

AJB  
Heard at Field House

APPEAL NO HX51785-2000  
HX51773-2000  
HX51779-2000

On 29 August 2002

**8 3 6(Risk – PDPA Member)  
Afghanistan CG [2002] UKIAT  
06506**

## **IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

.....13.02.2003..

**Before:**

**A R Mackey (Chairman)  
HH D Holden  
Ms S S Ramsumair JP**

**Between**

**Afghan Appellants 8(his 5 Dependants – his wife and four children), and  
3 and 6.**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**Representation:**

For the appellants: Mr Julian Fountain; IAS Tribunal Unit, London.

For the respondent: Mr M Blundell, Home Office Presenting Officer.

### **DETERMINATION AND REASONS**

1. The appellants, who are all citizens of Afghanistan, appeal with leave against the determination of a panel of Adjudicators (His Honour Judge Dunn QC (Chief Adjudicator), Professor D B Casson and Miss K Eshun). In that determination, they dismissed an appeal against the decision of the respondent, who on 1 March 2000, had refused leave to enter after refusing a claim for refugee status in the United Kingdom.

**Introduction:**

2. As the decision of the respondent was made prior to the implementation of the Human Rights Act 1998 on 2 October 2000, only refugee status issues were before us, not human rights issues.
3. Because the situation in Afghanistan has changed dramatically since the time of the hearing before the panel of Adjudicators in 2000, by agreement between the parties, this matter proceeded largely as a fresh hearing of the appeals for all three appellants. Statements of truth were presented by all three appellants, as well as a further statement from the wife of appellant 8. Given the acceptance of the credibility of the appellants by the Adjudicators and notice to us by Mr Blundell that he did not wish to cross-examine, we proceeded on the basis of accepting the statements of truth, which have been read in full by us. The appellants, while present for the hearing, were not called to give evidence.
4. All the appellants are from the same nuclear family and were in the aeroplane that was unfortunately hijacked to the United Kingdom in February 2000. Appellant 8 is the head of the family. He and his wife are the parents of the adult applicants 3 and 6 and also they have four other dependant children, who are included in the application of appellant 8. We have continued with the practice of addressing the appellants by number, in an effort to de-personalise their applications as best as possible. The de-personalisation has been somewhat limited however, through the need to set out and describe the somewhat unique and notorious events that this family have been involved in.
5. Apart from noting acceptance of credibility of the appellants in the determination of the Adjudicators, very little additional reference has been made to that determination.

**The appellants' submissions:**

6. Mr Fountain presented to us the statements of truth by the three appellants and wife of appellant 8. He explained that appellant 8 had been a civil servant, employed by the Ministry of Agriculture in Kabul for many years. He and his family were on the plane, which was travelling from Kabul to Mazar-i-Sharrif, (Mazar) on business concerning some family land in Mazar when the aircraft was hijacked and they eventually arrived in the United Kingdom. Appellant 8 had been a previous supporter of the Peoples Democratic Party of Afghanistan (PDPA). He joined that party in 1984 and remained a member until 1992, when it collapsed and the operations of government were taken over by the Muhajeddin under President Rabbani. Appellant 8 was able to keep his employment, which he had held since 1971, with the Ministry of Agriculture during the regime of President Rabbani. Subsequent to that, from 1996 until 2000 he continued to serve in the Ministry of Agriculture while it was under the Taliban regime.

7. The PDPA were a communist party who worked in support of the occupation by the former USSR.
8. In his statement, appellant 8 stated that, under the Rabbani and Taliban regimes, he had to hide his political and social views. He considered that those regimes were looking for evidence of his opinions and explained his experience of being under surveillance by those regimes.
9. The family are all from the Mongul Pashtun tribe.
10. Their fears on return at this time to Afghanistan, (that is; subsequent to the fall of the Taliban regime and the installation of the Afghan Transitional Administration which is supported by the International Security Assistance Force (ISAF)) are set out in the statements of the three appellants. Their fears are from a combination of:
  - (a) Past association as a member of the PDPA,
  - (b) Pashtun ethnicity,
  - (c) Notoriety as people who had been on the hijacked plane,
  - (d) Suspicions of them for having been in the United Kingdom and in some way, demonstrated that they were different or not loyal to Afghanistan, by remaining in the United Kingdom, both while the Taliban remained in power and afterwards.
11. In addition to those fears, appellants 3 and 6, as unmarried daughters of appellant 8, fear persecution as young and unmarried women returning to Afghanistan from a western country.
12. The fear of persecution is not from the interim administration, but from traditional enemies of the Pashtun, such as Tajiks, Uzbekis and Azaris, whose troops, as part of the "Northern Alliance" have power and control in Kabul. In addition, they fear persecution from remnants of the former Taliban regime and fundamentalist elements who, still wish to impose their version of Islam in Afghanistan.
13. Mr Fountain submitted that the appellants fell within a category of "at risk" people, set out in the UNHCR Report of 31 May 2002 "Real Time Evaluation of UNHCR's Response to the Afghan Emergency – Bulletin number 3", in that report it states:

"Some groups of Afghans in Iran have particular reason to remain in Iran or to delay their repatriation. These include high ranking members of former communist regime, Islamis and Shiite clergymen."
14. In this regard, he submitted that the appellant, as a former PDPA member of reasonably long standing, was at risk of persecution. While he had been able to hide during the regime of the Taliban and the Muhajeddin, this would not be so easy for him to do on his return,

particularly given that he was on the hijacked aeroplane. In this situation, he submitted that he simply did not have the ability to disappear into the masses. He submitted his situation was made worse by the failure of appellant 8 to return under the special arrangements that were made soon after the hijacking, for this reason, he would be seen as disloyal to Afghanistan and its society and attitudes.

15. In addition, he submitted that the ISAF may have stabilised matters, to a degree in Kabul, particularly when the British forces were administering the Peace Keeping Force, however, this may not continue now that the Turkish army have taken over the role. He submitted that the interim administration must be seen as very reliant on the ISAF. He referred us to the fact that the President Kaizai, had needed to call in a bodyguard of United States troops, and even then, the Vice President had been assassinated.
16. He also referred us to a considerable amount of country of origin information on Afghanistan, which, he submitted, indicated that the administration was a weak and shaky one. It was thus, logical to conclude that it would only be a matter of time before the interim administration unravels and a regime of "warlordism" returns. At that time, there would be the risk of atrocities against Pashtun and general lawlessness, as applies at this time in parts of the north of Afghanistan. He submitted that this was more than just speculation, but a real indication of what could happen in the future.
17. Beyond this, he referred us to reports showing that guns and other weapons were available in the markets of Kabul on an unregulated basis, and that cheap weapons continued to flood into the market. All this contributed to a higher risk of further problems.
18. In addition, the Northern Alliance troops, who largely controlled Kabul, were in charge of this trade in arms. Their position had been carefully protected in the Loya Jirga, such that their power base was assured. He submitted that the Pashtuns did not exercise control commensurate with their majority in the population and that this could lead for tensions to explode at any time. The volatility of the situation was shown currently in northern Afghanistan.
19. He further submitted that the whole family were at risk because of their largely secular background. The activities of appellant 8's wife, in a women's group in the past, is clear evidence of this.
20. In her regard, he submitted that she had an additional risk which arose through the land dispute (in Mazar). It was submitted that the property owned by her family would have been confiscated by the Taliban and that she believed there would now be occupiers on this land, who would not wish to see her return to Afghanistan and repossess the land. In support of this, he submitted that her half brother had been

taken away and beaten by the Taliban and that this type of event could happen in the future.

21. The risks to the two daughters, appellants 3 and 6, in addition to the above risks, included generalised fears as women returning from a western country to Kabul. It was submitted that women in Kabul would still be required to wear burqas, and that there had not been any form of genuine emancipation. The work of the Loya Jirga, had shown some improvement in the position of women, but, given the background of these two unmarried ladies returning from a western country, having been on the hijacked plane, their risk was enhanced. Appellant 3 referred to a specific incident she had been personally involved with during the Taliban regime, where she was hit four or five times with a whip, and threatened and told not to leave her house. She feared a recurrence of this type of event, particularly if she wished to study or obtain employment in the future.

**The respondent's submissions:**

22. At the outset, Mr Blundell reminded us that we were not dealing with human rights issues, but consideration solely of the asylum issues. He referred us to a number of reports that had been produced by the appellants and the respondent's bundle as well. We have had the opportunity of going through those bundles and considering all of the information in them. We have been able to take into account the submissions of both Mr Blundell and Mr Fountain in regard to them.
23. Mr Blundell's submissions specifically relating to the appellants were then presented.
24. He submitted that at present, there was no evidence of persecution of former PDPA government officials and thus, there was no risk at all to such persons. Appellant 8, he noted, had been a civil servant, and therefore, not part of the actual PDPA regime and certainly not a leading, or high ranking, official as referred to in the UNHCR Report on persons at risk. Given this lack of profile. He submitted that there would be no difficulty in this appellant returning to Kabul. In addition to this, he had not had particular problems during the Taliban or Muhajeddin regimes, and indeed, there had been no evidence of any persecution of him during that time.
25. In relation to the Pashtun ethnicity of all appellants, he again asked us to note that there was no claim by any of the parties, including the UNHCR, that mere membership of the Pashtun tribe did give rise to a reasonable likelihood of persecution. He pointed out that 15 of the 34 members of the current government cabinet were Pashtun, and thus, there was a significant representation in the interim administration. In addition, there was also a reasonable gender balance in that cabinet.
26. He submitted to us that some of the country of origin information indicated that women were no longer constrained in their dress.

Beyond this, in a place such as Kabul, which is the capital of an Islamic country, it should be recognised that women would be treated in accordance with the mores and culture of that country. This did not amount to persecution in his submission.

27. In relation to the issue of risks for returned failed ex-asylum seekers, he submitted that there had been huge numbers of former refugees who had returned to Afghanistan in recent months, a figure of approximately 2 million, having returned from Pakistan and Iran. Given this situation and an approximate number of 500,000 who had recently returned to Kabul, there were huge prospects for anonymity for this family, in his submission. There was no evidence of any targeting of anyone who had returned to Kabul, having previously claimed asylum, and therefore the issue of a possible “celebrity status” of these appellants was, in his submission, irrelevant.
28. In relation to the land dispute, he submitted that this was a difficult point and probably outside the five Convention grounds, set out in the Refugee Convention 1951. Beyond this, he submitted that it could not be considered as an area of possibly persecutorial risk as it was a common situation with many people from Afghanistan who had been removed or dislodged from their land by the Taliban. The fact that squatters were sitting on the land did not, in his submission, amount to persecution nor was a Convention reason invoked.
29. He urged us to look at the appeal following the Ravichandran approach, noting that we should look in a prospective manner at the risks to these appellants on return.
30. He submitted that the interim government were not on the brink of collapse, it had problems he conceded, but was a long way from disintegration, particularly given the continuing presence of the ISAF.
31. In reply, Mr Fountain urged that we look at the risks “in the round”, he submitted that the appellants were vulnerable given the totality of their background. In particular, the risk to the women should be considered and we should note the guidance, in this regard, given in the House of Lords decisions in Shah and Islam. Although, each decision must turn on its own facts, he submitted that the regime in Afghanistan was still effectively a repressive one where a woman could not feel free.
32. He submitted that some of the articles produced by him in support, which had been challenged by Mr Blundell as being unbalanced or bombastic, should still be viewed as commentary from respected newspapers (e.g. New York Times).
33. In relation to the “celebrity status” issue, he submitted there was no actual evidence before us, as there had been no forced repatriation of failed asylum seekers to Afghanistan at this time, nor in particular, people who had been on the hijacked plane. Therefore the situation

was unknown, and, given the fragility of the interim government and law and order in Afghanistan, the risks from the Tajiks, rogue fundamentalists and others to these appellants were, in his submission, real not speculative.

**The issues:**

34. We found the sole issue before us to be whether, at this time, any of these appellants, both subjectively and objectively assessed, do have a well founded fear of persecution on return to Afghanistan from non-state actors. If so, then we must turn to the further issue of whether that persecution is for one or more of the five Refugee Convention reasons.

**Assessment:**

35. Article 1A(2) of the Refugee Convention 1951 relevantly provides:

“... 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 of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself for the protection of that country; ...”

36. At the outset, we note that the fear of persecution by these appellants is not from the state or agents of the state, but from non-state actors. We also note that these appellants are from Kabul and the general undertaking given by the respondent is that they will be returned to that city. No issue of relocation or an internal flight alternative therefore arises.

37. The non-state actors feared by these appellants described as members of the Tajiks, Uzbekis or Azaris, who are in Kabul as part of the “Northern Alliance” group who liberated the city from the Taliban, and/or other fundamentalists who would identify the appellants, either because they were from a secular background, had spent considerable time in a western country and, in the case of the appellants 3 and 6, were young unmarried women.

38. We have carefully considered the country of origin information submitted by both parties, and measured it against all of the potential risks to these appellants from the non-state actors they have identified. We find from that analysis, that there is not a reasonable likelihood of persecution to any of these appellants on return to Kabul by any of those non-state actors. Any level of risk to them, is negligible or remote, and certainly below the level of a reasonable likelihood or real risk.

39. The primary area where it was submitted that there was a risk to appellant 8 and to a lesser extent, the other members of his family, was from his previous membership in the PDPA. In this regard, we again note the UNHCR Bulletin Number 3, which refers to “high ranking

PDPA members”. This appellant was a civil servant and a PDPA member. There was no indication of a high profile, or that he was a “Cadre”, or a Senior Official within the PDPA. This, in our view, clearly distinguishes him from the risks that may be associated with those former high ranking officials, ministers or cadre within the PDPA regime. Our analysis on this regard is confirmed by the lack of persecution to this appellant over the period of some eight years during the regimes of the Rabbani and Taliban administrations. While it is accepted that he may have intentionally kept a low profile, it is significant that he was not targeted at all, thus reflecting the lack of interest in him. An analysis of the current situation indicates only a very remote level of risk.

40. Any risk based on the Pashtun ethnicity of these appellants, we also do not consider rises to the level of a reasonable likelihood. We note the composition of the cabinet of the interim regime and also that there is little or no objective evidence of persecution of Pashtun in Kabul at this time. We acknowledge that there are risks to ethnic Pashtuns in the north of Afghanistan, but such a situation is not indicated presently in Kabul.
41. In relation to the claim that the “celebrity status” of these appellants would raise their profile and hence, the risk to them, we are also of the view that it is not a sustainable submission. The objective information indicates that some 500,000 people have returned to Kabul itself. The chances of anonymity for these appellants, we consider, must be very high. While there may be some recognition of their past involvement in the hijacked aeroplane, there is however no evidence that they would be targeted for that reason.
42. The remaining issue in respect of appellants 3 and 6, and the wife of appellant 8, is in relation to gender. We would agree that there are certainly some societal restrictions in Kabul on women, but these “restrictions” are part of the Islamic society in that country, and certainly do not rise to the level of being persecutorial. We do not consider that there are basic human rights infringed on a sustained or systemic basis against women in Kabul at this time. No objective evidence supports that. The decision in Shah and Islam therefore, is not relevant in this case. Any risks that may arise because of their gender, we consider highly remote and certainly not real risks.
43. Additionally, we have looked at the totality of the background and profile of these appellants, as we were requested to by Mr Fountain and find, that considered in the round, the combination of risks and their backgrounds do not indicate a reasonable likelihood or well founded fear of persecution to these appellants on their return.
44. As we do not consider there is a well founded fear of persecution on return to Kabul, the issue of whether there is a Convention ground is not relevant.

**Decision:**

45. For the reasons set out above, the appeals are dismissed.

**A R Mackey  
Vice President**