

LSH
Heard at Field House
On 4 September 2002

APPEAL NO HX51798-2000
14 (Kabul - Pashtun)Afghanistan
CG [2002] UKIAT 05345

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....21/11/2002.....

Before:

Mr D K Allen (Chairman)
Mr M Shrimpton
Mr J B Wilson

Between

No 14

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant has been granted leave to appeal to the Tribunal against the determination of a Tribunal of three Special Adjudicators who dismissed his appeal against the respondent's decision refusing asylum.
2. The hearing before us took place on 4 September 2002. Mr S Revindran from the Refugee Legal Centre appeared on behalf of the appellant, and Mr C Buckley of the Home Office Presenting Officers' Unit appeared on behalf of the respondent.
3. Mr Buckley had put in place enquiries concerning the newspaper article concerning the appellant. He had enquired with the Foreign and Commonwealth Office via the Information Policy Unit. The document emanated from Pakistan and there was a skeleton staff in post there and the view of the Foreign and Commonwealth Office was that it would be difficult to form a view on the reliability of newspaper articles in that part of Pakistan, so it was not worth

trying to verify it. It was not suggested that the newspaper was a forgery or other than genuine. In summary there had been little if any progress.

4. Mr Revindran called the appellant to give evidence. He was referred to his statement and said that the contents had been translated to him and he understood the translation and it was true. He had two shops, one in Mazar-i-Sharif, and one in Kabul. He had been born in Kabul. Before he came to the United Kingdom he was living in Mazar, having started to do so in 1993. He was the sole owner of each shop. His brother Karim looked after the shop in Kabul. His wife lived in Mazar and had lived there between 1993 and when he left Afghanistan. He owned a house in Mazar.
5. With reference to his first statement which was referred to at page 6 of the Adjudicator's determination, he had said that he had two houses and sometimes lived in Kabul. His parents and brothers lived in the house in Kabul. That house was in his father's name. His father had lived there for some 20-25 years. He used to stay at his father's house when he went to Kabul to see the shop. To the best of his knowledge he had no family in Afghanistan. They were in Pakistan. He had last spoken to his family about 1½ months ago and he had enquired about his brother and he was told they had no information about him. This was Qayum, who had been kidnapped by Commander Amanullah.
6. His father's profession was a shopkeeper who sold cosmetics and had two shops, one in Mazar and one in Kabul and the shop in Mazar was the same as the witness's shop. His father was a wealthy man and he also had a company dealing with the same stuff he was selling. He did not know what had happened to his father's house in Kabul.
7. In cross-examination Mr Buckley asked the appellant what proportion of his time he spent in Kabul between 1993 and the time that he came to the United Kingdom. He said he spent 15 years in Kabul. He would come from Mazar, not for a long time and would bring the stuff from there nearly for a week. He could not specifically say what proportion of his time he spent living in Kabul but he was sometimes in Mazar and sometimes in Kabul. He had lived in his father's house when he was in Kabul.
8. He was referred to the newspaper article. His brother was reported as saying that his brother (the witness) used to work with him in the shop before he went to London. He agreed that that was the case. He said his brother was talking about the joint work and they used to work jointly and travelled together to Mazar and it was shared work. The brother had been kidnapped from Kabul. He was asked what he would fear on return to Mazar and said his brother had been kidnapped because of him because he was in London and if

he went back his life would be in danger as well. It was put to him that the kidnap took place in Kabul and he was asked why he would be at danger in Mazar. He said that in the whole of Afghanistan there was one government and all the people were the same people. He was asked whether it was not the case that he did not fear the government and he said these people were the people from the government. He was asked whether he was saying that Commander Amanaullah was acting on behalf of the government and he said yes he was the Commander of Shaurai Nizar which was the party of the Defence Ministry and he was their man. Commander Amanaullah was a member of the government and a commander of the Defence Ministry. He was asked whether the same fear would have applied if it was said to him that he could go to a predominantly Pashtun area in Afghanistan and he said yes, definitely.

9. On re-examination the witness was asked whether he spent most of his time in Kabul or in Mazar and he said it was in Kabul. He was asked whether on his trips he travelled alone between Mazar and Kabul or with his family and he said he used to travel alone.
10. We asked the appellant a few questions. The port sheet said he was single but he said that he had not said that. He had flown regularly by air from Kabul to Mazar. He was asked why there was no independent evidence other than a newspaper about the alleged kidnap and he asked what evidence that might be. It was put to him that one would think it would be fairly prominent, as it concerned allegedly the kidnap of a relation of a person who had been on the hijacked plane. He said that Commander Amanaullah had spent 13 to 14 years in the same way kidnapping and killing. The government which had power now were all thieves and they were all killing people and all murderers. The government here had more knowledge than he did about Afghanistan.
11. The next witness was Mr Peter Marsden. He had provided expert witness testimony in the form of a statement concerning the appellant. He said that in Mazar at the moment there was a very significant level of tension between Dostum, who was of the Junbish Group, Atta who was the leader of the Jamiat Group which was the dominant party in Kabul, and to which the Defence Minister Fahim was affiliated, and also the Shia Party which was of less significance than when the Taliban were in power. The UN sought a joint defence force but there were clashes. The UN continued to try to stabilise the situation in the north and sought an extension of its mandate and there was as yet no positive response. There was serious concern about security in the north. There had been a lot of targeting of Pashtuns in the north since the Taliban fell. A century or so ago Pashtun colonies had been established in the north alongside Tajiks and Uzbeks. There were historic tensions and when the Taliban were overthrown the Pashtuns found themselves

targeted by the Tajiks and the Uzbeks. Tens of thousands had been forced to flee, many to Pakistan, who now sought to relocate them. So the security situation and the targeting of the Pashtuns meant that the area was dangerous.

12. Kabul used to be multi-ethnic before the Soviet invasion and Pashtuns were relatively prominent then in government and commerce. Many had fled in the late 1970s. There had also been internal purges within the socialists and it was a war zone. Others left when the Taliban came. It was a traditionally Pashtun area to the south of Kabul. Tajiks had fled to Kabul, and mainly now Kabul was inhabited by Tajiks. Around half of Kabul was in ruins but the north of the centre was still intact and the centre was relatively affluent and had been lived in by the Pashtuns when they were still there. Kabul had ethnically based neighbourhoods. The appellant could choose to go and see if his family home was still there and the neighbours would ask questions about who he was and they could be different people from those who lived there before. People were very suspicious in Afghanistan and it could be that they would be aware that he was on the plane and it would get back to the Tajik forces who wielded power. There had always been a climate of suspicion in Afghanistan and also one of fear. An incomer could be seen as threatening. It would be most unusual to see a young man moving into a house on his own as people usually operated on the basis of families.
13. A further problem was the influx of international organisations which led to very high rents being charged on available properties and this was beyond the means of people making a living in Kabul. The appellant's family was relatively wealthy so he would be in a good position to pay rent but even so it could be difficult as prices were comparable to London prices. There were some 400,000 refugees in Kabul and it could be more and this led to further pressure on rents even in the suburbs. This also led to health problems. If he could not rent then he would join the influx of refugees from Pakistan with no accommodation who were living in destitution in the ruins of Kabul. Again questions would be asked. It would be fairly obvious that he had not been living in a refugee camp in Pakistan. Tajik forces were behaving in an intimidatory manner to returning refugees and there could be problems if they questioned him and there would be a record in intelligence files that he was on the plane and he could be targeted as having abandoned Islam and also as a Pashtun. Pashtuns had not been driven out of Kabul as they had in the north, but they had fear. The humanitarian agencies were focused on their task and bodies such as the United Nations and Human Rights Watch were monitoring human rights issues and tended to focus on more high profile abuse. They would not hear of examples of individual harassment, beatings, disappearance.

14. Mr Marsden was asked whether the appellant could in the alternative travel to the southern region which was predominantly Pashtun and whether there would be any risks in travel for him going south. Mr Marsden said that all the roads were manned by people demanding bribes and there were a lot of checkpoints and this applied to everybody. He would be at risk of criminal activity. It was unclear whether his family originated from a particular village and so it would be difficult and if he could not go back to a particular village it would be hard to settle in the south.
15. We asked Mr Marsden if the people on the hijacked plane were still highlighted. He said that they were perceived as abandoning Islam and the Jamiat Party were in control in Kabul in parts of the north and they had their origins as a radical Islamic Party and were not much less radical than the Taliban. If the appellant moved to the south it would be hard to find somewhere to settle. Each village had its own kinship patterns. There would be a greater risk from Taliban elements in the south as in the Taliban period. The Taliban were upset by the hijack and the families of the people on the hijacked plane were targeted by the Taliban and many had had to flee to Pakistan. Some elements of the former Taliban were still powerful and there was evidence of Al-Qaeda activity in Pakistan. The power was highly fragmented and highly fluid in the south and when he tried to settle questions would be asked.
16. We put to Mr Marsden that there were millions of people in this situation and he said yes that questions would be asked about each and there was no effective police force. On return he would fear for the appellant being targeted by the Taliban as a Pashtun seen as abandoning Islam as a person on the hijacked plane or he would be targeted by former Taliban members in the south.
17. He was asked whether the claim concerning the hijack of the brother surprised him and he said no the family were seen to be wealthy and it was not surprising that the opportunity arose as he was on the plane.
18. In cross-examination Mr Buckley asked Mr Marsden when he was last in Afghanistan and he said that it was in December 1997. He was funded by the Department of International Development and the Department had banned travel there since 1998. He had not thought it safe enough to return there last autumn and did not feel particularly safe with regard to his impending visit to Afghanistan under the auspices of the UNHCR but the United Nations would protect him. People were feeling very nervous there. ISAF protection was less certain.
19. He was asked whether he was familiar with the Danish Fact Finding Report referred to in the CIPU No 3 Bulletin of 2002 dated 11 July 2002. It was put to him that that was more optimistic than he was.

He was referred to the comment of the Fact Finding Mission that several thousand Pashtuns were living in Mazar-i-Sharif without any problems. It was also said by the Director for the Co-operation Centre for Afghanistan in May 2002 that Pashtuns still occupied the trade and transport sector in the northern area. Mr Marsden said that people were driven from their homes and it was hard to say what risks faced those who returned. He would be surprised if people felt no risk and there would be an extra risk for the appellant as he was on the hijacked plane. He was asked what was the risk from being on the plane and he said that feelings ran high if he was seen as abandoning Islamic values. It was put to him that this appeared to be no more than an extrapolation from the case of people seen to be associated with the Soviet regime, and as essentially speculative. He said that there was evidence of a lack of sympathy to the west. He was asked whether the risk arose not from being on the plane but having been in a western non-Islamic country and he said no the hijack had brought shame to Afghanistan and there was a climate of erosion of moderate Islam now. He was asked why people who had been opposed to the Taliban would feel this about a man who had stayed in the United Kingdom to avoid the Taliban. He said that they had the same value systems and the Tajiks opposed the Taliban as they were seen as Pashtuns and radical Islamic views remained and this was a dominant force in Afghanistan. There would be significant risks for any asylum seeker who went to the west on return to Afghanistan. The risks would be greater for the appellant.

20. We asked Mr Marsden who would know that the appellant was on the plane and he said the intelligence services which had been effective throughout and records had remained throughout. All the indications were that this was so. From talking to individuals in Afghanistan they referred to the intelligence service and this was in his verbal contacts with people that the service existed and was effective and was feared. This was an assumption based on hearsay and accounts given by people to him but it was no different from the ignorance one had about the operations of MI5 and MI6. He was aware of the fear of these people. He made what he regarded as a reasonable assumption and it would be on official records which were available to the present regime. There had been no reference to the Taliban destroying records and they had left in a hurry.
21. It was put to him that he said it was highly unusual to live alone in Kabul and he was asked whether that was so after 23 years of combat and occupation and mass movements of the population. He said that it would be highly unusual because of the climate of fear and he would feel fear living in alone in a house. He was asked where individuals who had split from their families went and he said they would find refuge very difficult and there was nowhere else you could go and feel protected. He was asked about the

situation where there was no choice due to a family being split up and he said you would send them to relatives to look after them. It was put to him that there must be a lot of people in the position and they were not the only person left from their family and he said that the extended family system prevailed in Afghanistan and it would be unusual to live alone in Kabul.

22. He was referred to paragraph 21 in the CIPU Report. He did not consider that this was inconsistent with what he had said. There could still be violence under the surface and there had been recent bomb attacks and there were high levels of fear. The role of ISAF was to provide security to the government and not to the public at large. Even so there had been two assassinations of ministers.
23. He was referred to paragraph 13 of that report which among other things referred to a report by ISAF that crime rates had decreased across the city by as much as 70%. He was not sure how they worked this out and even so it was 70% of whatever the situation was before they came to the city. ISAF could not promote security throughout the city and there had been a deterioration since the United Kingdom forces left and it was pretty bad before anyway.
24. He was referred to the reference to the Danish Report in paragraph 14 and it was put to him that that taken with what ISAF said contrasted with his evidence. He said that the head of police referred to would say what he said as he was in control of the Tajik forces. The Danish organisation was reputable, but international groups were heavily constrained in their movements in Kabul. Before the fall of the Taliban you could walk around Kabul freely but international staff could not do now and it was very hard for diplomats to find out what was going on and it would be a problem for any international organisation to do any investigation. The Loya Jurga had been seen as disappointing and there were the same old people still around.
25. He was asked how reliable his information could be and he said that he was in a relatively good position to find out as he had contacts with British NGOs working in Afghanistan and had constant contact with the people with information about the situation in the country. The Danish team would be involved with the day to day operations. He could provide the big picture to all humanitarian agencies he worked for and he drew on a lot of sources.
26. He was referred to paragraph 38 of the CIPU Report which, it was put to him contrasted with what he said about the difficulties of movement in Afghanistan and in particular the difficulties the Danish team would have in getting information. He said that the situation changed rapidly, and reference was made to a recent article he had written which had been put in by Mr Revindran. It was risky to say what had been said, although it could be reporting on a brief period

when it was all right. He saw many reports of traders complaining about large numbers of roadblocks.

27. As regards the situation in Kabul it was a question of supply and demand concerning rents. Landlords sought to exploit the international organisations also. He was referred to paragraph 23 of the CIPU report and was asked whether there was accommodation in Kabul and said no. Housing was being built and some was being done by aid agencies and some by returning refugees. Shelter projects did not mean that new housing was being produced fast enough to meet all the needs and there was an economic bubble and boom from the international community.
28. He did not know how many Pashtuns had returned to Kabul. He guessed that most returnees to Kabul were not Pashtuns, Kabul having a mainly Tajik population. He would say that there were thousands of Pashtuns in Kabul, however mainly living in the southern suburbs, in the relevant areas. There was a lot of harassment from Tajik forces and it would be ethnically based.
29. As regards any exclusively or mainly Pashtun areas outside Mazar and Kabul, he said that all southern Afghanistan was Pashtun and most had gone back there. The appellant could not go to a new village but people went back to where they originated from.
30. He was asked who had accommodation in the UN camps and he said they were Pashtuns who were living in the north and had been driven out by the Tajiks and Uzbeks as potential Taliban sympathisers, and also nomads who were affected by the drought. He agreed that the appellant would fit the first profile. He was asked why he could not then go and live in one of the camps and he said he could and he would be living in an area where he would be at risk of mines and it was unclear whether he would be at risk of arbitrary violence from Tajik sympathisers and it would be hard to hide his identity. This was relevant to the United Nations camps in the south where refugees from Pakistan were accommodated, people who had come from the north and tried to get into Pakistan. There were up to 80,000 people in these camps. The UNHCR had felt they had to set something up meeting international standards but there were still concerns in the sites from mines etc. There was also a theoretical risk that former Taliban members or sympathisers could attack the appellant.
31. Mr Revindran had no questions on re-examination.
32. In his submissions his Mr Buckley said the first issue was what the appellant's home area was. It seemed that it could be said to be Mazar or Kabul. If that was the case then proposed return to Kabul would not be a question of internal flight. That would equally be so if he went to Mazar. The CIPU Report referred to thousands of

Pashtuns remaining in Mazar these being mainly business people as was the appellant. He referred us to paragraph 35 of the CIPU Report. The problems with Commander Amanullah had arisen in Kabul and not in Mazar. The appellant could return to Mazar and there was no risk of persecution there. If he went to Kabul, how could Commander Amanullah become aware that he was there. There were some problems in any event with the credibility of this account. Mr Marsden had no information on Commander Amanullah. One would expect, given that Mr Marsden said the people on the hijacked plane had a high profile, that the kidnap of a brother of such a person would be publicised but there was no evidence except in a Pakistani newspaper quoting the appellant's family. If it was credible there would be further evidence of it given his supposed profile.

33. If contrary to Mr Buckley's submission there were fear in either or both then he could be expected to relocate in an exclusively Pashtun area in the south. The Tribunal was invited to be circumspect concerning Mr Marsden's evidence about the appellant's inability to integrate in the south. It might be that there was an atmosphere of suspicion in Afghanistan, but given the large number of internally displaced people in Afghanistan it could not be as unusual as Mr Marsden suggested for people to be in areas with which their families had no connection. Mr Marsden had prevaricated and had been equivocal on this point. There had been a period of 23 years of upheaval and there were bound to be family splits. On the question of undue harshness, the UNHCR backed such relocations by the provision of refugee camps and it would be difficult to say that it was unduly harsh to use UNHCR protection. It would be hard to invite people to use the camps if they were not basically humanitarian.
34. In his submissions Mr Revindran agreed that the first issue concerned what was the appellant's home area. His home was in Mazar where his wife and children had lived. He stayed at his father's house in Kabul. It was accepted you could have two home areas but he did not own two houses nor had he travelled between the two with his family. He had resided in Mazar between 1993 and the time when he came to the United Kingdom and travelled to Kabul quite often.
35. The Tribunal was referred to the schedule of evidence. He would be at risk according to the UNHCR preliminary position paper as returning to an area where he constituted an ethnic minority. Reference was also made to the CIPU Report and the Human Rights Watch Report and the Amnesty International Report. The Tribunal was also referred to the extracts from the Guardian. It showed a history of the kind of mistreatment referred to. He also referred us to paragraph 35 of the CIPU Report. Pashtuns leaving the area were linked to increased attacks and it was likely to be as

the Taliban were Pashtun dominated. The question was whether there was a real risk for the appellant as a Pashtun. No copy of the CCA Report had been provided. That seemed to conflict with what was said by other agencies and more weight should be attached to other reports. He faced a well-founded fear of persecution in Mazar on grounds of race.

36. If it were the case that it was found that he had his home area in Kabul then there were fears from Commander Amanullah. Often the agencies in Kabul were dealing with the humanitarian situation and not with individuals so it was not unusual that they did not know of him. As far as one was aware this was a one-off event. An analogy could be drawn with the fact that it had not appeared anywhere in the media that two of the air crew after return had been mistreated and fled to Pakistan and approached the UNCHR and the British High Commission and claimed mistreatment. One would have thought that the Pakistani newspapers would be aware of this. There had been a lot happening in Afghanistan and there the kidnap of a member of one of the family of the hijacked passengers was relatively minor news.
37. We put to Mr Revindran that there was no mention of the kidnap in the newspaper article and also, that it referred to several arrests of the appellant's father, and he did not mention that in his statement. Mr Revindran said that it was only the appellant's evidence about the kidnapping and it was what the newspapers said and it was not a discrepancy as such it was just a small paragraph in the newspaper and the appellant had gone into more detail, having spoken to his brother. It could be that it was explained by the timing since the newspaper article was 2 months before he signed the statement although he might have been told subsequently about the kidnap. Mr Marsden had said that the description of the kidnap and the demand for money was in line with the material he had read from Afghanistan. The Convention reason was political opinion or religion. He would be seen as turning his back on Islam in remaining in the United Kingdom.
38. If the Tribunal did not believe him about the kidnap but found that Mazar was his home area then to return him to Kabul would be unduly harsh. The Tribunal was referred to the schedule of evidence concerning the situation in Kabul, including high crime rates and the lack of any real police force. What was described as a police force was in fact a body acting as police force which was under the control of the Defence Minister who was a member of Jamiat. For that reason the appellant as an ethnic Pashtun seen to be turning his back on Islam was at risk. Mr Marsden had said that the Taliban left Kabul quickly and there was no evidence that they destroyed their records. The appellant was in a unique situation. The new regime had a similar approach to Islam as the Taliban did. It was true that there were some differences with

regard to the treatment of women but fundamentally they were the same. There had been no forced returns at present and so it was hard to know exactly what the position on the ground was. Clearly going to Pakistan would not be seen as problem as it was not a rejection of Islam. No doubt there had been an improvement in Kabul in the last 6 months, but it could hardly have got much worse, and to return him there would be unduly harsh. Reference was made to paragraphs 22-28 of the CIPU Report. The Tribunal had to deal with the situation as of now. Mr Marsden had said that it would be unusual for a single person to relocate and to live alone in Kabul. Over recent years, certainly between 1997 to 2001 there had not been a question of large numbers of people being caught in a war situation. It must be quite rare to be in his situation. If he could return to Mazar he would be likely to come across family or people he knew. Questions would be asked as to why he was not living with his family and why he had come to Kabul. These questions created risk.

39. The south was the Taliban's heartland and it was hard to believe that all of the Taliban's huge forces had been killed or fled Afghanistan and it was far more likely that they had changed allegiance and again questions would be asked. He would be much more likely to come across Taliban sympathisers if not high level members. There would be problems of travelling to the south also. There was a reference in the schedule to Achter Mohammed who had experienced problems on return.
40. It was accepted that Kabul was the central issue on whether he was at risk of persecution or whether it would be unduly harsh for him to relocate there. As regards the implied criticism of Mr Marsden's evidence, the CIPU Report was a series of extracts and they were not seen in context and a number of points could be made in different ways and the most favourable reading to the appellant should be taken. In particular paragraphs 13 and 14 were relevant on this. Mr Marsden did not dispute that there had been improvements in Kabul but in many areas there were still serious problems concerning crime and general living conditions. It was hard but not impossible to obtain accommodation. Fewer roadblocks did not mean none so again there was not a discrepancy. Mr Marsden's job was to collate large amounts of information in order to create a monthly bulletin and was funded by the United Kingdom, by the Department for International Development and the UNHCR sought his opinion which should be given considerable weight. Pages 5-7 of his report concerning returnees to Kabul and the security situation should also be borne in mind.
41. We thanked the representatives for their helpful submissions and reserved our determination.

42. The appellant was intending to go to Mazar-i-Sharif and the plane he was on was hijacked and he ended up in the United Kingdom. The panel of Adjudicators found that he had been arrested on three occasions as a consequence of breach of Taliban regulations and not as a consequence of persecution. The Adjudicators noted his statement in evidence that he was an economic refugee. He has businesses in both Mazar and Kabul and his wife and children lived at his house in Mazar and when he was doing business in Kabul he stayed at his father's house there. We consider that in those circumstances it is appropriate to regard Mazar-i-Sharif as being his home area and therefore any questions of his situation in Kabul would be issues involving internal flight and consequently undue harshness, should we consider that to be an appropriate issue to be explored.
43. We consider first therefore any real risk of persecution in Mazar-i-Sharif. In this regard we have paid particular attention to the schedule of evidence put in by Mr Revindran, referring to the more detailed reports also, and also to the CIPU Reports put in by Mr Buckley. We bear in mind as we must the need to consider the evidence as of today. Against the point made for example in the UNCHR preliminary position paper that is dated 30 February 2002, it said that people may be at risk of violence harassment or discrimination if they originate and return to areas where they constitute an ethnic minority. We remind ourselves that the appellant is a Pashtun. There is a reference in the CIPU Report of April 2002, referring to the March 2002 Human Rights Watch Report concerning the situation of Pashtuns in northern Afghanistan. It is said that they were subjected to such abuses as killings and beatings on account of their ethnic group being closely associated with the Taliban. It is said in the Human Rights Watch Report that the wave of violence against Pashtuns has somewhat diminished since the first month following the falling of the Taliban but Pashtun communities continue to face serious and regular abuses. Paragraph 35 of the CIPU Report No 3 for July 2002 deals specifically with the position for Pashtuns. It refers also to the UNHCR Report and the Human Rights Watch Report. It notes the fact that in May 2002 UNHCR Afghanistan stated the number of attacks in northern Afghanistan against Pashtuns had reduced, but it notes also that Pashtuns were leaving the area to move to eastern and southern parts of Afghanistan, and there may well be a correlation between the two in our view. There was reference to the Norwegian Ambassador in Afghanistan stating that the attacks which were suppressed in April 2002 had grown worse again leading to a movement of refugees to the south. As against that the director of the Co-operation Centre for Afghanistan stated in May 2002 that Pashtuns still occupy the trade and transport sector in the northern area. We note also from the Danish Fact Finding Mission of 5-19 May 2002 that it is said that several thousands of Pashtuns are living in Mazar-i-Sharif without any problems.

44. In our view there is evidence of an improvement in the situation for Pashtuns in Mazar-i-Sharif. We bear in mind also in this context Mr Marsden's evidence that in his view there are serious concerns about security in the north, although the United Nations are seeking to persuade the various contenders for power to work together and are seeking the creation of a joint defence force. We note also in this context, and it is relevant elsewhere, Mr Marsden's view about the extra risk to the appellant as a consequence of having been on the hijacked plane and having chosen to remain in the United Kingdom rather than return earlier as he had the opportunity to do. He said that the risk is from the fact that in this regard he was referring we think in particular to Jamiat in Kabul having essentially the same radical Islamic views as the Taliban had, and that they would be just as likely as the Taliban to see him as having betrayed Islam in remaining in the United Kingdom. We shall come back to the issue of Kabul shortly, but we note that Mr Marsden made this comment in the context of the risk in Mazar also.
45. One issue that immediately arises in this regard is the question whether anybody would know that the appellant was on the plane. Mr Marsden said that they would, because the intelligence services have been effective throughout and records have remained throughout and all the indications are he said that this is so and this is a consequence of his talking to individuals who refer to the intelligence service and retain a fear of it. He accepted that this was based on an assumption based on hearsay evidence but he was aware of these people's fear and considered he was making a reasonable assumption. He pointed out that there was no reference to the Taliban destroying records.
46. We have to say that we find Mr Marsden's evidence in this regard to be excessively speculative. He has produced no hard evidence (perhaps it is not possible to do so we accept) that intelligence records have been retained, that there would continue to be a record of the appellant having been a passenger on the hijacked plane in those records, and that either in a factionalised area such as Mazar-i-Sharif or in Kabul itself would there be anybody with access to those records who would be likely to use them. References to a generalised fear of the secret intelligence services from contacts of Mr Marsden do not in our view come close to indicating a real risk that such records exist and/or are accessible to anybody likely to come into contact with the appellant. We regard the evidence in this regard as essentially fanciful.
47. In any event, even if one accepts Mr Marsden's evidence that groups such as Jamiat are of the same radical nature as the Taliban, we bear in mind the absence of any evidence concerning anyone who has been shown to have suffered because of any presumed association with the west as a consequence of seeking asylum.

There is the case of Achtar Mohammed to which we have referred above, but it seems to have been of particular significance in that case that money was a significant motive for the beating and robbing of Mr Mohammed. In effect Mr Marsden asks us to draw conclusions from the radical Islamic nature of the various groups and to derive from that the existence of a real risk to the appellant. We consider that the evidence in this regard is no more than supposition. Failure to take the opportunity to return after the hijacking and to go back into the custody of and potential ill-treatment by the Taliban, against whom the various groups in Mazar-i-Sharif and also the Tajiks in Kabul are strongly opposed, does not seem to us to give rise to a real risk that they would regard him with disfavour as a consequence of him having sought to keep himself away from the risk of mistreatment from people who are indeed themselves the enemies of the groups into whose custody he might now come. Accordingly we do not consider there is any real risk to the appellant as a consequence, if it did ever come out, that he was a person on the hijacked plane, that anybody would regard him with disfavour and as such place him at any real risk.

48. Taken as a whole our view concerning the risk on return to the appellant, bearing in mind on the one hand our rejection of the claim that he would be at any risk on account of having been on the hijacked plane and as a consequence be regarded as somebody who in effect expressed an anti-Islamic view, and also bearing in mind the increasingly positive signs that we detect, and in particular of the report of the Danish Fact Finding Mission, we consider that he does not face a real risk on return to Mazar-i-Sharif.
49. If we are wrong in this regard however, it is clearly appropriate for us to consider the situation in Kabul which is the place to which he would be returned initially, and then consider the question of whether, if he were at real risk of persecution in Mazar-i-Sharif, he would be able to relocate in Kabul without it being unduly harsh. An alternative issue concerns relocation elsewhere in Afghanistan, and here we need to consider the situation in the south which is largely if not exclusively Pashtun occupied.
50. It is we think accepted on all sides that the situation in Kabul has improved. Mr Revindran argues that an improvement from such a low base is not an improvement which is such as to make it practicable for the appellant to relocate to Kabul. In this regard we incorporate our above comments about any potential risk to the appellant with regard to the fact that he was on the hijacked plane. We reiterate our view that he would not face any real risk either on the basis that no one would become aware of the fact that he was on the plane, or if they did so, they would not be a real risk that they would take an adverse view of him as having abandoned Islam by remaining in the United Kingdom for a period.

51. In this regard an issue that must be considered first of all is any potential risk from Commander Amanullah which the appellant claims would exist bearing in mind the claim that his brother was kidnapped and held in exchange for him on \$20,000. The evidence in this regard consists of a newspaper cutting from a Peshawar newspaper concerning a report given to that newspaper by the appellant's brother Karim and also what the appellant says in his statement and said in his evidence before us. As was pointed out at the hearing before us, there is no reference in the newspaper cutting to the appellant's brother Qayum having been kidnapped. His brother is quoted as saying to the newspaper that Commander Amanullah has threatened us several times and he demands \$20,000 or our brother from us. We find it inconceivable that if the brother Qayum had been kidnapped as is claimed by the appellant in his statement that this would not have been mentioned by his brother Karim when interviewed by the newspaper. We also note the fact that in that interview Karim referred to his father in the past 15 days having been arrested several times by the new government, whereas at paragraph 3 of his statement the appellant said that Commander Amanullah had threatened his father who had left Kabul and travelled to Pakistan. Again we find a significant discrepancy between the two pieces of evidence. We do not consider that there is particular significance to be attached to the absence of any corroboration of this story from any other documentary source. There is force in Mr Revindran's argument there has been so much happening in that part of the world that a story of this kind even bearing in mind that it is said to have happened to a relative of one of the people on the hijacked plane, might not be regarded as of particular significance and indeed might not have been reported to the press. However we do consider there is significance in the absence of any reference to Commander Amanullah in any of the evidence. He is said by the appellant in evidence before us to be a member of the government and to be a Commander of the Defence Ministry. As such one would expect that it would have been possible to find some reference to him somewhere if he does in fact exist. Taken as a whole these matters are such as to lead us to the view that we do not accept the evidence on this point and do not accept that the appellant's brother has been kidnapped by a Tajik warlord called Commander Amanullah or indeed by anyone else, nor that a demand of \$20,000 or handing over of nor the appellant has been made. We therefore do not accept that there is any risk in Kabul to the appellant by or on account of Commander Amanullah or anybody associated with him. There is no credible evidence that he exists.
52. Otherwise the evidence with regard to Kabul concerns the general security situation and how life can be lived there with regard to the question of whether or not it would be unduly harsh for the appellant to relocate there. We have already referred to the incident of Achtar Mohammed which was set out in the Human Rights Watch

Report of March 2002. One issue of some relevance here is the question of the nature of the police force in Kabul. Mr Marsden was insistent that what is referred to as a police force is no more than Tajik militia. There is reference at paragraph 14 of the CIPU Report to the Afghan police in Kabul. It said that ISAF are not responsible for the protection of individuals or minority groups and have no official authority to investigate complaints or take action. It is said that complaints could be taken to the police but they have a limited capacity to react in the face of a high level of crime and the domination of warlords. There is reference to the Deputy Chief of police in Kabul who said that there were no security problems there and he attributed the limited crime rate to economic problems. We also note the Institute for War and Peace Reporting document in the appellant's bundle at page C23. It is said by the Deputy Defence Minister that like the army the police force was destroyed when the Mujahedin took control of Kabul in 1992 and so until a new police force was formed they must rely on what he referred to as "these men" for security. There is reference also to the authorities succeeding in forcing hundreds of armed men to withdraw beyond the city limits that the few who remain are being drafted in the local police force. It is said that the police do not have enough armed resources to mount operations against robbers who target the city and then retreat to hiding places, and some police officers are quoted as saying that the reason for lack of pursuit is that certain members of the Interior Ministry are themselves involved in criminal networks. It is said that many policemen have not received their salaries for months. The local police officers acknowledge that the ISAF with whom they conduct joint patrols have helped them to restore some degree of law and order to the city. The Ministry of Interior has promised an extra 29,000 officers for this and other tasks such as patrolling badly damaged parts of the capital to which people will not return because they feel unsafe.

53. We take from this that there is some entity representing a police force which is carrying out some policing functions in Kabul. There is no suggestion in the evidence which we have set out above that they are politically or ethnically motivated in their actions. We note also the comment of the Director of the Danish Committee for Aid to Refugees that he did not consider that there was any ethnically motivated violence in Kabul. It was also said by the Danish Fact Finding Mission to Kabul in May 2002 that the security situation there is generally good although in certain areas civilian safety is poor and crime in those areas is mainly directed against the wealthy. Such politically motivated crime as had been reported was thought to be in connection with the selection process for the Loya Jurga which was still under way at that time. We attach significant weight to the Danish Reports. We bear in mind that these reports were made by people on the ground and as a consequence of their direct observation of what was actually happening. We note Mr Marsden's comment that it would be a problem for any international

organisation to carry out any investigation since it could not go around Kabul freely. It is true that we do not have any indication of the sources of information relied on by the Fact Finding Mission and by the Danish Committee for Aid to Refugees, but just as Mr Marsden has his sources, we can see no reason to suppose that they do not have theirs also, and we consider that as we have noted above there is extra weight to be attached to their reports by dint of the fact that they have actually been in Kabul recently and have made their reports from there.

54. That is but one aspect of the situation in Kabul however, although clearly the issue of security is an important one. As regards the humanitarian situation, the CIPU Report indicates a significant improvement in the situation in Kabul and there is reconstruction under way in many districts and new businesses opening and journalists report on the general return to normal life within the city. There are however problems with water since many wells are running dry and the water table is still low after 4 years of drought and there is no urban sanitation system, no sewage treatment and pit latrines are the norm. It is said that work is being undertaken to improve water and sanitation in Kabul and work is being done to improve the situation including restoration of family wells, the construction and cleaning of drainage piping and the installation of latrines and waste tanks. Some work has been carried out by the Red Cross on work on water supply systems and sewage systems. In Kabul they also maintain over 300 hand pumps for water. Accommodation is available in Kabul although housing is increasingly limited as more families arrive, Mr Marsden tells us that rents are significantly high. It is said that reconstruction is under way in Kabul and over 38 agencies in Afghanistan are working on shelter and housing projects. Skilled labour is currently in demand in Kabul and the Recovery and Employment Afghanistan Programme working on projects in the employment, infrastructure and environment sectors has employed 12,000 people in Kabul since February of this year. On 7 June 2002 UNHCR reported that the numbers returning had exceeded expectations straining aid agency resources and the absorption capacity of the country.
55. It is unclear whether the appellant's house in Kabul still remains. If it does then clearly he can be accommodated, and alternatively if he were able to he would have to rent or alternatively face greater difficulties of accommodation in a shelter. Mr Marsden claimed that the appellant would experience difficulties as being a single person on his own in a situation where people are expected to live with their immediate or extended families and he would stand out in that regard. Although we bear in mind the fact that there was less movement than previously during the period 1997 to 2001, we cannot ignore the 23 years of turmoil that have existed in Afghanistan. We do not consider it to be a matter of more minor significance the appellant would be returning on his own. We hear

what Mr Marsden says about the rumour mill that is Afghanistan, and also we bear in mind that fact there will be likely to be other returnees who have been refused asylum in the west as well as the many people returning having sought refuge in Pakistan or Iran. As we have noted above, we do not consider that there is a real risk that the fact that the appellant was on the hijacked plane would come to anybody's attention, but even if we are wrong in that, we do not consider there is a real risk that he would experience any hardship on that account as being regarded as having expressed an anti-Islamist view by remaining outside Afghanistan. That must be seen in the context of the fear of the Taliban and the opposition to the Taliban which would be likely to be found in the people with whom he came into contact. No doubt the situation on return to Kabul would have its difficulties. The appellant is however a young man who claims that he had a home and a shop in Kabul previously. It may well be that the people who were neighbours of his father's house previously would still be there and clearly they would recognise him and remember him and it is not unreasonable to expect that he might find some support from them if they are there. Even if they are not, we consider that he would be but one of a very large number of other people returning to Kabul who would take their part in the redevelopment and re-growth of that city, and we do not consider the objective evidence shows that there would be problems for him such as to make it unduly harsh for him to return to Kabul.

56. In the alternative we consider the situation in the south. We note from the CIPU Report at paragraph 38, that it was reported in May 2002 by the Danish Fact Finding Mission that there is free movement both in and out of Kabul. In the remainder of the country there are no official restrictions on movement although there may be some local road blocks due to local acts of war. Banditry persists. The Director of the Danish Committee for Aid to Refugees stated that people now travel freely including on country roads and that there are fewer road blocks than previously and the main road running through Kabul, Mazar-i-Sharif, Herat, Kandahar, Jalalabad and back to Kabul is fully open. Clearly in terms of how he would be regarded ethnically, we would not expect the appellant to experience problems in the south given that it is predominantly if not almost entirely Pashtun. Clearly he might experience some minor difficulties from the fact that as far as we know his family does not originate from that area, and therefore he would be returning to a part of the country where he was not known. We can see no reason why that fact should cause him particular difficulties. In any event the alternative exists of living in a UNHCR camp, and as was cogently pointed out by Mr Buckley, it would be difficult to regard being under UNHCR protection in a UNHCR camp as being unduly harsh. It is difficult to believe that people would be invited to make use of those camps if they were not basically humanitarian. That exists as a further alternative for the appellant.

57. In conclusion therefore we do not consider the appellant is at real risk of persecution in Mazar which we consider to be his home area. If we are wrong in that regard, we do not consider that it would be unduly harsh for him to relocate in Kabul. If we are wrong as regards Kabul, we consider that he could relocate in the south bearing in mind the situation as set out in particular in the DACAAR Director's view concerning freedom of travel, either living in a village in the south or if he thought that was likely to pose difficulties, than living in a UNHCR camp.
58. Accordingly this appeal is dismissed.

**D K Allen
Chairman**