

**WK (Credibility - Hizb-i-Islami - Pashtuns- Kabul) Afghanistan
[2004] UKIAT 00280**

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 25 August 2004

Date Signed: 200

Date Determination Notified: 04th October 2004

Before:

Mrs J A J C Gleeson (Vice President)
Mr M J Griffiths
Ms S S Ramsumair, JP

Between

Appellant

And

Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

For the appellant: Mr M Saleem, a Solicitor of Malik & Malik
For the respondent: Mr J Morris, Home Office Presenting Officer

1. The appellant appeals with permission against the determination of an Adjudicator, Mr A W Brown, who dismissed his asylum and human rights appeals against the Secretary of State's decision to refuse to recognise him as a refugee or to grant him leave to remain on humanitarian grounds.

2. Permission to appeal was granted in relation to the sustainability of the Adjudicator's findings, in particular,

- (a) The Adjudicator's decision to prefer an uncertified translation made for the Home Office in place of the apparently certified translation produced by appellant. The Adjudicator relied on the Home Office version to make his adverse credibility findings (paragraph 11 and 32 of the determination).
- (b) The Adjudicator's reliance upon the appellant's demeanour in that after breaking down in tears, 'the appellant's eyes were not reddened and he did not appear to be truthful... he did not appear to be someone who was genuinely upset'.
- (c) The alleged persecution of the Hizb-i-Islami and in particular supporters of Engineer Gulbuddin Hekmatyar, leader of Hizb-i-Islami Gulbuddin, who was expelled in February 2002 for his vocal opposition to President Hekmatzar Karazi. In April 2002 a number of his supporters were detained in Kabul accused of conspiring to plant bombs. The appellant's father was found dead near a canal and the claimant relies upon this as evidence of the Northern Alliance's opposition to the family as Hizb-i-Islami supporters.
- (d) The Adjudicator's failure to consider background evidence about the difficulties of return to areas outside Kabul.

3. The chronology of this appellant's accounts as set out in his evidence, in the context of events in Afghanistan is as follows:-

- **1 January 1981** - The appellant was born in Jalalabad, in Ningrahar Province, Afghanistan. His family were Hizb-i-Islami supporters, his father and uncle Commanders in Hizb-i-Islami.
- **1996** - The appellant ceased going to school in Ningrahar when the Taliban came to power. He used to go to Hizb-i-Islami meetings with his father, although he was not a member. Usually the meetings were about Pashtun welfare. His understanding was that it was a legal party.
- **15 March 1997** - The Taliban arrested the appellant's uncle Modeer Lawang who has not been since. The uncle was working as an assistant for Haji Abdul Qadir.
- **22 December 2001** - Hamid Karzai, a Pashtun royalist, was sworn in as head of a power sharing Transitional Administration which included Haji Abdul Qadir as one of five Vice-Presidents.
- **January 2002** - The first contingent of the International Security Assistance Force arrived in Afghanistan.

- **April 2002** – The former King Mohammed Zahir Shah returned, making no claim to the throne of Afghan.
- **May 2002** – the UN Security Council extended the mandate of the International Security Assistance Force until December 2002, with allied Forces continuing their military campaign to find remnants of Al Qa’ida and Taliban forces in the south east.
- **June 2002** – The Loya Jirga elected Hamid Karzai as head of state and he chose his Transitional Administration members, to serve until 2004, including Turkey took over as the head national in ISAF.
- **July 2002** – Vice President Haji Abdul Qadir assassinated.
- **15 August 2002** – the appellant claims to have received a threatening letter telling him to stop supporting Haji Abdul Qadir.
- **23 August 2002** – He received another threatening letter.
- **22/23 August 2002** – Northern Alliance soldiers visited the appellant’s house warning him not to support Haji Abdul Qadir.
- **27 August 2002** – The appellant left Jalalabad with the help of an agent.
- **September 2002** – Hamid Karzai narrowly escaped an assassination attempt in Kandahar his home town.
- **4 September 2002** – appellant arrived in the United Kingdom.
- **November 2002** – appellant received a telephone call from abroad to say his father had disappeared.
- **February 2003** – Germany and the Netherlands took over as the league nations in the ISAF.
- **19 February 2003** – the US Department of State designated Gulbuddin Hekmatyar, leader of Hizb-i-Islami Hekmatyar, an international terrorist. Hekmatyar returned to Afghanistan at about this time after being expelled in 2002, but his whereabouts are unknown in Afghanistan.
- **August 2002** – NATO took control of security in Kabul, this being the organisations first operational commitment outside Europe in its history.
- **August 2003** – it was reported that Hizb-i-Islami were one of the groups believed to have been responsible for a spate of attacks on

Afghan and Western government, military had humanitarian targets.

4. Mr Saleem submitted that given the prominence of Vice-President Haji Abdul Qadir, the appellant would still be at risk. We observe that the appellant is claiming to have been threatened for supporting Mr Haji Abdul Qadir, a Vice-President in the Transitional Administration, when he had been dead for a month. Mr Saleem argued that Vice-President Qadir had not been replaced as a Vice-President as the Pashtuns could not agree on an alternative candidate. As regards the risk to the appellant as a Pashtun, the relevant passages in the April 2004 CIPU Country Report are paragraphs 6.121 to 6.132, to which we return below. Mr Saleem submitted that Hizb-i-Islami was being persecuted. He relied on the April 2004 CIPU report and filed no additional up to date documents of his own. The relevant passages in that report relating to the appellant's Pashtun ethnicity are at paragraphs 6.121 to 6.132.

5. Mr Saleem also submitted that Hizb-i-Islami was being persecuted. He relied on the April 2004 CIPU report and filed no additional up to date documents of his own. The appellant claims to be at risk from the Northern Alliance and to be recognisable in his home area of Jalalabad. The appellant was never a member of any faction of Hizb-i-Islami but as a good son he helped his father with his father's Hizb-i-Islami activities when his father was too ill to carry them out. He would run errands and generally support his father. Neither man was a combatant despite his father's title of Commander.

6. When the appellant and his father were asked to become personally involved in the contract in Northern Afghanistan, they decided to leave the area and cease supporting Hizb-i-Islami. We note that CIPU (Paragraph 6.328) Hizb-i-Islami as a whole is now supportive of the Transitional Administration, despite difficulties with one wing (Hizb-i-Islami Hekbatyar), which has connections with terrorism.

“6.328 An international Crisis Group (ICG) Asia Briefing published on 30 March 2004 stated that, “In the weeks since the constitutional Loya Jirga, the president has appointed a number of former Hizb-i-Islami (Hikmatyar) commanders and political figures to high-level post, including Bashir Baghlani as governor of Farah, Khyal Mohammad as governor of Zabul, and Sabawoon as minister-adviser in the Ministry of Border and Tribal Affairs.” According to ICG, “The incorporation of former Hizb-i-Islami personalities into the government has accelerated since the Constitutional Loya Jirga, an indication that the support extended to Karzai by the party's erstwhile members may be more than a short-term alliance.”

7. Mr Saleem asked the Tribunal to allow the appeal.

8. For the respondent, Mr Morris observed that the appellant was a low level activist and that his activities were now some time ago. Pashtuns in that position were not at risk. He accepted that the leading Tribunal determinations were based upon somewhat older evidence, but paragraph 6.123-4 of the current CIPU Country Report set out the position of Pashtuns –

“6.123 The world Directory of Minorities further notes that “despite the dominant position they have held, Pashtuns do not form a homogeneous group, and many have fallen victim to oppression at the hands of their own elites. The power and leadership of individuals are perhaps what divides Pashtuns, not only into different tribes but also into numerous sub-tribes, each isolated within its own borders. Interference in one another’s affairs has caused conflicts among sub-tribe throughout their history. Yet external interference, or interference by the central government, has usually resulted in a unified response.” [27] (p 539)

6.124 In 1997, a UNHCR background paper on refugees and asylum seekers from Afghanistan noted that Pashtuns made up the great majority of the refugees in Pakistan. The Pashtun tribal population of Pakistan’s North-West Frontier Province (NWFP) still had much in common in terms of culture, language and traditions with their fellow Pashtun-speakers across the border (the “Duran Line’) in Afghanistan. The Duran Line of 1893 demarcated the border of modern-day Pakistan and Afghanistan. There is a long tradition of mobility among the Pashtuns who live in the NWFP and those of eastern Afghanistan. Notably, some 60,000 nomads (‘kuchis’ or ‘powindahs’ as they are respectively known in Afghanistan and Pakistan) were accustomed to moving annually with their herds between summer and pastures in Afghanistan and winter pastures in Pakistan. Others were merchants or businessmen with interest in Kabul, Kandahar and Jalalabad in Afghanistan and Peshawar in Pakistan, who moved regularly between the two countries. [11a] (p 5).

6.130 In early March 2003 it was reported by the BBC World News that the main local leaders in Afghanistan had agreed to bring an end to factional fighting and help thousands of Afghans return to their homes. UN officials said that the agreement had been secured by Ruud Lubbers, the UN High Commissioners for Refugees.

6.131 According to a UNCHR report issued in July 2003, “Since April 2002, the situation for Pashtun minorities in the North and West has progressively improved. UNHCR has been actively supporting initiatives to prepare for the voluntary, safe and dignified return of displaced Pashtuns to the North, and the major party leaders in the North have given assurances that their rights will be respected. Although the situation has calmed in certain regions, particularly in Badghis as well as in the North-East where

there have been larger Pashtun refugee and IDP returns, the situation of Pashtun communities remains precarious in the North West, where harassment and opportunism by local commanders have not ceased.”

6.132 On 21 March 2004, a UNAMA spokesman announced that “Go and see” visits were underway in the Northern Provinces. According to the spokesman, “The Ministry of Refugees and Repatriation (MoRR) and UNCHR have organized the second “go and see” visit by leaders of internally displaced people (IDPs) as well as refugee representatives from Balochistan Province in Pakistan... (as you know,) the first “go and see” visit organized last month to Faryab Province has proven very useful in helping IDPs make decision about their possible return back to their places of origin... Many of these families had fled the north-western province nearly three years ago and were staying in Zar-e-Dasht camp in Kandahar Province. They are of Pashtun ethnicity and had left their homes due to conflict and human rights violations after the fall of the Taliban regime. The return momentum is picking up, taking advantage of improved conditions in the North West. About 100 more internally displaced families have expressed their willingness to return to their places of origin in Badghis Province and another 40 families are eager to return back to Faryab Province.”

9. Paragraph 6.124 refers to a 1997 UNCHR background paper, seven years old now. Whilst there are still some difficulties in the north and east the background evidence is that these are improving and there was no suggestion that Pashtuns, the largest ethnic group, in Afghanistan could not safely relocate to Kabul should they have difficulties in their home area.

10. In reply, Mr Saleem argued that Jalalabad was not safe at present. In order to return to Kabul the appellant would have to declare the name of his father and other male relatives; his connection to Haji Abdul Qadir would become apparent. He was the eldest, the head of the family and would be expected to pick up where his father left off. He asked the Tribunal to allow the appeal.

11. The Tribunal reserved its determination for postal delivery. We have taken note of the criticisms of the Adjudicator’s reliance upon demeanour and his approach to the translated document. We have treated the appellant’s core account as credible to the standard appropriate for the Geneva Convention on the Status of Refugee and Stateless Persons 1951 and its protocols and the European Convention on Human Rights and Fundamental Freedoms 1950.

12. Nevertheless, we do not find ourselves able to allow the appellant’s appeal. Taken at its very highest his claim is that he assisted his father in low-level Hizb-i-Islami activities in Jalalabad before the

beginning of the Transitional Administration, and that his family has a Hizb-i-Islami profile, in particular as supporters of the late Vice-President Haji Abdul Qadir. Hizb-i-Islami is now one of the supporting groups behind the Transitional Administration and the appellant comes from a majority ethnic group within Afghanistan as a whole. The appellant has relied on the CIPU Country Report evidence without filing any fresh country evidence of his own, and for good reason.

13. The recent evidence does not, as alleged, show a deterioration in the position of Hizb-i-Islami supporters (except perhaps Hekmatyar) nor in that of Pashtuns or supporters of Haji Abdul Qadir. The evidence is that in Kabul at least, there is a stable situation supported by ISAF and the Transitional Administration, which Hizb-i-Islami supports and that Pashtuns are 40% of all Afghans. As regards support of the late Vice-President Haji Abdul Qadir, he is effectively a martyr to peace and there is n indication at all that outside Jalalabad (or even within it) such support would now cause difficulties for the appellant on return.

14. We see nothing in the recent evidence which we have examined which renders incorrect the conclusions reached by the Tribunal in the decisions in *S* and *AL*, both of which indicate that Pashtuns with difficulties in their home area may be return safely to Kabul and take up their lives there. We do not see how that can put the appellant at any enhanced risk whatsoever.

15. **For all of the above reasons, the appellant's appeal is dismissed.**

**Mrs J A J C Gleeson
Vice President**

25 July 2013