

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76190**

**AT AUCKLAND**

<b><u>Before:</u></b>	J Baddeley (Member)
<b><u>Counsel for the Appellant:</u></b>	C Curtis
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	28 & 29 April 2008
<b><u>Date of Decision:</u></b>	3 July 2008

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**DECISION**

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

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 21 August 2004. He applied for refugee status on 2 October 2007 and was interviewed by the RSB on 19 and 20 November 2007. The decision declining the grant of refugee status was published on 15 February 2008. It is against this decision that he now appeals to this Authority.

**THE APPELLANT'S CASE**

[3] The following is a summary of the appellant's evidence. It is assessed later.

This is an abridged version of the decision. Some particulars have been removed from or summarised in the decision pursuant to s129T of the Immigration Act 1987. Where this has occurred, it is indicated by square brackets.

[4] The appellant was born in 1982 in a village in X district, [...]. He is a Pashtun Muslim. His family moved to Pakistan when Russian forces invaded Afghanistan in 1986 and remain living there.

[5] In 1989, the appellant's father worked for UNHCR [...] and in 1990 he began working for the World Health Organisation (WHO). [...].

[6] The appellant attended the Islamia Public High School, an English medium school in Peshawar from the age of eight until he was approximately 14. He then transferred to a different school to learn Pashtun and Farsi for two years. In 2000, the appellant began to be harassed and assaulted by other Afghani in the refugee camp who accused him of being a Christian and sympathising with the USA because he attended an English language school. They originated from a village near the appellant's home in Afghanistan. To avoid them the appellant left Peshawar and went to live with his uncle AA in Islamabad for three months. His father, who had attempted unsuccessfully to intervene on the appellant's behalf against the troublemakers, decided to move the whole family to B, about one and a half hour's drive from their previous home in the refugee camp. The troublemakers subsequently returned to their home village in Afghanistan.

[7] The appellant returned to the family home and took further courses in information technology (IT) management administration. He did not graduate in any of these and was still enrolled when he finally left Pakistan in 2004. He began working part-time for his father in 2002.

[8] In 1993, the appellant's father had established his first [business].

[9] In 1996, the Taliban took over Afghanistan. They raided and set fire to the offices of his father's [business] and the appellant's brother, who was working there, disappeared. The family believe that he was killed by the Taliban. His father could no longer continue to work in Afghanistan. [...].

[10] In 2001, the appellant's father received threatening telephone calls from the Taliban at his office in Peshawar. [...]. They threatened to "chop off" the heads of the appellant's father and his family. None of these threats were carried out.

[11] After the Taliban government collapsed at the end of 2001, the appellant's father was asked to resume his [business] in Afghanistan. [...]. The appellant

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joined this work in 2002. He conducted surveys of families in villages over a period of three months [...]. Throughout this time the appellant remained living with his family in Peshawar and travelled several times a week across the border with his father to carry out the project work in Afghanistan. They did not experience any serious problems with the Pakistani authorities when making these border crossings. The appellant also assisted his father with clerical work at his offices. His father's [...] projects in Peshawar continued to operate throughout this period.

[12] [...]. He continued with this work part-time while he also studied for a business course until 2004. He himself never experienced problems with the Taliban while he was working in Afghanistan or Pakistan.

[13] The appellant left Pakistan in 2004. He travelled to New Zealand on a visa obtained from Immigration New Zealand, Singapore. He had been granted this visa as a result of his marriage to a New Zealand citizen in November 2003 in Peshawar. He had made his wife's acquaintance over the Internet after an introduction in 2001 at the behest of his uncle who was in New Zealand at the time. The appellant attempted unsuccessfully to obtain visas for his family to come to New Zealand in 2005. Since leaving Pakistan in 2004 the appellant has never returned there or to Afghanistan.

[14] The appellant has remained in contact with his family in Peshawar. In October or November 2006 the appellant learnt that his father had received threatening letters from the Taliban. Threats were made to kill the appellant and his family [...]. When the appellant heard about the threats his father had received he contacted a lawyer to discuss the possibility of applying for refugee status. He was advised that his claim would not succeed so he took the matter no further.

[15] The warning letters were delivered to his father's office in Jalalabad in February 2006, April 2006 and most recently in June 2007. Warnings were also written on the walls of their family home in X. Initially his father did not take these threats seriously.

[16] When his father eventually, in mid-2007, brought these threats to the attention of other Afghans [...] they warned him that these threats were serious and he needed to protect himself and his family. He closed down his [business] in

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mid-2007 and advised his son-in-law to take the appellant's mother and siblings away from their home to a place two hours' drive from their home in Peshawar. His father went to a different unknown location.

[17] The family was separated in October/November 2007 and reunited at their home in B in March 2008.

[18] His father has not re-opened his [business] and the appellant reports that he has no other employment. He stays at home most of the time and takes precautions when he leaves the house. His father fears that he could be killed by the Taliban who are operating in Pakistan. In February 2008 another of his father's Afghani friends, who ran his own [business] in Jalalabad, was shot while leaving the [business] premises.

[19] Nearly all of the appellant's extended family (his parents' siblings and their children) have left Afghanistan. The only remaining family members whom the appellant knows are his father's elderly uncle who lives in his father's village (his children are all abroad) and a maternal uncle, BB, in Kabul. BB works for an NGO spending five months a year in Kabul and the remainder overseas because of the terms of his employment.

[20] Since his arrival the appellant has remained in New Zealand by virtue of work permits. In 2006, he separated from his wife. She no longer supports him remaining in New Zealand. He began a *de facto* relationship in 2006 and there is one daughter of that relationship born in September 2007. The appellant lodged his claim for refugee status on 31 September 2007.

[21] The appellant fears that if he were to return to Afghanistan he would be identified as his father's son and therefore be targeted by the Taliban as somebody who had pro-Western sympathies and had worked for [his father's business] which [...]. He would also be identified as someone who had returned from the West and therefore suspected of having pro-Western sympathies. The appellant has no right to return to or reside in Pakistan.

### **Documents received**

[22] The Authority has received the following documentation from the appellant:

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- (a) Opening submissions dated 7 April 2008 and annexures;
- (b) Documents supplied during the course of the hearing containing relevant country information;
- (c) Documents received subsequent to the hearing on 6 May 2008, 16 June 2008 and 26 June 2008.

### **THE ISSUES**

[23] 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."

[24] 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**

[25] Before determining the abovementioned issues an assessment must be made of the appellant's credibility. The appellant's evidence is consistent with previous accounts he had provided to the RSB. It is also consistent with country information concerning conditions in Pakistan and Afghanistan. He gave his evidence readily and without evasion. The Authority finds him to be a credible witness. In reaching its conclusions as to the credibility of his account, the Authority was assisted by the provision of documents, a video tape and photographs listed below:

- (a) Copies of his family members' registration cards issued by the Pakistani government which show them to be Afghani citizens, resident in Pakistan.
- (b) Copies of agreements [relating to] the appellant's father's [business].
- (c) Photographs showing:
  - (i) The appellant's father's [business] in Peshawar and goods stored there [...];
  - (ii) The appellant and his father at the entrance to the [business]; and
  - (iii) His father [working] in Afghanistan and meeting with [...].
- (d) A video tape showing his father carrying out his [business] in Peshawar. The same video tape shows his father [...] in Kabul in 2003.
- (e) Records from [a] hospital in Peshawar [...] describing injuries suffered by [...], his father's friend and [...], who was shot while leaving his [business] in Jalalabad.
- (f) The warning letters dated February 2006, April 2006 and June 2007 sent to his father by the Taliban. This is the strategy commonly employed by the Taliban as referred to in the country information cited below.

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[26] The Authority has reservations as to the authenticity of the warning letters and questioned the appellant as to why his father had kept these letters since 2006. The appellant could do no more than to surmise that his father knew it would be no use showing the letters to the authorities who were unwilling or unable to provide him with protection.

[27] The Authority also expressed concern as to the clean and relatively untarnished condition of these letters. The appellant did not know where or how his father had stored them. In any event the Authority finds it is able to reach its conclusions as to the credibility of his account without relying on these letters. The family's registration cards, the photographs, video tape and the agreement confirm the appellant's evidence that his father had run various [businesses] in Afghanistan in 2002 and 2003 from offices in Peshawar and that the appellant had assisted him in this. The hospital record attests to the shooting of [...] and confirm the appellant's assertion of the dangers faced by people such as his father who have established [businesses] in Afghanistan.

### **Country information**

[28] The persistence of Taliban influence in Pakistan is confirmed in various reports (refer "Pakistani Taliban gains strength: Strong arm tactics deal blow to US War on Islamic militancy" *San Francisco Chronicle* (3 April 2006)). In "Pakistan: the Taliban's godfather" National Security Archive (14 April 2007) <http://www.gwu.edu/nsarchiv/NNSAEBB/NSAEBB227/index.htm> it is reported that:

"Pakistan. Consistent reporting indicates Pakistan provides both military and financial assistance to the Taliban. Islamabad's primary goals are to achieve strategic depth with regard to India and securing access to central Asian trade routes. Cultural ties also exist between the Taliban leadership in Pakistan, where several Taliban leaders lived for many years following the 1979 Soviet invasion. Pakistan fears a complete Taliban victory may incite irredentist aspirations within its own Pashtun population, and will likely attempt to pressure the Taliban into moderating some of its policies ...

This new release comes just days after Pakistan's President, General Pervez Musharraf, acknowledged that 'there was no doubt Afghan militants are supported from Pakistani soil'."

This country information confirms the appellant's assertion that the Taliban operate among the Afghani refugee communities in Peshawar.

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[29] The general security situation in Afghanistan has deteriorated during 2007. It is reported in “UNHCR’s Eligibility Guidelines for Assessing the internal protection needs of Afghani asylum-seekers”, UNHCR (December 2007) that violence linked to armed conflict has escalated along with the reduction in the reach of governmental influence and control in many parts of the country:

“In 2007, violence linked with armed conflict was the worst since the fall of the Taliban in 2001 and is increasingly affecting civilians. In 2007 indiscriminate insurgency-related attacks were reportedly at least twenty per cent higher than in 2006. An average of 548 incidents per month were recorded in 2007 compared to an average of 425 per month in 2006. By the end of September 2007, there have been over 100 suicide attacks compared to 123 in the whole of 2006.”

and elsewhere at page 62 (*supra*):

“The re-emergence of previous and new militia commanders in many parts of the country and escalating violence due to the insurgency require particular consideration of possible risks emanating from non-State actors. The reach of the central Government in a number of provinces in the eastern, southeastern, southern, central and western parts of the country has been significantly reduced due to the growing number of armed attacks and reported *de facto Taliban* control. Furthermore, in the northern part of Afghanistan factional violence and criminality continue to pose significant challenges to the authority of the government in a number of areas.”

[30] A recent successful attack on Kandahar prison resulting in the escape of 350 Taliban members has underlined the variable nature of the control of central government (see “Taliban free 1,200 in Attack on Prison” *New York Times* (14 June 2008)).

[31] The number of refugees returning from Pakistan has reduced because of greater insecurity in Afghanistan. In “UN prepares for repatriation of over half a million refugees” *IRIN News* (5 December 2007) it is reported that:

“The security situation and a lack of economic opportunities are two major concerns which have affected repatriation trends to Afghanistan in the past two years, Afghan officials and the UNHCR said.

Insecurity and lack of land, shelter and livelihoods in Afghanistan are the main obstacles to return for refugees said the Appeal, which was released on 4 December.

Insecurity is also hampering aid agencies access to volatile parts of the country.

Almost half of Afghanistan’s 652,225 square kilometre territory is considered ‘extremely risky’ by UN agencies, according to a leaked aid map of Afghanistan published by a British newspaper, *The Times*.”

[32] [...].

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[33] The prevalence of the distribution by Taliban of warning letters is [...] reported by the UNHCR (*supra*) at page 35:

“Fear and insecurity among the civilian population have also been fuelled by the continued distribution of so called “night letters” allegedly written by the *Taliban* and containing death threats against Afghans cooperating with the international aid community or military forces.”

and further at page 72 (*supra*):

“In Logar province, leaflets showing the photo of a victim who worked with a rural development NGO (DACAAR) killed in Gazni province were found with threatening statements. In November 2003 leaflets were also found in Wardak province that warned Afghans of the consequences of working with NGOs.”

[34] The appellant will be returning to Afghanistan as an individual without any immediate family. He has an elderly uncle in his home village in X with whom he has had little contact and one maternal uncle in Kabul whose job takes him abroad for six months of each year. The importance of family and community structures and the resettlement of those returning from outside the country is highlighted by the UNHCR (*supra*) at page 60:

“The traditional family and community structures of the Afghan tribal system constitute the main protection and coping mechanism. The support provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence. Return to places other than places of origin or previous residence, may therefore expose Afghans to insurmountable difficulties, not only in sustaining and re-establishing livelihoods but also to security risks. Security risks may include, *inter alia*, arbitrary detention and arrest, targeted killings based on ethnic rivalries and family-based conflicts.”

### **Well-foundedness**

[35] It is against the background of the foregoing country information that the well-foundedness of the appellant’s claim falls to be assessed. The following factors are particularly relevant:

- (a) The appellant will be returning to Afghanistan, a country where he has not lived since the age of four. Against this he has continued to live in the predominantly Afghani community of refugees in Peshawar. However, he has not lived in his home village for 22 years or grown up with his kinsmen and its other inhabitants.

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- (b) The appellant will be returning without the support and protection of his parents and siblings or any other close kinsmen all of whom are in Pakistan or elsewhere.
- (c) [...]. His father has become the target of Taliban threats amounting to a campaign to shut down his [business] because of its work [...], of which the Taliban disapprove and view as supporting the current government. The Taliban have succeeded in forcing his father to close his offices and cease operations in both Peshawar and Afghanistan. The appellant has worked in Afghanistan for his father's organisation both in Jalalabad and in the surrounding rural areas in 2004. There is a real chance that he would be recognised on return as someone who has previously worked in his father's [business].

[36] On return to Afghanistan, the only place where the appellant has a right to reside is in his father's village where he was born. He will certainly be readily identified in this village as his father's son. The family house has been damaged initially by the Russian invasion and subsequently by the Taliban. It is now uninhabitable. In addition, threats against the family because of his father's [business] activities have been painted on the walls of the family compound. This clearly indicates the presence of those hostile to the appellant's immediate family.

[37] The appellant also claims to fear those who had previously harassed him in Peshawar because of his Westernised education and his father's work [...]. They caused him to leave Peshawar for Islamabad for seven months. These people have returned to Afghanistan to a village a few kilometres from the appellant's own village. He now believes that they would soon become aware of his presence in his home village and without the (albeit minimal) protection of the Pakistani authorities he would be persecuted for his perceived un-Islamic and pro-Western education and family background.

[38] There are only remnants of his extended family (his father's elderly uncle) living in the village and because of the general climate of insecurity and lack of state protection in the country, the chance of the appellant coming to serious harm is heightened by the fact that he is associated with [...] pro-government agencies and has no effective resident kinship network.

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[39] The Authority finds that the appellant has a well-founded fear of suffering serious harm which would amount to being persecuted on return to his home village. The harm suffered would be for reason of his political opinion which is perceived as hostile to the Taliban because he has supported his father's [business] which is seen to be promoting the current government and social advancement of Afghans in ways which are inimical to the Taliban.

### **Is there an Internal Protection Alternative?**

[40] Having found that the appellant has a well-founded fear of being persecuted in his home village, the final issue to be considered is whether he can genuinely access meaningful protection elsewhere. In this regard the first question to be answered is whether in the proposed site of Internal Protection the real chance of persecution for a Convention reason is eliminated?

[41] The site of Internal Protection available to the appellant is Kabul where his maternal uncle lives five months of the year. The appellant claims that his maternal uncle would perhaps give him accommodation for a short period initially but that his presence would cause his uncle to become a target of the Taliban. He himself would be conspicuous; easily identified as having come from the West by his appearance and, in particular, his language. His Pushtu is no longer fluent. When his uncle leaves Afghanistan in the course of his employment, his household is closed. His family travel with him. For seven months of the year the appellant would be without effective support. He would have difficulty finding employment in Kabul.

[42] Country information has been cited above which acknowledges the importance of traditional family and community structures of the tribal system in protecting and supporting returnees.

[43] The UNHCR (*supra*) at page 60 advises that:

"In this regard, given the differences particular to the situation in Afghanistan, the UNHCR advises against the return of persons to areas other than their places of origin or previous areas of residence where they do not have effective family or tribal links."

In the same paper the situation of urban dwellers is addressed at page 80:

"In most instances, the State is unable to give effective protection against persecution by non-State actors. The links to other actors may, depending on the

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circumstances of the individual case, expose a person to risk beyond the zone of influence of a local commander, including in Kabul. Even in a city like Kabul, which is divided into neighbourhoods (*gozars*) where people tend to know each other, the risk remains, as news about a person arriving from elsewhere in the country travels fast. .... As documented in studies on urban vulnerability, the household and the extended family remain the basic social network in Afghanistan and there are indications that existing traditional systems of sharing and re-distribution are less effective in the extended urban family. It is therefore very unlikely Afghans will be able to lead a relatively normal life without undue hardship upon relocation to an area to which he or she has no effective links, including urban areas of the country.”

[44] Relocation to Kabul places the appellant in the situation of an individual immediately identified in the neighbourhood as a newcomer from the West who, although he may be able to rely on his uncle for a limited period, would ultimately be deprived of that support and protection. It is reasonable to assume that his uncle, an employee of an NGO, would attract hostility from the same pro-Taliban elements as those targeting the appellant’s father.

[45] Given the appellant’s lack of familiarity with Kabul and the, at best, episodic protection available from his maternal uncle, the Authority cannot be satisfied that an Internal Protection Alternative is available to him in Kabul or elsewhere in Afghanistan. Given its conclusions the Authority finds that the appellant has a well-founded fear of being persecuted on return to Afghanistan. The Convention ground is that of political opinion.

## **CONCLUSION**

[46] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

“J Baddeley”

J Baddeley  
Member

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