

AT AUCKLAND

Appellant:	AB (Afghanistan)
Before:	S A Aitchison (Member)
Counsel for the appellant:	C Curtis
Counsel for the respondent:	No Appearance
Date of hearing:	13 June 2011
Date of decision:	30 June 2011

DECISION

INTRODUCTION

[1] This is an appeal under section 194(1)(c) of the Immigration Act 2009 (“the Act”) against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining to grant either refugee status or protection to the appellant, a citizen of Afghanistan.

[2] Pursuant to section 198 of 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).

[3] The appellant believes his father was killed in Afghanistan either by members of the Hizb-e Wahdat Party (for whom he transported ammunition and money), or by the Taliban. The appellant fears death at the hands of those responsible for his father's killing on account of being his father's eldest son. The appellant also fears death at the hands of the Taliban and arrest by the Afghanistan government by reason of his Hazara ethnicity and Shi'a religion. He claims that there is no state protection in Afghanistan.

[4] Given that the same account is relied upon in respect of all three limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[5] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[6] The appellant was born in Jaghori district of Ghazni province in Afghanistan. He is of Hazara ethnicity and Shi'a religion. He received no formal education, but did some Koranic study. He also helped his father on the family farm. He has six siblings: three sisters and three brothers who are now living, variously, in Iran and Pakistan.

[7] His family lived in Jaghori until the Soviet occupation when his father took the family to live in Iran. The appellant remained in Jaghori to operate a store which his father supplied with materials from Iran and elsewhere. The appellant married and had four children in Jaghori.

[8] As a member of the Sazman-e Nasr Party, which later merged into the Hizb-e Wahdat Party, the appellant's father was responsible for transporting weapons and money between Afghanistan, Pakistan and Iran. The appellant did not know the details of where, and to whom, his father transported money, but he knew that the weapons were used to fight the Soviet occupation.

[9] The appellant continued operating his business in Jaghori until the Taliban arrived in the district. In approximately 2000, a group of 10 Taliban visited his store and threatened him that if he did not convert to the Sunni religion and wear a beard he would be killed. That night the appellant took his family to Quetta,

Pakistan. They lived there in Hazara town and the appellant found employment as a taxi driver. His wife worked as a tailor. They held no legal status in Pakistan. The appellant and his wife had three more children in Pakistan.

[10] The appellant had few family members remaining in Afghanistan when he left. He only knew of two uncles (brothers of his mother and father) who lived in Kabul. He did not know if their wives remained with them.

[11] The appellant has not had any contact with his father since leaving Afghanistan. Approximately four to five years after leaving Afghanistan, he received a telephone call from a cousin living in Sweden, informing him that his father had been killed in Afghanistan. His cousin told him that his father had been shot "because of money". He guessed that either money had been taken from his father at the time of his death, or that he was killed because money he transported was missing. His cousin did not know who had killed his father. The appellant considered that members of the Hizb-e Wahdat Party or Taliban could have been responsible. His cousin also told him not to go to Afghanistan as he would be killed by the same persons who killed his father. The appellant then sold the family land in Jaghori to his cousin.

[12] The appellant did not know who had informed his cousin of his father's death and he did not inquire about this. He considered that, probably, his cousin's father, or another cousin, had informed him.

[13] While living in Pakistan, the appellant travelled illegally to Iran to work. He remained in Iran for varying periods of time, up to a year in duration. He found employment at a slaughterhouse and also selling jewellery in a market in Iran.

[14] While working at the market, he told a person there that he wanted to leave Pakistan. This person informed him that he had a Finnish passport containing a photograph that resembled him. The appellant arranged to pay the person \$10,000 United States dollars for the passport. The appellant then travelled to Muscat where he met another person who handed him the passport, escorted him to the airport, and through immigration. The appellant then flew to Sri Lanka, Dubai and on to New Zealand.

[15] The appellant arrived in New Zealand on 22 May 2010 on the false passport. He otherwise had no identity documents with him. He used to have an identity card for Afghanistan but he lost it.

[16] The appellant fears that his “father’s enemies” will kill him. While he does not know who they are, he believes that they know who he is, including the fact that he is his father’s eldest son. He believes that they will seek and find him no matter where he may live in Afghanistan, including Kabul.

[17] He also fears the Taliban because he is Hazara and Shi’a. He claims that, every day, Hazara are killed in Afghanistan and that Shi’a are under attack everywhere, including Iraq, Pakistan and Afghanistan. He states that, while Taliban may not seek Hazara out, if they find an opportunity to kill Hazara they will. He considered the reported declaration by Mullah Omar, that the Taliban would not tolerate sectarian bias, to be a lie.

[18] The appellant is unsure of the current security situation in Jaghori district, and whether or not the Taliban have a presence there, but considers that, even if the area is relatively secure, he would be at risk because of his father’s enemies. Should he be required to relocate to Kabul, he does not consider he could find work there.

[19] The appellant also claims to fear the government of Afghanistan because there is no law and because they might arrest him.

[20] Counsel relied upon written submissions she made to the RSB for the appellant’s appeal. She also filed closing submissions with the Tribunal on 24 June 2011, which included country information and a response to further questions posed by the Tribunal by letter of 14 June 2011.

THE REFUGEE CONVENTION – THE ISSUES

[21] 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."

[22] 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

[23] A number of inconsistencies appeared between the appellant's evidence at the RSB interview, before the Tribunal, and in his confirmation of claim form. Given, however, that the appellant had, prior to his hearing before the Tribunal, been interviewed in a language that he did not fully understand (in Farsi, though his native language was Hazaragi), the Tribunal accepts that language difficulties, in addition to the appellant's lack of any formal education, account for these inconsistencies and accepts his evidence as credible.

Nationality

[24] The Tribunal has accepted the appellant's evidence that he is a national of Afghanistan and 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, is there a real chance of the appellant being persecuted upon return to Afghanistan?

[25] The "being persecuted" element of the refugee definition is interpreted by the Tribunal as the sustained or systemic violation of basic or core human rights such as to be demonstrative of 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]. As such, 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.

[26] 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).

Fear of “father’s enemies”

[27] The appellant claims that his main fear upon return to Afghanistan is death at the hands of the persons responsible for killing his father. He does not know who these persons are, but is certain that they know him. He believes that those responsible for his father’s death are either members of the Hizb-e Wahdat Party or the Taliban. If those responsible are Hizb-e Wahdat Party members, he believes that his father may have been killed for money that he was transporting for the Party, or because the money he was transporting went missing. He believes he will be at risk as the eldest son of his father, and suffer the same fate. In a response to further questions raised by the Tribunal subsequent to the hearing, the appellant stated that he cannot say who his father was working for when he was killed and that he may have been supporting anti-Taliban groups or other factions in the area.

[28] The assessment of a well-founded fear is an objective one. It does not involve any evaluation of the appellant’s subjective state of mind. Conjecture and surmise have no part to play, either, in determining whether the anticipation of a risk of harm is well-founded; see *Refugee Appeal No 75692* (3 March 2006). Such anticipation is only well-founded when there is a real and substantial basis for it. The Tribunal finds that the fact that the appellant’s father was killed, and that he also transported weapons and money for the Hizb-e Wahdat Party, in themselves do not establish a real chance that the appellant is at risk of being persecuted. There is no evidence correlating the two. The appellant is only guessing as to who killed his father and for what reason. He does not know where in Afghanistan his

father was killed. Given that Afghanistan is in a state of civil war, and the fact that his father was regularly travelling between several countries, including Iran, Pakistan and Afghanistan, many possible agents and causes for his father's death could be presented. The claim that the appellant would, in turn, suffer a similar fate to his father, is simply conjecture. Given that conjecture and surmise have no part to play in assessing whether a risk of harm is well-founded, any risk of harm to the appellant for this reason is no more than speculative and falls well short of amounting to a real chance.

[29] The appellant also claims to fear persecution in Afghanistan at the hands of Taliban and the Government on account of being of Hazara ethnicity and the Shi'a religion.

Treatment of Hazaras

[30] According to CIA World Factbook (2007), there are approximately 2.8 million Hazaras living in Afghanistan, constituting approximately nine percent of the population. They are distinguishable from other ethnic groups by their Asian appearance and by the fact that most of them are Shi'a Muslims. The Hazaras are most concentrated in the central, mountainous regions of Afghanistan known as the Hazarajat, but they are also found in smaller numbers scattered in other areas of the country; see "Hazaras" in *Worldmark Encyclopaedia of Cultures and Daily Life* (Detroit: Gale, General OneFile, 1998). Historically, they have suffered severe political, social and economic repression from the majority Sunni population, including the Taliban, and have been the subject of discrimination and persecution since the "Hazara Wars" of 1891-1893; "Hazaras" in *World Directory of Minorities and Indigenous Peoples* (Minority Rights Group, 2008).

[31] However, the circumstances of Hazara in Afghanistan, in recent times, have been reported to have improved. Hazaras are one of the national ethnic minorities recognised in the new Afghan constitution and have been given full right to Afghan citizenship. Further, the Hizb-e Wahdat, their main political party, has gained a seat in the cabinet; Minority Rights Group Report in UK Border Agency Country of Origin Information Report: *Afghanistan* (8 April 2010), 22.16.

[32] The Australian Department of Foreign Affairs and Trade (DFAT) in a report, dated 21 February 2009, stated that the current time is perhaps the best in several

hundred years for Hazaras in terms of personal and community freedoms, opportunities and human security. Reporting on a presentation given by a UNHCR Senior Protection Officer to EU Missions in Kabul in December 2009, DFAT states that there was no evidence of a campaign by the insurgency to target Hazaras and that Hazaras were experiencing a relative “golden age” in light of their tragic past.

[33] Concerning the Taliban, it has also been reported that, at least officially, they have moderated their position towards the Shi’a community, Mullah Omar declaring repeatedly that the movement would not tolerate any sectarian bias; Afghanistan Analyst Network, T Ruttig, *A New Taleban Front?* (18 June 2010).

[34] In the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* (17 December 2010) (UNHCR Guidelines), UNCHR advises that the mere fact that a person belongs to an ethnic group constituting a minority in a certain area does not automatically trigger concerns related to risks on the ground of ethnicity alone. Other factors, such as “the relative social, political, economic and military power of the person and/or his and her ethnic group in the area where the fear is alleged may be relevant”.

[35] Having regard to UNHCR’s guidelines, the Tribunal finds that the appellant belongs to an ethnic group constituting a majority in Jaghori district. The guidelines record that provinces and districts where the Hazara constitute a majority or a substantial minority, such as Jaghatu, Jaghori and Malistan districts in Ghazni province, have reasonably stable security situations when compared to the remainder of the province; UNHCR Guidelines. The security landscape of Jaghori district has been described by the Program for Culture and Conflict Studies, 18 May 2010 (www.nps.edu/programs/ccs) to be one of moderate risk. The districts of Malistan, Nawur, Jaghatu and Giro, in comparison, are evaluated as ones of significant risk, and Nawa, Gelan, Muqur, Ab Band, Qarabagh, Andar, Bahrami Sahhid, Ghazni (almost every province along the Kabul-Kandahar road), Dih Yak and Zana Khan, are considered to be high risk.

[36] Counsel has presented country information which she submits demonstrates Hazara 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.

[37] Analysts report that Ghazni is deemed to be among the most volatile provinces in southern Afghanistan. The Afghanistan Analysts Network in Kabul reported in June 2010 that 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 in south-eastern Hazarajat, warned that the main road out of Jaghori which links to Kabul was closed and not to prevent the Taliban entry into the area. Having regard for this information, 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).

[38] Having regard to the above country information, the Tribunal finds no evidence that Hazara are currently at risk of persecution from the Taliban or other groups in Jaghori district of Afghanistan by virtue of their ethnicity or religion alone. However, current reports suggest that the Taliban have killed Hazara from Ghazni

province who are perceived to support the government or international community. The Tribunal is also mindful that various portions of the main Kabul-Kandahar highway which accesses Jaghori district has been blocked by the Taliban (Kabul: Afghanistan Analysts Network, T Ruttig *A New Taliban Front?* (18 June 2010), and that, whilst certain districts of Ghazni are not subject to Taliban control, such districts, may nevertheless not be safely accessible due to the security situation in neighbouring districts and/or provinces; see the UNHCR Guidelines. While there is some evidence of detours available to avoid the most insecure areas of the road, the Tribunal has insufficient evidence to assess these alternatives; Finnish Immigration Service *The Current Situation in the Jaghori District of Ghazni* (10 December 2009).

[39] Amongst the potential risk profiles presented in the UNHCR Guidelines, are individuals associated with, or perceived as supportive of the government and international community, including the International Security Assistance Force (ISAF). Targeted attacks have risen dramatically in parts of the southern region, particularly in Kandahar, where the Taliban have conducted a systematic assassination campaign, with an average of 21 assassinations per week being committed. Clearly, persons perceived to have links to the international or government community are targeted by the Taliban.

[40] The Tribunal finds, at this time, that there is a real chance of the appellant, as a Hazara Shi'a from Jaghori district in Ghazni province who would have recently returned to the country from a western country overseas, being viewed by the Taliban as supportive of the government and international community and thus being persecuted.

[41] The Tribunal turns now to consider whether the protection available from the state will reduce the risk of serious harm to below the level of well-foundedness.

[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, p2 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.

[45] In short, the Tribunal accepts that the appellant would not receive adequate state protection in Ghazni province from the Taliban. State institutions are not capable of reducing the risk to the appellant of harm at the hands of the Taliban to a level below that of a real chance. The appellant has a well-founded fear of being persecuted.

Arrest or discrimination from government

[46] While unnecessary, given the above finding, to consider the appellant's fear of arrest or discrimination from the government of Afghanistan, for the sake of completeness, the Tribunal will briefly do so.

[47] There is no evidence that the appellant will be arrested by the government of Afghanistan, or that he will suffer any persecution from the government by reason of being Hazara Shi'a, or both. While Afghanistan is in a state of civil war, and the security situation in many provinces is frail, the government has made attempts to improve conditions for ethnic minorities. The Hazaras are one of the ethnic minorities recognised in the new Afghan constitution with full rights to Afghan citizenship. Their main political party, Hizb-e Wahdat, has gained a seat in cabinet. While there may exist a level of discrimination generally in society against Hazara (for example, the Hazara report that they are asked to pay bribes at border crossings while Pashtuns are allowed to pass freely), there is no evidence that such discrimination rises to the level of persecution. The government have made

significant efforts to address historical tensions and have included affirmative hiring practices for Hazara; Bureau of Democracy, Human Rights, and Labour *International Religious Freedom Report 2009: Afghanistan* (26 October 2009).

[48] The Tribunal acknowledges counsel's submissions and country information that there are individuals holding positions in government who are alleged to have committed human rights abuses against groups that include Hazara, and that the President has actively supported the appointment of persons who have such backgrounds. However, this does not provide evidence of discrimination against Hazara. There are equally reports that the President has courted many persons, groups, and ethnicities, including the Hazara, to achieve political success and representative governance; see "Long-oppressed Hazara minority may play key role", *Washington Post* (26 July 2009).

[49] There is no evidence that the government will arrest or harm the appellant, or discriminate against him to a degree that reaches persecution.

Internal Protection Alternative

[50] 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".

[51] 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."

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

[53] The Tribunal finds that the appellant may safely access Kabul or Bamiyan by flight. While Taliban attacks do take place intermittently in these cities, the Taliban do not enjoy such a measure of *de facto* territorial control there to be able to act with impunity against those they perceive supportive of the government and the international community. The Tribunal does not consider there to be any new risks of the appellant being persecuted in these cities.

[54] The Tribunal does have real concerns, however, that basic socio-economic rights will not be afforded the appellant in such places. Afghanistan is a tribal culture and protection is shared amongst extended family, community and tribes. The UNHCR Guidelines state that:

“The traditional extended family and community structures of Afghan society constitute the main protection and coping mechanism, particularly in rural areas where infrastructure is not developed. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence.”

[55] The appellant is without any family support, resources, or property in Afghanistan. While there are Hazara communities living in Kabul, and predominately in Bamiyan, the appellant has been living outside Afghanistan for over a decade and has no current ties to persons or groups there.

[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), p14; 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.

[59] Given the security, political and economic climate in Afghanistan, paired with the appellant's lack of any family or tribal support or resources, the Tribunal considers there to be a real likelihood that he will end up in an IDP camp if returned to Afghanistan. In no way does this provide meaningful protection to him.

[60] Given these factors, the Tribunal is satisfied that there is no internal protection alternative available to him.

Is the anticipated harm for a Convention reason?

[61] 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

[62] 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 – THE ISSUES

[63] 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.”

Conclusion on claim under Convention Against Torture

[64] 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 – THE ISSUES

[65] 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.”

Conclusion on claim under ICCPR

[66] 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

[67] 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 Covenant on Civil and Political Rights.

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

"S A Aitchison"
S A Aitchison
Member

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Member