

AT AUCKLAND

Appellant:	AC (Afghanistan)
Before:	D L Henare (Member)
Counsel for the appellant:	C Curtis
Counsel for the respondent:	No Appearance
Date of hearing:	13 July 2011
Date of decision:	16 August 2011

DECISION

INTRODUCTION

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

[2] The appellant arrived in New Zealand on 6 February 2011 having travelled on a false Chilean passport which he destroyed in flight.

[3] The appellant fears, upon return, being persecuted by warlords who have confiscated his land. He also fears the *Hezb-e-Islami* insurgent group, who assert control in his district in Afghanistan. Additionally, he fears being persecuted by the *Taliban* because of his Hazara ethnicity and Shi'a religion. He claims that the state cannot protect him in Afghanistan.

[4] The Tribunal finds that the appellant is a refugee, having assessed the threshold issues of credibility, well-foundedness and access to state protection in his refugee claim.

[5] The Tribunal will first outline the appellant's account on appeal before

turning to address the issues.

THE APPELLANT'S CASE

[6] The appellant is a married man in his late 30s. He was born in the Qarabagh district of Ghazni province in Afghanistan. He is of Hazara ethnicity and Shi'a religion.

[7] His mother died when he was young. He has two older siblings, a sister and a brother. Upon marriage, his sister achieved permanent residence in Pakistan. He and his sister lost contact with their brother some years ago.

[8] In Qarabagh, his father farmed crops on land which had been held by the family according to Hazara custom. There are no ownership or use records for the land.

[9] The appellant did not receive an education, since there was no school in the village. Although he can identify some numbers, he is illiterate.

[10] When Soviet troops invaded Afghanistan some 30 years ago, the family fled to Quetta in Pakistan. They had no legal status there. The appellant's older brother worked on building sites in order to support the family.

[11] After his father's death in 1991, the appellant married a Hazara from Afghanistan, also living in Quetta, and had three children who were born deaf and mute. The children's births were not registered because of their parent's illegal status. In the early period of the marriage, the appellant shared a home with his brother and sister-in-law who eventually moved away because of family squabbles.

[12] After the birth of his daughter in 1994, the appellant travelled illegally to Iran and worked there.

[13] In 1996, the appellant returned to his village in Qarabagh to try to reclaim the family land. He stayed in the mosque because all of his relatives had fled the district.

[14] He was informed by the village elders that his father's land had been taken by certain warlords. He met twice with these warlords who were Hazara. On the first occasion, he explained his family's relationship with the land. They rejected

his claim for return of the land. At the second meeting, they warned him to leave the district and threatened him.

[15] The elders told him that such warning meant that he would be killed if he persisted in his claim to the land. He accepted that without support he could not regain the land and it was not safe for him to remain there. He never returned to his village again.

[16] The appellant went back to his family in Quetta. He obtained the assistance of an Afghani doctor to get his children into a special needs school. The children could not be enrolled because of the family's illegal status in Pakistan, so he paid bribes to obtain false documents for them.

[17] He established a shop in the bazaar. In the late '90s, the *Taliban* strengthened their foothold in Pakistan, particularly in Quetta. They raised their flag in the city centre and approached the shopkeepers asking for money to support their activities. Initially, they requested general contributions which the appellant paid. Later, they sought specific amounts. At first, he paid the sum they sought. The second time he told them he could not afford payment. They responded that upon return, they expected to be paid. When he tried to plead his case, he was warned that as a Hazara, he had to pay, otherwise he would be killed. The appellant believed it was unsafe to continue his work in his shop in Quetta.

[18] He contacted a Pakistani friend in Saudi Arabia, whom he had met at the bazaar, and asked for his help. His friend had a restaurant in Riyadh and agreed to sponsor him to work there. Upon the advice of his friend, he contacted an agent in Islamabad who arranged a false Pakistani passport and a ticket. When he received the passport he asked the agent to read out the details to him. He learned that his name had been recorded correctly but that his father's name was incorrect.

[19] The appellant left his family in Quetta and went to Saudi Arabia in 2001. He worked in his friend's restaurant for approximately six years. During that period, he was able to save and send money to his family.

[20] He returned to Pakistan in 2005 because his passport was due to expire and he wanted to visit his family. He paid a bribe to get through Karachi airport. The *Taliban* had increased their dominance in Quetta and there was no hope of re-establishing his shop there. He noted that people were frightened and

suspicious of each other.

[21] After a couple of months, the appellant flew back to Saudi Arabia. Since his passport was false he believed he would not get a renewal. Afghani friends in Riyadh told him to obtain an Afghani passport from the Afghani Embassy there. In 2006 or 2007, he applied for an Afghani passport. He told the embassy that his Pakistani passport was false and his father's name was recorded incorrectly. The officials transferred the details from his false passport to the new passport. He was informed that the Saudi government had instructed the embassy to follow this procedure so that there would not be a problem obtaining a work permit.

[22] The appellant then took his Afghani passport to an agent and obtained a work visa without any difficulty. In the next two years he worked in various restaurants run by Afghanis and an Arab from the Yemen.

[23] He learned from some Afghanis in Riyadh about their plans to go to Australia. When he considered his options, he realised that in Pakistan he had no legal status and it was unsafe for him to work there. In Afghanistan, it was not safe for him to return to his village. As Hazara Shi'a, he could not be safe in other areas of Afghanistan. He particularly feared for the future of his disabled children, in the event of his death. He wanted a safe and secure future for his family.

[24] In late 2009 he returned to Pakistan, via Afghanistan, because he travelled on his Afghani passport. He flew to Kabul where he stayed overnight and then travelled by vehicle on back roads, crossing illegally into Pakistan at the Speen Bolduk border. He heard that one of the warlords in his district had been killed. However, the other warlord had formed an alliance with *Hezb-e-Islami*, a group of Pashtun military commanders.

[25] He stayed with his family in Quetta for three months and then flew back to Saudi Arabia.

[26] In late October 2010 he flew from Saudi Arabia to Thailand where he met an agent who arranged a false Chilean passport for him and his travel to New Zealand. The appellant paid US\$7,000 to the agent who retained his Afghani passport. He spent three months in Thailand and Malaysia.

[27] He travelled from Malaysia to New Zealand, arriving here on 6 February 2011. He destroyed his false passport on the flight and claimed refugee status on arrival at the airport at Auckland.

[28] The appellant fears that he will be killed if he returns to his district, either by the warlord, or the *Hezb-e-Islami* or the *Taliban*. He believes the warlords' authority has been reinforced by their alliances with the insurgent groups.

[29] He fears the *Taliban* in Afghanistan because he is Hazara and Shi'a. He has experienced their hatred and threats in Pakistan. He has no family in Afghanistan and there is "nowhere safe" for Hazara Shi'a without such support. He has been living out of the country for approximately 30 years and "you cannot just go back to Afghanistan and blend in. It does not work like that". If he tries to get work he will be asked questions about his background. He cannot hide his ethnicity.

[30] He fears that the Afghani government cannot protect him from any of his potential foes, the warlord, the *Hezb-e-Islami* or the *Taliban*.

Documentary Evidence

[31] Counsel filed:

Before the hearing:

- (a) Submissions dated 9 June 2011, including items of country information;
- (b) An undated statement from the appellant who disclosed new evidence about his work in Saudi Arabia; the issue of his Afghani passport there; and that his journey to New Zealand originated in Riyadh.

At the hearing:

- (a) *BBC News* article entitled "Afghan president's brother, Ahmad Wali Karzai killed" (12 July 2011) marked exhibit "A";
- (b) School records for the appellant's children at a school in Quetta, which includes a school leaving certificate for his daughter and reports for his sons, marked exhibit "B".

Following the hearing:

Translations of exhibit "B" from Urdu to English language, received on 21 July 2011.

JURISDICTION

[32] Pursuant to section 198 of the Immigration Act 2009 (“the Act”), the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and/or
- (b) as a protected person under the Convention Against Torture (section 130); and/or
- (c) as a protected person under the International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

THE REFUGEE CONVENTION – THE ISSUES

[33] 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.”

[34] In terms of *Refugee Appeal No 70074* (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 Claim to Refugee Status

The appellant’s credibility

[35] There were some inconsistencies in the appellant’s evidence. However, the Tribunal noted that prior to the appeal hearing, all of the appellant’s interviews had been conducted in Farsi (of which he admits limited fluency in the language). The appellant’s native language is Hazaragi. The Tribunal accepts that any inconsistencies in the appellant’s claim were resolved by his explanations in the

Hazaragi language.

[36] In his statement on appeal, the appellant conceded he had omitted evidence in earlier articulations of his claim which related to:

- (a) his employment in Saudi Arabia for about nine or 10 years;
- (b) his travel to Saudi Arabia on a false Pakistani passport, and obtaining an Afghani passport from the Afghani Embassy in Riyadh and the use of that passport to fly to Kabul in 2009;
- (c) his journey to New Zealand which originated in Saudi Arabia and the use of that passport to fly to Thailand.

[37] Upon questioning by the Tribunal to explain why he omitted such evidence, he said he did not think his life in Saudi Arabia was important to his claim of being persecuted in Afghanistan and Pakistan.

[38] The Tribunal does not condone the appellant's omission of evidence and that he lied in his refugee claim before appeal. However, the Tribunal is prepared to accept his explanations and his core account that:

- (a) he is Hazara Shi'a, a national of Afghanistan, who fled to Pakistan 30 years ago;
- (b) he is married with three children and his family continue to reside in Quetta, Pakistan;
- (c) he returned to his village in Afghanistan in 1996 to try to reclaim his land from warlords who threatened him;
- (d) he was threatened by the *Taliban* as he operated his shop in Quetta and, as a result, he went to Saudi Arabia and worked there; and
- (e) he travelled to Pakistan, via Afghanistan, in 2009.

Nationality

[39] The Tribunal has accepted the appellant's evidence that he is a national of Afghanistan and he has no legal right to reside in Pakistan. There is no evidence that he could acquire nationality in Pakistan as a mere formality. His claim to refugee status, therefore, falls to be considered in relation to Afghanistan alone.

Objectively, on the facts as found, whether there is a real chance of the appellant being persecuted upon return to Afghanistan?

[40] “Being persecuted” has been interpreted by the Tribunal as the sustained or systemic violation of basic or core human rights such as to be a failure of state protection; see J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) pp104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [38]. The concept of persecution is a construct of two essential elements, namely, the risk of serious harm, defined by core norms of international human rights law, and a failure of state protection.

[41] When assessing the standard of state protection, the Tribunal must consider whether the protection available from the state will reduce the risk of serious harm to below the level of well-foundedness, or, as interpreted in New Zealand, to below the level of a real chance of serious harm; see *Refugee Appeal No 71427* (16 August 2000) at [66] and *Refugee Appeal No 75692* (3 March 2006).

[42] In order to assess the appellant’s predicament upon return, it is necessary to consider country conditions in Afghanistan. There follows an overview of the position of Hazaras; the rise of warlords and the insurgent groups *Hizb-e-Islami* and the *Taliban*; and the current challenges for the government in Afghanistan.

Hazaras

[43] There are approximately 2.8 million Hazaras in Afghanistan. The majority are Shi’a. They settled mainly in the mountainous area of Hazarajat in the thirteenth century, and in other provinces such as Bamiyan and Ghazni. They are historically regarded as the most repressed ethnic minority group in Afghanistan, with Sunni Pushtun clerics teaching up to the 1970s, that killing Hazaras was a religious service. The past two decades of war have driven many of them to Iran and Pakistan, where there is a large community living in Quetta. See: Minority Rights Group International *World Directory of Minorities and Indigenous Peoples: Hazaras* (2008) and Robert Canfield *Encyclopedia of World Cultures Supplement, Hazara*, (2002).

[44] In 2004, the constitution gave the Hazaras rights to Afghan citizenship. Despite these constitutional guarantees, social discrimination continued against Shi’a Hazaras along class, race and religious lines. This discrimination included extortion of money through illegal taxation, forced recruitment and forced labour,

physical abuse and detention. See United States Department of State *Country Reports on Human Rights Practices for 2010: Afghanistan* (8 April 2011).

[45] The UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Afghanistan (17 December 2010) recognise that members of minority ethnic groups may have risk profiles arising from land disputes, at p30:

“Land disputes, particularly where claims involve the illegal occupation of land by persons in positions of authority, are sometimes resolved by resorting to violence or threats. This may be the case where land occupiers are local commanders with strong links to the local or central administration. Where restitution is pursued and in the absence of political, tribal or family protection, the rightful owners may be at risk of ill-treatment, arrest and detention by local militia leaders. Generally, persons residing in areas where they are an ethnic minority are at heightened risk when attempting to reclaim land and property.”

Warlords

[46] The rise of warlords occurred after the collapse of the communist regime in the early 1990s. Their assertion of authority is viewed as part of a system of social governance and control. See Canfield, *ibid*, noted, at p8:

“The wars of the 1980s and 1990s produced another kind of leader, a warlord, whose powers were based on the ability to muster military support. His power was partly personal but also circumstantial, as it entailed not only the ability to gain and keep loyal followers, but also to obtain military supplies. The conditions that formed around these men were often affected by personal and family loyalties”.

Hizb-e-Islami and the Taliban

[47] The *Hizb-e-Islami* has operated mainly in the central and eastern provinces. The group has been characterised by friction and factions led by commanders who have either military or political control. Many *Hizb-e-Islami* commanders, in the meantime, “remain firmly in the fight” asserting control in districts such as Qarabagh. See International Crisis Group *The Insurgency in Afghanistan’s Heartland, Asia Report* (27 June 2011) at p8:

“Hizb-e Islami maintains a hold on districts such as Qarabagh, controlling most of the roadway from there to Moquer, in an informal alliance with Hizb-e Islami linked commander Gen Bashi Habibullah, who also served for a time as a police chief in several districts in Ghazni.”

[48] The *Taliban’s* heartland is in southern and eastern Afghanistan, in predominantly ethnic Pashtun regions along the border of Pakistan. Relations between the *Taliban* and *Hizb-e-Islami* have been tenuous. However, their fluid alliances have enabled the *Taliban* to tighten its grip through a campaign of

intimidation and assassination, particularly in Ghazni province. See *Jane's World Insurgency and Terrorism* (4 July 2011). The International Crisis Group (*ibid*) reports, at pp16-21:

"In the south-eastern province of Ghazni, for instance, where Pashtuns slightly outnumber Hazaras, the Taliban, under the leadership of shadow governor Mullah Najibullah, predominate...

The greater dominance of the Taliban in Ghazni has led to cooperation by Hizb-e Islami commanders where they have limited control. However, where Hizb-e-Islami believes it has an advantage, there have been frequent clashes with the Taliban...

Competition for control over access points, particularly to the stretch of the Kabul-Kandahar highway that runs through Wardak...the Taliban and Hizb-e Islami have battled for the monopoly on the lucrative tax on the bulk transport of local produce from the district."

Taliban treatment of Hazaras

[49] In *AB (Afghanistan)* [2011] NZIPT 800017, the Tribunal referred to recent country information regarding the treatment of Hazaras by the *Taliban* within the district of Ghazni and found evidence of intimidation and killings. At [36]-[37], the Tribunal noted:

"[36] Counsel has presented country information which she submits demonstrates Hazaras are currently at risk from Taliban in Ghazni province. A *New York Times* article "Taliban Kill 9 Members of Minority in Ambush", dated 25 June 2010, is provided. This reports that, in Uruguan district in Ghazni, an area dominated by Pashtuns, the Taliban beheaded nine Hazara village elders. The Taliban took responsibility for the killings and stated that they had killed the men because they were trying to form a traditional local militia. The Taliban stated that those killed had met with district officials and some foreigners, and were on the way back from these meetings when they were ambushed and killed. Law enforcement officials stated that the killings took place because Hazaras are viewed as spies and informants to NATO troops and Special Operations forces in the area, and that many interpreters for these groups are Hazaras. Two weeks earlier, Special Operations forces and Afghan commanders had killed several militants and three brothers of a Taliban commander together in a house. According to an intelligence representative, someone told the Taliban afterwards that it was Hazaras who had "tipped off" the Special Operations forces about the group in the house. This profile of those killed differs from a report in the *Hazaristan Times* on 26 September 2010, claiming that those killed were mostly students on their way to homes for summer vacations from Kabul. The same article reported that, several weeks earlier, a Hazara man from Nahoor District of Ghazni had been beheaded by Taliban in the Sai Ganj area of Ghazni, while travelling to Ghazni city for business".

[50] Ghazni is considered by analysts, to be among the most volatile provinces in southern Afghanistan. In June 2010, the Taliban had distributed "night letters", a method of intimidation to districts within Ghazni province. These letters, distributed at the border of Qarabagh and Jaghori districts, warned that the main

road out of Jaghori to Kabul was closed and not to prevent the Taliban entry into the area. Professor William Maley, Director of the Asia-Pacific College of Diplomacy at the Australian National University, reports that “No part of Ghazni can realistically be considered safe for Hazaras, even in districts where they might seem numerically predominant”; William Maley “The General Situation in Afghanistan”, an Expert Opinion to the Australian Department of Foreign Affairs and Trade (June 2010).”

[51] The UNHCR’s Eligibility Guidelines note that those perceived to be supportive of the government or the international community are at risk, *ibid*, at p3:

“UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF)...”

[52] The *Taliban* have intimidated, threatened and killed individuals, including Shi’a Hazaras, suspected of being supportive of the government and the international military forces. See UNHCR *ibid*.

[53] In Qarabagh, ‘the Taliban use 40 villages as bases to dominate hundreds of other villages’. See *New York Times* article (9 April 2009).

Application of country information to the appellant

[54] The country information corroborates the appellant’s evidence.

[55] It will be recalled that upon return to Qarabagh in 1996, the appellant found that warlords, who were also Hazara, had taken his family land. They threatened him with violence when he pressed his claim with them for return of the land. The appellant has no family support to challenge the warlords’ authority which is strengthened by their alliance with insurgent groups. In Qarabagh, the *Hizb-e-Islami* assert control. In Ghazni, the *Taliban* predominate. As a result, the appellant has been forced to leave the land held by his family over many years, for protection related reasons.

[56] In consequence, the Tribunal finds that there is a real chance of the appellant being persecuted. First, the appellant’s claim for his dispossessed land has been rejected by the warlords who have threatened him. As a result, he has been forced to leave the district. Any pressing of his claim will be viewed as a challenge to their authority. Second, the warlords’ alliance in Qarabagh is with *Hizb-e-Islami* who in turn, has links with the *Taliban* in Ghazni province.

Therefore, there is a real likelihood that the appellant will come to the attention of the *Taliban*. His position as Hazara Shi'a without family or tribal support, relative to the insurgent groups, places him at risk of being persecuted. Third, he has lived outside Afghanistan for 30 years and would be viewed by the *Taliban* as supportive of the government and the international community. For these reasons he faces a real chance of being persecuted.

State protection

[57] The Tribunal now considers whether state protection will reduce the risk of serious harm to the appellant to below the level of well-foundedness.

[58] In *AB (Afghanistan)* [2011] NZIPT 800017, the Tribunal considered the constitutional and political/legal framework in Afghanistan and found that the government's state of readiness to protect its citizens to be haphazard. At [42]-[44] the Tribunal noted:

"[42] Afghanistan is an Islamic republic and the government consists of both executive and legislative branches. Afghanistan has a constitution. Notwithstanding this political/legal framework, one of the greatest challenges facing Afghanistan is law enforcement and state protection.

[43] Afghanistan's National Security Forces consist of three main groups, the army, the army air corps, and the national police. Their effectiveness, professionalism and state of readiness, however, remains uneven; Afghanistan's National Security Forces, 16 April 2009, p.2 cited in the Home Office UK Border Agency *Country of Origin Information Report: Afghanistan* (8 April 2010), 10.01 (Home Office Report). According to Jane's Sentinel Country Risk Assessment: *Afghanistan, Security and Foreign Forces Section* (3 December 2008):

"The police in Afghanistan have never had an effective national enforcement capacity and have only been able to fully represent the authority of central government within the main cities."

[44] The development of the police force has been reportedly hindered by widespread corruption, lack of institutional reform, insufficient trainers and advisers, and a lack of unity of effort with the international community; The Council on Foreign Relations background information on Afghanistan's National Security Forces, 16 April 2009, cited in the Home Office Report."

[59] The Tribunal adopts the above analysis in the present appeal.

The Taliban threat to the state

[60] Notwithstanding the Afghan state structure, the *Taliban* currently represents a threat throughout significant areas of the country, and has capacity to disrupt international security and stabilisation efforts. According to *Jane's World Insurgency and Terrorism, Afghanistan* (4 July 2011):

“While the group will be unable to overthrow the government as long as the International Security Assistance Force (ISAF) personnel remain in the country, there is equally little prospect that it will itself be defeated in the near term. As such – in the context of anticipated future draw-downs of ISAF forces – the Taliban poses a severe threat to the future of Afghanistan in the mid to long term”.

[61] Workshops held by Afghan and foreign analysts concluded that “the insurgency has expanded its reach across the country” and shows no signs of subsiding. See *Report of the United States Institute of Peace, Afghanistan* (February 2011).

[62] The killing of President Karzai’s brother is a recent example of *Taliban* targeted militancy in the south of Afghanistan, which neither NATO forces nor the state, was effective to combat. See “Afghan president’s brother, Ahmad Wali Karzai killed” *BBC News* (12 July 2011).

[63] Moreover, the international community has announced pulling troops out of Afghanistan with the Afghan National Security Forces taking the lead on national security. While there is speculation about the effects of this plan, it is expected that the *Taliban* attack trends will continue and place more pressure on the Government and its institutions. See “Briefing: Holding Ground” *Jane’s Defence Weekly* (20 May 2011).

[64] The Tribunal accepts that the appellant would not receive adequate state protection from harm by the warlords in his village, the *Hizb-e-Islami* or the *Taliban*. Specifically, the state agencies are not capable of reducing the risk to the appellant of harm at the hands of any of them, particularly the *Taliban*, to a level below that of a real chance. The appellant has a well-founded fear of being persecuted.

Internal Protection Alternative

[65] Having found that the appellant has a well-founded fear of being persecuted for a Convention reason in Afghanistan, it is necessary to determine whether there is an internal protection alternative.

[66] For the reasons more fully explained in *Refugee Appeal No 76044* [2008] NZAR 719 and *Refugee Appeal No 71684* [2000] INLR 165, once the appellant has established a well-founded fear of being persecuted for a Convention reason, recognition as a Convention refugee can only be withheld if he or she can genuinely access protection in his home country which is meaningful. This means:

- “a) that the proposed internal protection alternative is accessible to the individual; the access must be practical, safe and legal;
- b) that in the proposed site of internal protection there is no well-founded risk of being persecuted for a Convention reason;
- c) that in the proposed site of internal protection there are no new risks of being persecuted or of being exposed to other forms of serious harm or of refoulement; and
- d) that in the proposed site of internal protection basic norms of civil, political and socio-economic rights will be provided by the State. In this inquiry reference is to be made to the human rights standards suggested by the Refugee Convention itself.”

[67] Recognition of refugee status can only be withheld if each of these four elements is satisfied.

[68] It will be recalled that the appellant stayed in Kabul overnight on his way to Pakistan in 2009. Although there are government and international forces in Kabul, the appellant is without any family support, resources or property. He has been living outside Afghanistan for 30 years and has no current ties to persons or groups there.

[69] There has been high growth in internally displaced persons as a result of the conflict in Afghanistan, exposing real difficulties for the future in finding durable solutions. Again, country information assessed by the Tribunal in *AB (Afghanistan)* [2011] NZIPT 800017 at [56]-[59] records:

“[56] The Norwegian Refugee Council reports internally displaced persons (IDP) Statistics provided by UNHCR in January 2011, recording that some 76,000 of the more than 309,000 persons internally displaced by the conflict, have spent a decade in displacement. There are real difficulties achieving durable solutions for such persons, exacerbated by the duration of their displacement, with weakening support networks and rights to property acquisition; Norwegian Refugee Council, Internal displacement Monitoring Centre *Afghanistan: Need to minimise new displacement and increase protection for recently displaced in remote areas* (11 April 2011).

[57] In urban centres, the IDP population is putting increased pressure on labour markets and resources such as construction materials, land and potable water. In Kabul alone, the population has risen from about 1.5 million in 2001 to nearly 5 million today, with the vast majority squatting in informal settlements, public buildings, or on public land; Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan* (May 2010), p. 14; UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural rights: Afghanistan*, 7 June 2010 E/C.12/AFG/CO/2-4.

[58] According to the Integrated Regional Information Network, most IDPs in Kabul claim that they had not received any assistance from Government or aid agencies, and faced health, food, water and cold-related problems; see Integrated

Regional Information Networks, *Afghanistan: Kapisa Province IDPs flock to Kabul* (12 January 2010). Widespread unemployment limits the ability of a large number of people to meet their basic means. The limited humanitarian assistance which is available has generally not improved this situation in any meaningful way.”

[70] The appellant does not have access to any family support or resources. Indeed, as a married man with three disabled children, he must provide both for himself and his family. The Tribunal considers it is likely that he will end up in an IDP camp if returned to Afghanistan. Such camp does not provide meaningful protection to him.

[71] The Tribunal is therefore satisfied that there is no internal protection alternative available to him.

Convention Reason

[72] As to the second issue raised by Article 1A (2), the harm faced by the appellant at the hands of the *Taliban* would be for reasons of an imputed political opinion.

Conclusion on Claim to Refugee Status

[73] For the reasons stated above, the Tribunal finds the appellant is a refugee within the meaning of Article 1A (2) of the Refugee Convention.

THE CONVENTION AGAINST TORTURE

[74] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[75] The appellant is recognised as a refugee. In accordance with New Zealand’s obligations under the Refugee Convention, he cannot be deported from New Zealand, by virtue of section 129 (2) of the Act (the exceptions to which do not apply). Accordingly, the question whether there are substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand must be answered in the negative. He is not a person requiring protection under the Convention Against Torture. He is not a protected person within the meaning of section 130(1) of the Act.

THE ICCPR

[76] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

[77] For the reasons already given, the appellant cannot be deported from New Zealand. Accordingly, the question whether there are substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand must be answered in the negative. He is not a person requiring protection under the ICCPR. He is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

[78] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the ICCPR.

[79] The appellant is recognised as a refugee. The appeal is allowed.

“D L Henare”
D L Henare
Member

Certified to be the Research
Copy released for publication.

D L Henare
Member