

ASYLUM AND IMMIGRATION TRIBUNAL

SO and SO (KhaD – members and family) Afghanistan CG [2006]
UKAIT 00003

THE IMMIGRATION ACTS

Heard at: Bradford
On 12 October 2005

Determination Promulgated

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Before

Dr H H Storey (Senior Immigration Judge)
Mr I F Macdonald (Immigration Judge)

Between

and

Appellants

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Ms S Khan of Counsel, instructed by Barry Clarke Solicitors
For the respondent: Mrs R Aslam, Home Office Presenting Officer

Given recent evidence, which includes evidence about significant numbers of former KhaD officers working in the present Afghanistan Intelligence Service, it cannot be said that past service in KhaD suffices to establish a risk on return. Cases have to be considered by weighing up a number of factors, including some personal to the appellant. In this regard it is important to bear in mind that past or present personal conflicts are more important than political conflicts. In assessing whether family members of a PDPA and/or KhaD member would be at risk, it must be borne in mind that there may be factors reducing or removing risk such as the death of the PDPA/KhaD member, and the amount of time that has elapsed since his death.

DETERMINATION AND REASONS

1. The appellants are brothers. Both are nationals of Afghanistan. Both were the subject of decisions refusing to grant them asylum and to remove them as illegal entrants, made on 22 January 2004 and 14 December 2004 respectively. The appeal of the first appellant, who is the older brother, was heard before an Adjudicator, Mr J.H. Bryan, on 24 November 2004 and was dismissed by him on 17 December 2004. The appeal of the second appellant was heard on 15 March 2005 before an Adjudicator, Miss L. Thornton. In a determination notified on 7 April 2005 she dismissed his appeal.
2. The basis of the brothers' claim was as follows. Their father had been a prominent member of the Communist People's Democratic Party of Afghanistan (PDPA) who had acted as an Adviser to President Najibullah. He was also a senior officer for KhaD, the secret service wing of the communist regime (Khadimat-e-Atalat-e Dawlati). He worked for the Soviet police in Riagor 5 branch. The first appellant believed that his father had recruited many young men into the army. His father was known as a PDPA commander both in Kuhdaman (where fighting had taken place between the PDPA and the Mujahadeen) and in Kabul city. Their father's brother had also been a PDPA commander. Following the fall of the communists, whilst the Mujahadeen were in power, their father ran a business in Kabul. When the Taliban came to power in 1996 they almost immediately detained him and the first appellant. Both were tortured. The first appellant was forced to give the names and addresses of Mujahadeen. Their father was beaten to death in custody. Some months later the first appellant's release was secured by paying a bribe, although it took place without the knowledge of a certain Soofi Naeem, one of the Taliban commanders, whose men had first pursued the family in Kabul. He came looking for the first appellant. In 1997 the family fled to Mazar-i-Sharif. They managed to live in hiding there from 1996/7 until the Taliban captured the city in 2001. Fearing the Taliban would track them down, the two brothers fled Afghanistan in 2001.
3. Following a grant of permission to appeal, the appeal of the first appellant came before a panel constituted under the Asylum and Immigration Tribunal as a reconsideration hearing on 25 May 2005. This was chaired by Mr P. King, Senior Immigration Judge. This panel found that there was a material error of law which was stated as follows.

'No proper findings or consideration as (sic) issue of father's membership of KhaD. Such was material issue as to return [CIPU 6.280, 6.283. Expert evidence Marsden p.27 of bundle and Dr Giustozzi page 169-173 of bundle].'

Mr King directed:

1. Oral evidence of the appellant limited to issues of (i) whether father in Khad , (ii) if so what risk does that present for the appellant upon return.
2. Afghan-Dari interpreter.
3. Expert evidence to be served no later than fourteen days before hearing (if not agreed - oral evidence only to be given).
4. Any further applications to be made no later than fourteen days from today.'

4. At the time the second appellant applied for review of the determination of Miss Thornton, it was already known that his brother had been granted permission to appeal. Mindful of this fact Mr J. Freeman, Senior Immigration Judge, in a decision of 26 April 2004 ordered reconsideration in the following terms:

'If the grounds of appeal filed for the claimant's brother SZ (case HX.10838/2004, to be reconsidered by the Tribunal on 25 May) were to succeed, then it might be arguable that two inconsistent decisions in what is suggested are identical cases could not be allowed to stand (for similar reasons to those identified by the Court of Appeal in *Shirazi [2003] EWCA Civ 1562*). On that basis only, reconsideration is directed in this case also to be carried out together with reconsideration of Shahzad's; but, whether they represented Shahzad before the Adjudicator or not, the solicitors will have a good deal of explaining to do as to why they did not take steps to get the cases linked at first instance. They have laid themselves open to the charge that they were trying to secure a favourable result in one case to exert leverage on the other, and there may be costs or disciplinary implications, so they had better instruct counsel on their own behalf, as well as the appellant's.'

5. Thus we have before us two cases which have been joined, one presenting as a second-stage reconsideration, the other as a first-stage reconsideration.
6. We should say at the outset that having looked more closely into the history of the proceedings in both cases, we did not consider that any blame for the failure to seek an early joinder can be laid at the door of the current solicitors.
7. We asked the parties to address us first on the appeal of the second appellant. Ms S. Khan asked us to find that the determination of Miss Thornton (dealing with the second appellant) was legally flawed because she had not engaged with the determination of Mr Bryan (dealing with the first appellant) or with his different assessment of the first appellant (who gave evidence before Mr Bryan as well as Miss Thornton). Mrs Aslam contended that the determination of Miss Thornton was legally sound as she had considered Mr Bryan's

determination and properly stated that she would reach her decision independently. The Court of Appeal in ***Otshudi [2004] EWCA Civ 893*** had made clear that discrepant outcomes of appeals by two brothers, founded on much the same evidence, did not import any legal error. She also submitted that neither the grounds of appeal nor Mr Freeman's order in fact identified an error of law.

8. Having considered the submissions we concluded that there was a material error of law, which we set out in the following terms:

'The Immigration Judge (IJ), Miss Thornton, materially erred in law in failing to take into account as a relevant consideration the evaluation and assessment made by a previous Adjudicator (Mr Bryan) in respect of the appellant's brother. Whilst the evidence of the two brothers was not in identical terms, their position so far as the claim to risk on return was concerned was near identical and they were similarly situated. The IJ was perfectly correct in paragraph 47 to make clear that she would reach an independent decision. However, what she was not entitled to do was fail to engage with the findings made by Mr Bryan and the reasons he gave for those findings. This failure was all the more glaring in this case since she heard evidence from the brother which had been the subject of assessment by Mr Bryan (see paragraph 11). She was in no way bound by Mr Bryan's findings, but she was obliged to give reasons why she took a different view. She failed to do so.

Neither the case of ***Shirazi*** nor ***Otshudi*** address the specific issue arising in this case, namely the relevance of another Adjudicator's determination as a piece of evidence, to be weighed and evaluated along with other pieces.

Whilst we accept that the grounds forming the application for review did not in terms identify the legal error as we have above, their underlying concern regarding the two cases being decided differently on virtually identical factors was directed at Miss Thornton's determination and the evident fact that she had Mr Bryan's before her. In our view logically implicit in that concern was the way in which Miss Thornton had approached Mr Bryan's determination as a part of the overall evidence.'

9. Having decided there was no reason to adjourn the second-stage reconsideration of the second appellant's appeal, we thus proceeded with the two appeals, now both at the second-stage of reconsideration.
10. We informed the parties that before going ahead with the hearing in accordance with Mr King's Directions, we wished them to address us as

to whether the appellants could succeed, even assuming the accounts they gave of their past experiences were accepted as fully credible. We explained that there would be no point in proceeding to examine the factual issue identified by Mr King - whether the father was in KhaD - if the appellants could not succeed even accepting that he was.

11. Miss Khan submitted that both appellants should be able to succeed on this basis. She identified a number of risk factors. Firstly, the appellants' father had been a high-ranking member of the PDPA, having been an Advisor to President Najibullah, having visited Russia on government business and having appeared on TV at least twice. She relied on the April 2005 CIPU Report paragraphs 6.289 and 6.290 in particular:

'Former Members of the PDPA (People's Democratic Party of Afghanistan)

6.289 In a paper dated July 2003, UNHCR stated that

“Even though the Interim Administration issued a “Decree on the dignified return of Afghan refugees”, valid as of 22 December 2003, the situation is yet unclear with regard to persons affiliated or associated with the former communist regime in Afghanistan, through membership of the People's Democratic Party of Afghanistan (PDPA) or as a result of their previous professional or other functions. Although not targeted by the central authorities, they may continue to face risks of human rights abuses if they do not benefit from the protection of influential factions or tribal protection. The degree of risk depends on a variety of factors, including the following: a) the degree of identification with the communist ideology, b) the rank or position previously held, c) family and extended family links”.

6.290 The UNHCR paper also noted that

“Members of the following groups, if without any links with existing Islamic/political parties or tribal protection, would require a careful assessment.

- High ranking members of the People's Democratic Party of Afghanistan (PDPA), irrespective of whether they belonged to the Parcham or Khalq faction of the party. Most PDPA members lived in Kabul or other cities during the communist regimes. They will be at risk only if they are known by armed factions as such and this includes:

- (i) Members of Central, Provincial Cities and Districts Committees of the PDPA and their family members;
- (ii) Some of the heads and high-ranking members of social organisations such as the Democratic Youth Organisation and the Democratic Women Organisation at the level of country, province, city and districts.'

12. Secondly, he was also (on the appellants' accounts) a member of KhaD, which had been the secret service wing of the Communist government. The April 2005 CIPU Report in relevant paragraphs stated:

'Persons with links to the former Communist Regime

KhaD (KHAD) (former State Security Services)

6.280 In April 2001 a situation report by a Netherlands delegation to the European Union on the security service in Afghanistan between 1978 and 1992 was published. The report noted that the Khadimat-e-Atal'at-e-Dowlati (meaning "State Intelligence Service" in Dari) was set up in 1980 and transformed into a ministry in 1986. The secret service became notorious and feared under its acronym "KhaD" and soon came to embody the highly repressive communist regime. The first head of the KhaD was Dr Najibullah, one of the former leaders of the Parcham faction of the Communist People's Democratic Party of Afghanistan (PDPA). As a result of his post as head of KhaD he rose rapidly in the hierarchy of PDPA. In November 1987, he became President of the country, a post he retained until 1982. On 9 January 1986 the KhaD was transformed into a separate ministry under the name of Wazarat-e-Amaniate-e Dowlati or "Ministry of State Security". The report also advised that "Although the official abbreviation was henceforth to be WAD, the secret service continued to be popularly referred to as the KhaD."

6.281 The Netherlands delegation reported that

"It was the task of the KhaD and of the WAD to ensure the continued short and long-term existence of the Communist regime, which had already been exposed to strong pressure shortly after the Great Saur Revolution. In practice, this meant that the KhaD and the WAD had a licence to track down and fight the regime's external and internal enemies as they saw fit

... In practice, the slightest sign of disloyalty or opposition provided a pretext for being branded an enemy ... Persons branded enemies of the PDPA could be eliminated in many ways. Thus, KhaD leaders could instruct their subordinates to carry out arrest, detention, judicial sentencing, exile, torture, attempted murder and extra-judicial execution of real or alleged opponents of the Communist regime. If required, KhaD and WAD agents also attempted to murder persons outside Afghanistan, especially in Pakistan. Through their ruthless and mostly arbitrary behaviour the KhaD and WAD deliberately created a climate of terror aimed at nipping any opposition among the civil population to the Communist regime in the bud." The reporter noted that "There was precious little support for the Communist Party among the population."

6.282 The Netherlands's report stated that all KhaD and WAD NCO's and officers were guilty of human rights violations. However, NCOs and officers could not operate within KhaD and WAD unless they had proved their unconditional loyalty to the Communist regime. During their trial period (Azmajchi) officers had to pass a severe loyalty test. On first assignment NCOs and officers were transferred to KhaD and WAD sections actively engaged in tracking down "subversive elements". Only those who proved their worth were promoted or transferred to sections with more administrative or technical activities. In practice this meant that all KhaD and WAD NCOs and officers took part in the arrest, interrogation, torture and even execution of real and alleged opponents of the Communist regime. The report considered that it was inconceivable that anyone working for the Afghan security services, regardless of the level at which they were working, was unaware of the serious human rights violations that were taking place, which were well known both within and outside Afghanistan.

Treatment of former KhaD members

6.283 The Netherlands' report of April 2001 stated that after the fall of the Communist regime in 1992 many KhaD and WAD agents went to work for the new rulers' intelligence series. The Taliban intelligence service [Estikhabarat] too was partly manned by former KhaD and WAD agents [but see paragraph 6.284 below]. Despite their reputation, former members of the Communist security services and their relatives were not automatically at risk of Taliban persecution. Their attitudes towards the Taliban combined with what was known about them

and the extent to which they made enemies, was considered to be more important than the position they previously occupied.

6.284 In comments prepared for the Advisory Panel on Country Information meeting on 8 March 2005, UNHCR stated that the Taliban intelligence service [Estikhabarat] was partly manned by Pakistani ISI (Inter-Services Intelligence), and not by former KhaD and WAD agents.

6.285 In a paper issued in July 2003, UNHCR stated that “Some of the former military officials, members of the police force and KhaD (security service) of the communist regime also continue to be generally at risk, not only from the authorities but even more so from the population (families of victims), given their identification with human rights abuses during the communist regime.” UNHCR advised that such people, if without any links with existing Islamic/political parties or tribal protection, would require a careful risk assessment. The applicability of exclusion clause of Article 1F of the Geneva Convention must be considered.

6.286 A Danish Fact Finding mission to Kabul in March/April 2004 reported the views of several sources on the position of former members of KhaD and the PDPA. According to the report UNHCR said “Regarding the question as to whether a person from the former PDPA or KhaD [sic] runs the risk of any form of persecution depends on whether he, in the course of his activities for the PDPA or KhaD, has had concrete conflicts with or has come in opposition to people who are in power at the present time ... The UNHCR did not know of any former members of the KhaD who had returned.”

6.287 The same Danish report also noted the views of UNAMA.

“The source [UNAMA] had the impression that the political environment in Afghanistan currently is not open to all political viewpoints. The source stated that in this connection personal conflicts are more important than political conflicts. The source mentioned a case in which a former employee of the KhaD had returned to Afghanistan and was now working for the security forces. The person has complained that powerful individuals have threatened him, persons he in his previous position had been investigating. He had allegedly been stopped in the street and threatened into silence.

6.288 The Danish report noted that the CCA (Co-operation Centre for Afghanistan) said that about half of the officers working in the present Afghanistan Intelligence Services are former officers of the KhaD. The report stated that “It has been necessary to introduce them into intelligence work, as there is a lack of qualified personnel in this field. The organisation gave as an example that the director in the 7th department of the present intelligence services earlier served the same position in the KhaD.”

13. Thirdly, submitted Miss Khan, there was clear evidence that the appellants’ family was well known in Afghanistan and in Kabul in particular. She drew our attention to statements of the appellants and the first appellant’s wife to this effect as well as to the opinion of country expert Mr Peter Marsden who in an opinion written on 7 January 2004 for another case (but with his permission adduced here) at paragraphs 22 and 24 stated:

‘22. The Soviet invasion caused a significant backlash against the liberal values that the Soviet-backed government was espousing and has brought about a more conservative moral environment than existed before. Those with liberal attitudes are perceived as a threat to the survival of Islam within Afghanistan and also as a threat to the political ambitions of the radical Islamic parties. It should be stressed, therefore, that those associated with the former Soviet-backed government will be regarded, generally, as having abandoned their Islamic values in favour of western value systems. It is important to note, in this regard, that the war between the Mujahadeen and the Soviet Union had enormous consequences in terms of fatalities, refugee movements, destructions and economic decline. Feelings thus run understandably high. The Jamiat-i-Islami forces which have effective control of Kabul have, as noted above, their origins in the radical Islamic circles of Kabul University in the 1960s and 70s and will view very negatively those associated with the former Soviet-backed government, to the point of, potentially, being prepared to commit acts of violence against them. In a situation in which summary justice is the norm and the perpetrator has no fear that he will be called to account, the risk to such individuals is significant and this has been recognised by the UNHCR.

24. It should be noted that there has been, for many decades, a pronounced labelling process in

Afghanistan so that people have been identified with prominent members of their families who have taken particular political positions or brought harm to others by virtue of the power they wielded. The individual is thus identified by association with his relatives and it is normal practice for revenge attacks to be undertaken against male relatives if the original perpetrator of the action is no longer to be found.'

Miss Khan emphasised the importance in Afghanistan of family and tribal identity: the appellants would be perceived in the same way as their father.

14. Lastly, she relied on the still-current Country Guideline case of ***Nos. 8, 3, 6 (Risk – PDPA Member) Afghanistan CG [2002] UKIAT 06506*** which found that in respect of 'appellant 30' that his relatively senior or high level position in the former PDPA government would result in a real risk of persecution to him from Jamiat-e-Islami and other fundamental Islamic groups, including remnants of the former Taliban.
15. Asked by us to clarify what the sources of harm to the appellants were she stated that they were: (1) Mujahadeen working for the current government; (2) Jamiat commanders who would know he had reported them to the Taliban (background evidence indicated that it was the practice of the Taliban to tell their captives who had informed on them); and (3) the general populace of Kabul. So far as the appellants' time in Mazar-e-Sharif was concerned, their evidence was, she emphasised, that they had to keep a low profile.
16. Mrs Aslam urged us to read the CIPU Report paragraphs with care. They dwelt largely, she said, on risk to the former members of the PDPA/KhaD, not their relatives. Similarly the focus of the Marsden report was on risk to former members, not their relatives. This was especially important in this case since the father had been dead since 1996 and even during the 1992-1996 period, when his father and his family lived in Kabul, albeit they experienced some level of harassment from the local population, they were not targeted. Furthermore, when the appellants went to Mazar-e-Sharif in 1997 to flee the Taliban, they were able to live there in relative peace for four years and only left because they thought they would have to serve in the army. Neither of the appellants had any political profile and the first appellant had held no rank or position.
17. Having heard the above submissions we informed the parties we would reserve our determination and would only take steps to reconvene if we decided we could not reach a decision on both appeals on the basis of an assumption of full acceptance of credibility as to past experiences.
18. In the event we have concluded that we are able to reach conclusions on the appeals without the need for a further hearing.

19. We note that the Tribunal in **30, 27, 28 (Risk – PDPA member) CG [2002] UKIAT 06500** found that the issue of risk to persons having a connection with the former PDPA had to be considered by weighing up a number of factors including some personal to the individual. In our view, although time has moved on, the same approach to assessment of risk is called for.
20. We would accept that the appellants' father being a senior member of the PDPA government as well as a member of KhaD is an important factor to be taken into account when assessing risk on return. There is no doubt that KhaD was a ruthless security service organisation who between 1978-1992 was responsible for grave human rights violations. However, as regards the treatment of former KhaD members, whilst UNHCR advice of July 2003 refers to KhaD members continuing to be generally at risk both from the authorities and the population '... given their identification with human rights abuses during the communist regime', this advice significantly qualifies its description of the category with the word "[s]ome" ("Some of the former military officials, members of the police force (security service) of the communist regime also continue to be generally at risk ...'). Furthermore, the more recent Danish fact-finding mission to Kabul in March/April 2004 reports the view of several sources on the position of former members of KhaD and the PDPA, including UNHCR. It recorded UNHCR's more recent position as seeing the issue of risk as dependent on whether a person, in the course of his activities for the PDPA or KhaD, "has had concrete conflict with or has come in[to] opposition to people who are in power at the present time...'. The Danish report added the view of UNAMA was that in this connection personal conflicts were more important than political conflicts: the example was given of a former employee of KhaD who had been confronted by powerful people he had previously investigated. Furthermore, the Danish report goes on to note that the evidence of the CCA (Co-operative Centre for Afghanistan) was that "*about half of the officers working in the present Afghanistan Intelligence Services are former officers of the KhaD*" (our emphasis). This in our view is a very important piece of evidence and was not one which was before Mr Marsden (all his sources were from 2003 save for a UNAMA statement of January 2004). Nor was it before Dr Giustozzi in his report of 8 November 2004. Previously there had been disagreement amongst background sources as to whether any former KhaD and WAD agents were taken on by the Taliban or the Kharzai regime.
21. What we glean from the background evidence before us, when considered in the round, is that, so far as the current authorities are concerned, a former KhaD member will not be viewed adversely, unless he has personally crossed people who are now in power.
22. In this regard we consider that it is particularly relevant to focus on the conduct of the appellants' father and on what happened to him and them and the rest of his family in the four year period following the overthrow of the communist regime in 1992. During this period, as Mr Marsden notes, there was a struggle for power within Kabul between different elements of the Mujahadeen, with fluctuating levels of armed

conflict between different groups. This was at a time when the memories of all concerning KhaD and PDPA misdeeds would have been freshest. Yet on the evidence of the appellants his father and his family stayed put in Kabul. His father did not flee. They did not flee. Nor is there any evidence that his father involved himself actively in any of the political realignments taking place, some of which involved former PDPA members. Instead he started a business. Furthermore this was not a discreet business hidden away from the public eye. It was a garage and car showroom and one at which the father had sold a number of cars to Mujahadeen commanders personally.

23. It was the first appellant's evidence on this point that "The Mujahadeen probably would have persecuted us too but at the time they were too busy fighting each other and we were running our business as quietly as possible so as not to draw attention to ourselves... The Mujahadeen did not even have time to try Dr Najib ...". However, whilst this is a subjective piece of evidence which we take into account, we do not consider that their evidence considered as a whole objectively demonstrates that the family was at risk of serious harm of persecution during that four year period. In our view, the four years in Kabul, objectively considered, are a strong indication of two things. Firstly that the appellants' father, notwithstanding his known PDPA and KhaD background and profile, had not seen it as necessary to flee or to avoid conducting a business with a public face. We do not think, if he feared revenge attacks that he would have gambled on the Mujahadeen being too busy fighting each other. That in our view strongly suggested that he did not think his own KhaD activities would have led to any persons or families identifying him as their persecutor. In the second place, it indicates that despite people in Kabul clearly knowing about his KhaD background, no one sought to target him for a revenge attack in the course of some four years. We come back here to the UNAMA evidence that in Afghanistan personal conflicts are more important than political conflicts. On the first appellant's evidence, despite trying to run the business as quietly as possible, the father's background and whereabouts were clearly known about: indeed he detailed how neighbours 'started to hate us' and he and his family encountered different kinds of harassment (windows being smashed etc).
24. In our view this demonstrates that the father had no fear of being targeted either by any individuals involved in the Mujahadeen groups jostling for power during this period or by any other individuals.
25. This brings us to the significance of the fact that in any event what we have to assess in this case is not risk to the late father, but to two of his family members.
26. We accept, as Miss Khan has rightly highlighted, that both the CIPU Report, in respect of PDPA members and the expert report from Dr Marsden, in respect of KhaD members, include family members in the category of persons who may [or, in the case of Dr Marsden, would] be at risk. However, given that the appellants' father's activities on behalf of the PDPA and KhaD had not resulted in any targeting of him and his

family in Kabul between 1992 and 1996, we do not consider that members of his family would now be targeted either. Indeed we consider that in respect of these two appellants there is one very important additional reason why they would not be targeted, namely the lapse of time since their father died in 1996. Since then there have been a host of major political changes in Afghanistan. We do not consider that Mr Marsden's report demonstrates that family members of former PDPA and KhaD males continue to face the same level of risk of revenge attacks even after the members themselves have died or been killed and we think that, given the many shifts in tribal and political allegiances which have taken place in Afghanistan over the past five years especially, that the passage of time must be a factor further reducing risk.

27. Miss Khan has asked us to consider the issue of risk to the appellants arising out of the events of 1996 and thereafter. We agree with her that it would be wrong to confine the issue of risk to the events of 1992-1996, since on the appellants' account something happened in 1996 which added an additional dimension to their problems. The first appellant (perhaps his father also, but we have no evidence about this) gave intelligence and information to the Taliban concerning Mujahadeen commanders. In his written statement of 29 July 2004 the first appellant stated:

“I did not tell the Taliban the address of my father's friends but I did tell them the addresses of Mujahadeen I knew. I knew where they lived because they used to come and buy cars from us when they were in power from 1992-1996. ... I knew a lot of commanders, not necessarily by name but well enough to describe them and tell the Taliban where they lived. ... Normally when the Taliban arrest somebody they tell them who has informed on them ... Now of course any of those commanders and their relatives who are still in Kabul will know who informed against them.’

28. Miss Khan pointed out that the appellants' claim that the Taliban told those they arrested who had informed on them was borne out by the expert and other evidence before us. We accept that.
29. The question remains whether this fact would be sufficient to put the appellants at risk. We are not persuaded that it would. Firstly, we note that the first appellant's evidence did not extend to saying he had been told by the Taliban that they had acted on the information he gave them. Secondly, on the first appellant's account he had given information about Mujahadeen commanders soon after he was arrested; he did not claim that it was only after a significant period of time. That is highly significant in our view because on his evidence he was detained for nine months. If any action was taken by the Taliban on this information about Mujahadeen commanders it was reasonable to assume that it would have been taken quickly as otherwise information of this kind would risk being out of date. But if it was acted

upon quickly then any Mujahadeen commanders rounded up or detained in consequence would have learned about the appellant's role in the affair while his family was still living in Kabul.

30. We recognise that there is inevitably a degree of speculation about this. But so there is about the claimed fear of the appellants that there would be Mujahadeen today who would hold them responsible for what happened to them or their colleagues in 1996. We consider that if the information given by the first appellant at the beginning of his detention had been acted on by the Taliban, then it was reasonably likely his family would have been the subject of targeted attacks by Mujahadeen in Kabul during the nine month period they remained there after his detention began. But they were not.
31. Thirdly, there is no strong reason for thinking that the information given by the first appellant was information that would not already have been known to the Taliban. The first appellant did not claim to be privy to any of his father's secrets or details of his PDPA or KhaD activities. Moreover such evidence as we have about the 1996 period and events in Kabul does not indicate that Mujahadeen commanders were conducting themselves clandestinely; rather it seems most if not all were seeking to draw support to themselves publicly from as many groups and individuals as could be persuaded to back them. Certainly such leaders had armed men whose job it was to protect them and their families, but the evidence does not suggest that their addresses were unknown to their rivals and enemies.
32. For these reasons we do not consider that the appellants would be at risk of serious harm or treatment contrary to the Article 3 either from the current government or from Mujahadeen who are now within or outside the government.
33. That brings us to the only other claimed source of harm, namely, that posed by the local populace. As we have already indicated, we consider in this regard that the family's experiences between 1992-1996 provide a strong indication that any difficulties the appellants may face on return are likely to be limited to forms of harassment falling short of serious harm. Even in 1992-1996, on the appellants' own evidence the problems they encountered in different areas in Kabul were confined to incidents of harassment such as the smashing of windows at night. Such actions, although unpleasant were not the actions to be expected of individuals or their families seeking revenge, nor did such actions lead them to move elsewhere. In addition, we think it reasonably likely that any hostility or suspicion on the part of neighbours or of the local populace of Kabul will now be considerably lessened, due to the passage of time. We re-emphasise here the fact that in this case there is no suggestion of there being any attempts of revenge attacks during 1992-1996.
34. For completeness we should address one further point, which was raised in the grounds but which Miss Khan did not pursue at all before us. This was the specific threat said to be posed by the remnants of the Taliban, in particular by Soofi Naeem and his followers. It was the

appellants' evidence that it was Soofi Naeem who had spearheaded the move made against the appellants' father in 1996 and who had played a leading role in the interrogation and ill-treatment of him and his father and in the subsequent search for the appellants following the first appellant's return from custody on payment of a bribe, which appears not to have had the approval of Naeem. It has been contended earlier that Naeem has survived as a local warlord, notwithstanding his Taliban involvement. We are bound to say we think Miss Khan was prudent not to pursue this contention, since there was no concrete evidence to indicate that Soofi Naeem, even assuming he had somehow managed to continue as a local warlord in Khadomor Shromali, a district north of Kabul, would have any continuing post-Taliban interest in pursuing or visiting harm on the appellants or their family.

35. For the above reasons we conclude that the decisions to be substituted for that of the Adjudicator, Mr J.H. Bryan (in respect of the first appellant) and Miss L. Thornton (in respect of the second appellant) should be to dismiss the appeal.

General Conclusions

36. (a) Assessment of the appellants' appeals has required us to consider the general position in relation to former PDPA and KhaD members and their families and we deem it appropriate to set out our principal conclusions on such categories as follows.
- (b) The Tribunal in **30, 27, 28 (Risk – PDPA member) Afghanistan UKIAT 6500** found that the issue of risk to persons having a connection with the former PDPA has to be considered by weighing up a number of factors including some personal to the individual. Although time has moved on, we consider that the same approach to assessment of risk is called for.
- (c) We consider that the recent evidence, which includes reference to a significant number of former KhaD officers working for the present Afghanistan Intelligence Services, indicates that former membership of KhaD will not generally place a person at risk of persecution or treatment contrary to Article 3 on return unless they have had concrete conflicts with people who are now in power. In this context past or present personal conflicts are more important than political conflicts.
- (d) Cases involving family members of a former PDPA and/or former KhaD member will require consideration in much the same way as in (a), (b) and (c), although there may be additional factors reducing or removing the risk family members face such as the fact that the PDPA/KhaD member has died or been killed and the amount of time that has elapsed since his death.

DR H H STOREY
SENIOR IMMIGRATION JUDGE

APPENDIX A:

APPENDIX: BACKGROUND MATERIALS AND EXPERT REPORTS

Human Rights Watch Backgrounder, 5 October 2001

Eurasia Insight, 2 Jan 2003

UNHCR Report, July 2003

“Killing You is a Very Easy Thing for US”, Human Rights Watch, July 2003

ICG Report, 5 August 2003

Eurasia Insight, 9 August 2003

British Agencies Afghanistan Group (BAAG) Monthly Review, November 2003

RFE/RL Afghanistan Report undated

“Warlords Still Call the Shots”, Human Rights Watch: 24 December 2003

“Flawed Charter for a Land Ruled by Fear”, Human Rights Watch, 6 January 2004

Danish Immigration Service: The political conditions, the security and human rights situation in Afghanistan: Report on fact-finding mission to Kabul, Afghanistan: 20 March-2 April 2004 (English version Nov 2004)

ECRE: Guidelines for the Treatment of Afghan Asylum Seekers and Refugees in Europe: May 2004

Report of the independent expert of the Commission of Human Rights to the UN General Assembly, 21 September 2004

“The Rule of the Gun”, Human Rights Watch Briefing Paper, September 2004

CIPU Afghanistan Country Report, October 2004

US State Department Report 2004 (Feb 2005)

CIPU Afghanistan Country Report, April 2005

Expert report of Peter Marsden, 4 January 2004 (with permission for use in this case)

Expert report by Dr Antonio Giustozzi, 8 November 2004