

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73608

AT AUCKLAND

<u>Before:</u>	A N Molloy (Chairperson) L Tremewan (Member)
<u>Counsel for Appellant:</u>	R Hooker
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	1 July 2003 and 5 August 2003
<u>Date of Decision:</u>	28 June 2004

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Afghanistan.

INTRODUCTION

[2] The appellant is a 23 year-old male of Pashtun ethnicity. He arrived in New Zealand on 22 February 2001 and submitted an application for refugee status the same day. He was interviewed by the RSB on 15 May 2001. A decision was published, declining his application, on 26 February 2002. He appeals against that decision.

[3] The Authority regrets that the publication of this decision has been somewhat delayed. This is in part because of the amount of country information which has required consideration, much of it provided by counsel, whose assistance in this connection is acknowledged. He has also provided the Authority with useful written submissions. Those submissions, and all of the country

information, the sources of which are listed below, have been taken into account for the purposes of this decision. We note for the record that this includes documents forwarded to counsel by the Authority under cover of letters dated 15 July 2003, 5 August 2003 and 8 December 2003, and submissions and documents forwarded by counsel to the Authority under cover of letters dated 30 June 2003, 4 August 2003, 5 August 2003 (x2), 14 August 2003, 16 December 2003, 20 January 2004, and 30 January 2004:

(i) US Department of State

Country reports on human rights practices for 2002: Afghanistan (31 March 2003)

(ii) UNHCR

Press release: *Afghan returnees make molehill out of mountains* (June 2003)

Press release: *Afghanistan: Returns surge in May* (June 2003)

Reliefweb *Iran, Afghanistan and UNHCR sign new agreement on Afghan returns* (17 June 2003)

Reliefweb *Afghan refugee returns in 2003 cross quarter-million mark* (25 June 2003)

Reliefweb *UNHCR to start relocating Afghans before closing camp* (27 June 2003)

Reliefweb *Afghan refugees: Still coming home in large numbers* (2 July 2003)

UN predicts 1.5 million Afghan returnees in 2003 (3 August 2003)

Afghan returns cross 100,000 mark in first five months of 2003 (3 August 2003)

Afghanistan: poor security threatens reconstruction, elections – Aid agencies (3 August 2003)

District profiles for Baghlan

UNHCR Afghanistan humanitarian update No 68 (15 August 2003)

UN to review Afghan asylum claims in Nauru (24 December 2003)

Nauru: UN says detained asylum seekers may get refugee status (5 January 2004)

(iii) United Nations Office for Coordination of Humanitarian affairs (UNOCHA)

Afghanistan: Focus on returns and reintegration in the north (18 June 2003)

Afghanistan: Thousands of soldiers forsake new army (29 January 2004)

(iv) United Nations Security Council

Report of the Security Council mission to Afghanistan, 31 October-7 November 2003 (11 November 2003)

(v) Danish Immigration Service

The Political, Security and Human Rights Situation in Afghanistan, Report on fact-finding mission to Kabul and Mazar-i-Sharif, Afghanistan and Islamabad, Pakistan 22 September – 5 October 2002 (March 2003)

(vi) UK Home Office country information policy unit

Country Report: Afghanistan (April 2003)

(vii) Amnesty International

Continuing need for Protection and Standards for Return of Afghan refugees (July 2002)

Out of sight, out of mind: the fate of the Afghan returnees (June 2003)

Letter to Vallant Hooker and Partners, 4 August 2003

(viii) Human Rights Watch

Anti-pashtun violence widespread in Afghanistan (3 March 2002)

Paying for the Taliban's crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan (April 2002)

Press release: *New survey finds persistent attacks against ethnic Pashtuns in Western Afghanistan; Call for Protection* (9 May 2002)

World report: Afghanistan (2003)

Statement by John Sifton, Afghanistan researcher: *Deteriorating security situation threatens human rights* (18 June 2003)

“Killing you is a very easy thing for us”: Human Rights Abuses in Southeast Afghanistan (July 2003)

(ix) *Washington Post*

“Report claims Afghanistan rife with abuse, fear” (29 July 2003)

“Afghan political violence on the rise” (3 August 2003)

(x) Physicians for Human Rights

Press release: *New Survey finds persistent attacks against ethnic Pashtuns in Western Afghanistan: call for protection* (9 May 2002)

(xi) Refugee Review Tribunal

RRT Reference: *N02/42876* (28 August 2002)

(xii) UK Law Reports

Karanakaran v Secretary of State for Home Department

Horvath v Secretary of State for the Home Department [2000] 3 All ER 577 (6 July 2000)

(xiii) *The Economist*

“And there’s another country” (13 September 2003)

(xiv) *BBC Monitoring International Reports*

“Afghan national army opens recruitment centre in north” (17 September 2003)

“Afghan ministry provides shelter for 300,000 returnees in north east” (12

November 2003).

(xv) *BBC News UK Edition* (Internet)

“Q&A: Afghan security situation” (12 January 2004)

“Afghanistan – A rocky year ahead” (28 January 2004)

(xvi) *Agence France Presse*

“North Afghan corps to be combined to end warlord fighting” (8 November 2003)

(xvii) *New Zealand Herald*

“Gwynne Dyer: Opium is thriving and the Taliban are back in Afghanistan” (30 December 2003), comment published 20 January 2004.

THE APPELLANT’S CASE

[4] The appellant’s account is summarised below. An assessment of his credibility follows.

[5] The appellant was born in the village of K, a small village populated by approximately 300 families, in the province of Baghlan. He is the fourth of five children and has two older brothers, one older sister and one younger brother. The appellant’s family originally sustained itself from the income derived from its farm of approximately 35 acres and latterly from a shop.

[6] The appellant’s father was a teacher. He was killed by the Russian army in 1986. Less than a month later, the appellant’s mother gave birth to the appellant’s younger brother. Family life was thereafter difficult.

[7] When he was seven years old, the appellant began attending primary school. He completed six years of primary education and about five years of secondary education, albeit that the secondary education was interrupted from time to time because of the various conflicts which have plagued Afghanistan in recent decades.

[8] Further tragedy befell the appellant's family in 1995, when his oldest brother was killed in an ambush after being forced to fight for the *Mojahedin*.

[9] At the beginning of 2000, Taliban forces arrived in the appellant's village and surrounding areas. Their presence imposed a repressive atmosphere and the appellant himself came into conflict with them on at least one occasion. He and some school friends were reprimanded for playing football at a time set aside for formal prayer. They managed to run away before anything serious happened to them.

[10] In August 2000, the appellant learned that his other older brother had been forcibly conscripted by Taliban forces which were scouring the region for young males to enlist. The appellant was told by some other villagers that they had seen his brother being accosted by Taliban fighters in Baghlan city, which is a short distance from K. Friends of the appellant were taken away at the same time. He has heard nothing more of his brother since then.

[11] After his brother's abduction the appellant became very concerned about his own future. The Taliban continued to visit villages in the area, including K, seeking fresh conscripts. The appellant managed to hide for two months. While in hiding, he decided that he had to leave Afghanistan.

[12] Towards the end of 2000 the appellant made his way to Pakistan. He funded his travel through savings and by selling some of his family's land. Although the vehicle he was travelling in was stopped at one checkpoint outside Pol-e Khomri, the appellant did not encounter any particular problems en route to the border. Once there, he bribed his way into Pakistan and made his way to the city of Peshawar, where he prevailed upon an old friend of his father, with whom he lived for three months.

[13] The large number of other Afghans seeking similar respite in Peshawar led the appellant to believe that he had little prospect of obtaining work or building a future for himself there. He decided that he would have to leave. His father's friend helped him to find an agent, who procured an airline ticket and a false passport which the appellant used to travel to New Zealand.

[14] The appellant has not been able to contact any of his family since his

departure from K. A year before the hearing, the appellant wrote from New Zealand to his father's friend in Peshawar. He passed on his telephone number and asked his father's friend to circulate this to any other people who he might meet from the appellant's village, as a potential way of obtaining news about his family.

[15] As a result, the appellant soon received a telephone call from a person who had lived close to the appellant's village in Baghlan province. Although they knew each other, they were not well acquainted. That person was unable to give the appellant any news of his family. He told the appellant that he had left because he was Pashtun and because of the antipathy expressed towards other Pashtuns in the region. He said that initially, many Pashtuns in the area were killed and many others were jailed. Most just ran away.

[16] Since that telephone conversation, the appellant has had no further contact with anyone from his home village.

[17] When the appellant arrived in New Zealand and claimed refugee status, his claim was based upon his fear of being compelled to fight for the Taliban. Because of the invasion by UN forces following the events of September 11, the internal situation in Afghanistan is now fundamentally different from what it was at the time the appellant fled.

[18] Although Afghanistan is no longer ruled by the Taliban, the appellant believes that they remain a force across the country and that there is still a possibility that they could return to the north, including his home area in Baghlan.

[19] His original fears have been augmented by new concerns. As an ethnic Pashtun, the appellant is in the minority throughout his district. Since the fall of the Taliban, members of other ethnic groups have taken violent reprisals against the Pashtun community, from which the Taliban drew most of its personnel. The appellant is in fear of such reprisals.

[20] In addition, he fears that he may be forcibly recruited to fight for one of the warlords still operating there; and he fears that, even if the situation in Baghlan has stabilised, conditions in Afghanistan as a whole have continued to deteriorate to the extent that he is unlikely to reach his village in safety once he has returned

to Afghanistan.

[21] He also believes that it would be impossible for him to relocate safely anywhere else in Afghanistan, because of the divisive climate of ethnic suspicion which exists there. With no family or social network outside his village, he believes that he would eventually be forced to leave any other region to which he might go, and driven back to his home area where he would again be at risk.

[22] The appellant also called two witnesses to give evidence, X and Y. Witness X has lived in New Zealand since 1990. He maintains a high degree of interest in the events in his homeland and is involved in a radio programme for the Afghani community here. He is also in contact with new arrivals from Afghanistan through his assistance with recent refugees. Although he is not from the north, he believed that the appellant would be at risk because he is Pashtun and would face reprisals from those who are anti-Taliban. He also believed that the appellant would be at risk because he is a young man whose return after an absence would arouse suspicion among the locals.

[23] Witness Y has also lived in New Zealand for some years. He had recently travelled to Pakistan with his wife. She had not seen her family in the south of Afghanistan for 25 years. Against advice, she went into Afghanistan from Pakistan. The witness did not do accompany her, but recounted her impression that the people in the south were acting as they pleased, with little regard for the central government.

THE ISSUES

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

"... owing to a 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

[26] Before turning to the issues as framed, it is necessary to evaluate the appellant's credibility. The appellant has given consistent evidence on each occasion when he has been questioned about his claim. This includes his interview at the airport after arriving in New Zealand, his interview with the RSB, and his appeal hearing. Minor concerns about his evidence were clarified with credible explanations. His account is also consistent with country information. The Authority therefore accepts his account.

[27] The Authority notes that the two witnesses, X and Y, both gave sincere, credible evidence which provided some insight into Afghani society in general. It is no criticism of them to state that their evidence was generalised and that they could not specifically address conditions in the area from which the appellant himself has come from their own personal experience. It is also true that neither was able to give a direct first hand account of the circumstances in Afghanistan since the invasion of UN forces late in 2001.

Afghanistan: Recent history

[28] Before turning to the appellant's respective claims, it is helpful to refer to the recent history of Afghanistan, in general terms. During the past quarter of a century, Afghanistan has endured successive conflicts. The most recent followed the invasion of Afghanistan by US-led coalition forces in September 2001, which was prompted by terrorist attacks on US soil earlier that same month. The aim of the invasion was to bring an end to the Taliban regime which was then in power. This was achieved in June 2002.

[29] Shortly afterwards Hamid Karzai, himself an ethnic Pashtun, was appointed president of an interim administration elected at a grand assembly of tribal representatives, or *Loya Jirga*. He has presided over the process of drafting a

new constitution, which was adopted by the *Loya Jirga* early in 2004. Presidential elections are scheduled to take place in 2004 and the difficult process of enrolling people on the ballot has commenced.

[30] The appellant accepts that these are significant changes, but he is not convinced that the Taliban will no longer have any influence in his local area. He also claims that there are additional bases for his claim for refugee status. He fears being the subject of violent reprisals from the non-Pashtun majority within his surrounding district; he fears that he may be forcibly recruited to fight for one of the warlords still operating there; and he fears that, even if the situation in Baghlan has stabilised, conditions in Afghanistan as a whole have continued to deteriorate to the extent that he is unlikely to reach his village in safety once he has returned to Afghanistan.

[31] The post-Taliban situation in Afghanistan has previously been examined by this Authority. It traversed a considerable body of country information in *Refugee Appeal No 73545/02* (11 October 2002), and *Refugee Appeal No 74412/02* (28 March 2003). Much of that information provides useful background to the appellant's predicament. However, it is clear that local circumstances vary throughout the country and that they are subject to change. The Authority has had access to further reports which have updated and augmented the information previously available, as previously listed.

OBJECTIVELY, ON THE FACTS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO AFGHANISTAN?

[32] Persecution has been defined as "serious harm + lack of state protection", *Refugee Appeal No 71427/99* [2000] NZAR 545. The appellant claims to be in fear of persecution from various sources.

Fear of the Taliban

[33] The Authority will first consider the appellant's original reason for seeking refugee status, namely, that he is in fear of being persecuted by the Taliban.

[34] While the report of the Danish Immigration Service, published in March 2003 ("the Danish Report"), suggested that by 2002 the Taliban was defunct as a

political movement, more recent sources refer to incidents in the south and south east of Afghanistan which contradict the view that the Taliban is moribund in that region; see, for example, the Amnesty International report *Out of Sight, out of mind: The fate of the Afghan returnees* (June 2003); and *BBC News, UK Edition*, “Q&A: Afghan Security Situation” (12 January 2004).

[35] Likewise, the *Washington Post* outlined new activity by the Taliban in the southern city of Khandahar; “Afghan political violence on the rise” (3 August 2003). However, the same article also describes Afghanistan as being more stable than during recent decades and observed that the Taliban does not seem to have mass support or the ability to recapture the country.

[36] The Authority has also taken into account additional material forwarded by counsel under cover of a letter to the Authority dated 20 January 2004. That material included a copy of an article written by Gwynne Dyer, published in the *New Zealand Herald* on 20 January 2004, entitled “Opium is Thriving and the Taliban are back in Afghanistan”. Mr Dyer is a journalist who writes a column syndicated to publications in various parts of the world. In his article, he predicts that the prospects for establishing a democracy in Afghanistan is doomed because of the likelihood that Pashtun areas in the south will again fall into the hands of the Taliban. He also asserts that elections scheduled for 2004 may not take place at all.

[37] While the Authority notes the view expressed by Mr Dyer, it is essentially no more than the personal view of one journalist about the general situation in Afghanistan. The article does not, and cannot, purport to be otherwise. The Authority also notes that even Mr Dyer suggests that it is southern, Pashtun-speaking provinces which are once again falling into the hands of Taliban fundamentalists. The article does not address the prospective risk to this appellant if he were to return to his home area, a north eastern province which is not dominated by Pashtun.

[38] That article also appears juxtaposed with another article submitted by counsel under cover of the same letter; by Pakistani journalist Ahmed Rashid, “Afghanistan – a rocky year ahead”, *BBC News unlimited*, (Internet), 28 January 2004.

[39] Mr Rashid identifies two problems which will dominate the concerns of the government of President Karzai: the lack of security in the countryside and the failure of the international community to disperse adequate funds for Afghanistan's reconstruction. However, it is apparent from a close reading of his article that Mr Rashid is actually optimistic about the future of Afghanistan. For example, he observes that, despite ongoing ethnic tensions and cash shortages, Afghanistan is "on the road to stability". He also concludes that the essential processes of building a nation are taking place, namely, political and economic reconstruction, and establishing state and government institutions. He does not perceive the Taliban to be the threat that Mr Dyer does.

[40] The appellant lived in a small village in the north of the country. The Taliban has traditionally drawn its support from Pashtun people. Although, according to the appellant, the majority of people in his village were Pashtun, that is not true of the population in the surrounding areas. Within the surrounding area and province, Pashtun are in the minority. This is undoubtedly why any country information referring to the re-emergence of the Taliban is focussed in the south-east of the country.

[41] Evidence given and submissions made on the appellant's behalf emphasised that if the appellant attempted to live anywhere else in Afghanistan, the closed ranks of Afghan society would inevitably propel him back to his home area. In summary, the Taliban are not resurgent in or near the appellant's locale; there is no reason for him to relocate to any area where the Taliban are said to be emerging again, nor is there any prospect that he could, even if he wanted to do so.

[42] It is quite clear that the Taliban is no longer in a position of centralised power in Afghanistan. Indeed, the purpose of the invasion in 2001 was to remove them from that position. The Authority finds that the possibility of the Taliban re-emerging as a significant force in Baghlan is currently remote, if not non-existent. For all of these reasons, the Authority finds that the appellant does not currently have a well-founded fear of being persecuted by the Taliban if he were to return to Afghanistan.

[43] The Authority now turns to address the basis for the appellant's claim that he is at risk of reprisals from the non-Pashtun majority within his locale.

Whether the risk of reprisals against Pashtun has abated

[44] According to the Danish Report, only select members of the Taliban are at risk of targeting on the grounds of their membership of that organisation. That report states, at page 15, that:

“...the Taliban was an organised group with a clearly defined structure. It was obvious who gave the orders, and people who were actively involved in the movement – often against their own groups – are known locally. ...they should stay away from their area of origin, but may return to other regions.”

[45] The appellant was never involved with, or associated with the Taliban. Accordingly, there is no reason to suggest that he would be at risk of persecution on these grounds. We turn to consider whether there is a more generalised risk to Pashtun.

[46] There is no doubt that during the months which immediately followed the fall of the Taliban, numerous acts of violence were perpetrated against ethnic Pashtun people throughout Afghanistan. Such incidents were recorded in many districts, including villages in Baghlan. In its *World Report 2003*, Human Rights Watch stated:

“In the last two months of 2001 and the first months of 2002, there was a wave of attacks on Pashtun civilians in the north of the country, seemingly because they shared the same ethnicity as the Taliban leadership.”

[47] More specific details appear in the Human Rights Watch (HRW) publication *Paying for the Taliban's Crimes: Abuses against Ethnic Pashtuns in Northern Afghanistan*, April 2002. That report outlines experiences of people in provinces, including Baghlan, many of whom lived in villages with which the appellant was familiar.

[48] According to that report, anti-Pashtun violence led to the internal displacement of thousands of people throughout the north. This is consistent with the information given to the appellant by his “neighbour” during their telephone conversation after the appellant’s arrival in New Zealand. Many of those who were forced to flee moved from rural areas to urban areas, including Baghlan city.

[49] It is also apparent, from both of the Human Rights Watch publications to which we have referred, and from more contemporary country information, that this wave of excess has all but come to an end. The Danish Report, drawing from

numerous sources, stated that although ethnically-based persecution of Pashtun was still taking place in some northern regions (in October 2002):

“There is increased monitoring of the northern areas – especially the provinces of Kunduz, Baghlan and Takhar – where the incidents of injustice have now decreased or completely ceased. At the same time, a large number of Pashtun have returned from Pakistan to these areas...” [Page 43], [emphasis added by the Authority].

[50] At page 42 of the same report, the authors cited the co-ordinator for the United Nations Assistance Mission to Afghanistan (UNAMA), civil affairs branch, who stated that incidents involving Pashtuns had peaked between November and December 2001, which was in the immediate aftermath of the collapse of the Taliban regime. They concluded that the decline in abuses was at least partly due to the fact that rulers in the northern regions had been pressured to discipline their own commanders and gave a specific example of the Baghlan province, in which new Pashtun commandants had been appointed.

[51] The Danish Report also cited the Cooperation Centre for Afghanistan (CCA), which found that the situation had improved for Pashtun in northern areas, largely due to the presence of the international community, and that there were no ongoing violations of, or restrictions upon, Pashtun in those areas (page 43).

[52] The Authority has also considered the report from the United Nations Office for the Co-ordination of Humanitarian Affairs (“UNOCHA”), *Afghanistan: Focus on returns and reintegration in the north*, dated 18 June 2003. This report identifies the logistical problem of returning and reintegrating 2.5 million Afghan refugees and internally displaced persons to their places of origin.

[53] It also refers to a UNHCR estimate that 60,000 Pashtun fled from the north following the fall of the Taliban in December 2001. That is consistent with the reports to which we have already referred. More positively, it refers to another UNHCR estimate that some 600,000 Afghan refugees and internally displaced persons (including 100,000 Pashtun) had returned to their homes in nine northern provinces, including Baghlan, by the end of March 2003. It continues:

“Aid workers believe that the situation has largely stabilised in the north eastern provinces of ... Baghlan ..., where most of the Pashtuns have returned”.

The report then contrasts those provinces to others in the north, to which few people had returned.

[54] None of the above suggests that inhabitants of the city or the province of Baghlan are without problems. There are difficulties faced by returnees to many areas, including some in the north, such as unofficial “taxation” by local commanders, poor general security, and poor employment prospects. Many of these problems are identified in the Amnesty International report *Out of sight out of mind: The fate of the Afghan returnees*, 26 June 2003. That report confirms the almost chaotic state of the country’s infrastructure and the ongoing political problems which it faces.

[55] However, it is also clear that the concentrated spate of attacks against Pashtun has ended in Baghlan province and that Pashtun evacuation from that region is reversing. Country information which is specific to Baghlan suggests that it is an area of relative stability, with its infrastructure intact. Although there are still references to incidents in the north in general, the references to Baghlan province and Baghlan city have consistently emphasised a positive trend.

[56] The Authority finds that the appellant is not currently at risk of being persecuted for reason of being Pashtun. We are also satisfied that, given the number of returnees, any risk to the appellant simply because of suspicions aroused by his return after an absence would be remote.

Risks relating to general insecurity across the country as a whole

[57] Counsel submitted that the security situation in Afghanistan deteriorated during 2003. He referred the Authority to the Human Rights Watch report “*Killing you is a very easy thing for us: Human rights abuses in southeast Afghanistan*”, July 2003. That report outlines serious violations of human rights, including abuses against civilians by police and the military, rape, armed robbery, extortion, illegal seizure and occupation of land, and also refers to attacks on political activists and the media. It outlines the denial of basic freedoms to women, and restrictions on social activities at large.

[58] While the Authority accepts that this is an important document in terms of understanding conditions in Afghanistan, its utility is limited when considering this particular appellant’s claim for refugee status. First, it concentrates on research conducted within the southeast. Although the report states that the human rights violations identified are not confined to the southeast, but are taking place

throughout Afghanistan, that generalised assertion is again only of limited utility: the rest of the country covers a large area and a multitude of local conditions and the research was not conducted outside the southeast. The Authority does not accept that the contents of that report automatically applies to the area to which the appellant would return.

[59] Further, even if it is accepted that this appellant may find himself dealing with the many problems facing his country at present, the focus of the Refugee Convention is narrowly defined. The appellant has to demonstrate that he has a well-founded fear of being persecuted for a Convention ground. Matters of general insecurity, for example relating to the risks of being the victim of crime, do not bring him within the ambit of protection offered by the Convention.

[60] The Authority has also considered the Amnesty International report, "*Out of sight, out of mind: the fate of the Afghan returnees*" (April 2003), prepared on the basis of interviews with people from various areas in the north. The report observes that the number of returnees to Afghanistan in early 2003 was substantially lower than during the previous year and attributes this to the need to improve internal security, "especially in the southern provinces" (para 2, page 4).

[61] Once again, this report is of limited assistance. While there were people interviewed from two villages in Baghlan, they were groups of Ismailis who, having been internally displaced, had returned from Pakistan to find their land occupied by members of a rival ethnic group. They had accordingly set up informal settlements on government-owned land in another city within Baghlan province. Thus, the source of difficulty for that group, while not to be taken lightly in a humanitarian sense, does not inform the assessment of a risk to this appellant were he to return to Baghlan.

[62] Significant numbers of displaced persons have returned to the north, including to Baghlan (see paragraph 52 above). Even if the rate of influx varies from month to month, it remains significant. There is no report of which the Authority is aware which suggests that large numbers of those displaced persons have been subjected to the types of criminal acts which counsel suggests would make the return journey to Baghlan province too dangerous for the appellant to undertake.

[63] Nor do we accept that there is evidence which suggests that the appellant would face a real chance of persecution for a Convention reason while trying to reach Baghlan. The Authority accepts that at present the environment in Afghanistan is not wholly stable. The ongoing process of repatriation of displaced people from within and outside the country may contribute to that instability in many ways. It is also clear that security concerns remain, and that undoubtedly gives rise to subjective fears faced by the appellant. The Authority can not discount the possibility that the appellant could face such problems relating to employment, possible banditry, or even land disputes. While these problems may give rise to general subjective fears applicable to anyone living in that country, and even to a risk of non Convention related harm, they do not provide a basis for finding that there is a real chance that the appellant would be persecuted for a Convention reason either in Baghlan or on his way there.

[64] For all of these reasons, the Authority finds that the risk that the appellant will suffer serious harm due to the general instability within the country is remote. We find further that even if he were to fall victim of banditry, such harm would not be for reason of a Convention ground.

Whether the appellant is at risk of forcible recruitment

[65] Counsel has also provided the Authority with a copy of a letter which he had received from Amnesty International (AI) dated 4 August 2003. In that letter, AI refers to a research mission carried out between June 2002 and June 2003. The mission visited Baghlan province. AI delegates identified reports of discrimination against the Pashtun minority, some including violence. The Authority has already set out its reasons for finding that the appellant is not at risk in this connection and nothing in the AI letter causes the Authority to depart from its conclusions set out at paragraphs 44 to 56 inclusive.

[66] The letter also indicated that AI had concerns about forcible recruitment of men and boys throughout rural areas in the north of the country. AI did not suggest that individuals are targeted because of their ethnicity. The letter also states that families could buy their sons out of service, which indicates that the practice may be a means of generalised extortion.

[67] The letter also refers to a report from the office of the UNHCR about forced

military recruitment in five provinces in Afghanistan, including Baghlan. However, AI did not cite the source of that information and the Authority has not been able to identify that report. We also note that there was no mention of such a problem existing in Baghlan in the comprehensive Danish Report to which we have already referred.

[68] We also record that the appellant frankly acknowledged while giving evidence that there is nothing which physically identifies him as being Pashtun. He is bi-lingual, and is able to speak Farsi. While he may face the same risk of any of his fellow countrymen of falling victim to crime or recruitment to the private army of a warlord, there is no country information upon which the Authority could base a finding that such risks would be for a Convention reason.

Ongoing re-evaluation by UNHCR

[69] In his letter to the Authority dated 20 January 2004, counsel referred to a UNHCR press release dated 5 January 2004, *Nauru: U.N. says detained asylum seekers may get refugee status*, which indicated that the UNHCR has decided to reconsider unsuccessful refugee claimants from Afghanistan who are presently in Nauru. He submitted that this, in conjunction with other material already provided, shows that the appellant is presently at risk of persecution.

[70] While acknowledging that material, the Authority notes that it is couched in very general terms. First, the release makes it clear that the claims of “some” asylum seekers were to be reappraised because of the serious deterioration of security and human rights situation in “certain regions” of Afghanistan which are not identified by the press release.

[71] The press release did not suggest that Baghlan is one of those areas. As noted, country information available to the Authority indicates that both the province and the city of Baghlan are relatively stable. Counsel has not provided any information which suggests that Baghlan is an area in which security and human rights concerns are “seriously deteriorating” and which would therefore bring its inhabitants within the scope of reappraisals proposed by UNHCR.

[72] For all of these reasons, the Authority does not consider that this appellant’s appeal is advanced simply by virtue of the fact that UNHCR is reviewing the cases

of some claimants.

CONCLUSION

[73] For the reasons given, the Authority finds that the appellant's fear of persecution if he returns to Afghanistan is not well-founded. The first principal issue is answered in the negative. The second does not fall for consideration.

[74] The appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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AN Molloy
Member