellant's father had died of natural causes in the early 1990s. Accordingly, it would appear from the chronology that at no time after the release of the father from prison was he then the subject of a vendetta by other family members nor prior to the appellant's fortuitous shopping expedition to Masar-i-Sharif was the appellant the subject of adverse attentions in pursuit of the vendetta.
6. The claim now put in relation to the vendetta, is that notwithstanding the old history of the matter there is nevertheless the prospect that those other family members, who still nurse adverse feelings towards the appellant's father, would use the device of making false accusations against him to the authorities or the American forces or any other security forces seeking to find the Taliban or Alquaeda fighters. The appellant said that this way would be used in order to

avoid the possibility of further vendetta being taken against that other part of the family. We did not see how this would, in reality, conceal the matter from members of the appellant's family willing to preserve the vendetta.

7. On the evidence before us we found, that notwithstanding the opinion expressed by the appellant as to his fears on return or indeed the necessary speculation that formed the basis of Mr Marsden's opinion of these matters, that the vendetta was an old issue which had never in itself given rise to any real or actual threat to the appellant prior to his departure. Further, whilst we cannot dispute the possibility of the vendetta reviving, the evidence did not show that there was the reasonable likelihood of this happening either by direct or indirect steps being taken using the authorities to bring about the death of the appellant or some other ill fate.
8. It was accepted by the appellant's representative that if it was directly from by family relatives against the appellant that that would not amount to persecution for a Convention reason. In order to bring the claim within the Convention the appellant's representative was essentially forced to argue that the ill-treatment would arise from an imputed political opinion, through the false allegation, that the appellant was against the current authorities or regime now in control of Afghanistan or a Taliban supporter or alternatively a terrorist associated with the Alquaeda organisation. Even if it was possible to bring the claim within Refugee Convention through third parties we do not find on the evidence that the appellant has discharged the burden of proof that there is the reasonable likelihood of persecution because of the vendetta whether by relatives directly or indirectly through false allegations.
9. The next basis of claim is the connection with his father and the army run by the Najibullah government. The evidence is less than clear, perhaps not surprising given the appellant's age at relevant times, as to what his father did or if it was of any significance. There is nothing to suggest, given the appellant's relatively humble background, that his father was either high ranking or serving in some particularly sensitive role such as to attract adverse attention. It is noteworthy that the appellant's father who survived the fall of the Najibullah regime did not become the subject of adverse attention from the Mujahadeen or possibly Taliban prior to his death.
10. Likewise, other than the single incident involving the Taliban the appellant did not through family connection become of any interest to the authorities. It is noteworthy that the appellant was released and, even though he claimed at various stages to be in hiding, felt able to use internal flights and travel to the north east of the country for his shopping expedition.

11. In these circumstances, we find that the alleged connection with the Najibullah regime is so distant as to give rise to no reasonable likelihood of persecution through either any imputed political opinion to the appellant or for any imputed religious opinion (in relation to the secular society that the communist regime of Mr Najibullah sought to bring about) or from the Taliban hereafter or religious fundamentalists or extremists who espouse similar Islamic views opposed to a secular state in Afghanistan.
12. A further element of the claim relates to the presence of the appellant on board the aircraft which was hi-jacked. It is said that the appellant by refusing to return and making an asylum claim will be imputed with anti-Taliban or anti-religious views such that the attempts to re-group by the Taliban or other religious extremists or indeed Alquaeda would lead to him being subject to persecution for a Convention reason namely, opposition to an Islamic state. Further or in the alternative it is said that the appellant would, through having stayed in the United Kingdom, have become tainted by western culture and the secular society: he would not be tolerated on his return because he was so tainted by non Islamic experiences.
13. There is no evidence before us, other than in respect of the air crew, that any difficulties have arisen for those on board the hi-jacked aircraft who returned either during the period of the Taliban or thereafter. We cannot find any evidence, in the written submissions and material given to us, which demonstrates that failed asylum seekers either before the events in question or since, if returned, have been or were likely to be the subject of adverse attention either from of the government of Afghanistan at a national or local level.
14. We see no basis why this appellant, who has apparently done nothing whilst in the United Kingdom, to draw himself to the attention of the present or former authorities in Afghanistan, should face any continuing interest in him now or on return or thereafter.
15. We are satisfied on the evidence, on the basis of the Secretary of State's undertaking that the appellant would only be removed to Kabul, that there is no evidence which goes to show that the appellant could not safely journey to his home area in Khost (at a small village nearby) in the area of Paktia. It may be that there are some checkpoints on the route and bribes might be sought for passage. Those bribes would be paid simply on the basis of criminal actions rather than arising from any Convention reason. The appellant's evidence was clearly that he had made enquiries (in an extensive telephone conversation lasting some 20 minutes) and so far as he was aware his wife, three children and other family relatives continued to live on what he described as a big farm. They had remained there since his departure and indeed claim there had been no adverse attentions by any authorities in connection with his presence in the UK. The appellant, by his further statement, produced some generalised evidence relating to a cousin (Gharsie)

who had telephoned him, and warned him that he (Gharsie) had been the subject of false allegations which had caused him to flee and that he Gharsie thought that similar risks might arise in respect of the appellant. The whole basis of this element of the evidence was vague, generalised and did not show the basis of the false accusation had been made against Gharsie. It was simply speculative as to what might happen in relation to the appellant. On the face of it therefore we were not satisfied that the evidence disclosed any basis for a fear of persecution founded on the appellant's ethnicity as a Pashtun.

16. The evidence of Mr Marsden was that Pashtun in Kabul had a subjective fear of the northern alliance forces not least given the experience of Pashtuns in Masar-i-Sharif. Nevertheless, the general evidence did not show that indeed those fears are born out by the objective evidence relating to Kabul. For those reasons we are satisfied that there is no reason why the appellant on return to Kabul could not safely make his way from there to the home area in the east of Afghanistan.
17. For these reasons the internal flight alternative does not fall to be considered nor the issue of whether such would be unduly harsh.
18. The appeal is dismissed.

T B Davey