

The Committee,
Parliament House,
Canberra

To the Committee members,

Laurie Ferguson's second reading speech was a masterpiece of utter nonsense and I condemn him for daring to make it. When the innocent young Bakhtiyari children were deported Laurie wrote "they were not genuine, who cares if they die in the snow" which made former Senator Kirk so enraged at his callous disregard for human life that she started the full scale investigation into their case with my help, my questions and Paul McGeough's excellent journalistic skills.

We have also seen in recent times reports of the horrors we are inflicting on innocent people in other countries. It is time the government told the public who said we had any right to work in other countries to arrest other people and have them locked up in these sorts of conditions. I suggest the committee comb the human rights reports we have ratified and inform the public which of them we uphold at any level at all.

This story was in the AGE and SMH last week and was written by Julian Burnside.

<http://www.watoday.com.au/opinion/politics/australias-ugly-secret-we-still-warehouse-asylum-seekers-20090916-fqqe.html>

“The past week has seen a significant change in the treatment of asylum seekers in Australia. The grotesque practice of charging refugees for the daily cost of their imprisonment in our detention centres has now ended (despite the resistance of the Opposition). The degrading indignity of a visa which denies refugees the right to work or to receive Medicare or Centrelink benefits has ended. For these reforms the Government must be warmly congratulated.

But despite these welcome developments, the Government has an ugly secret: it is involved in warehousing asylum seekers in Indonesia in order to prevent them from seeking protection here. This is well documented, but not widely known.

Warehousing is not a new feature of Australia's refugee policy. The Pacific Solution pioneered the idea. Nauru was a textbook example: an offshore place where asylum seekers could be kept at a distance, outside Australia so as not to trigger any legal rights, at a price that far outweighs the normal cost of **processing and resettling refugees onshore.**

Jessie Taylor is a lawyer and refugee activist who recently travelled to Indonesia. She met more than 250 people, in 11 places of detention across the country. There were infants and young children in maximum security

jails, with faeces and fungus in their drinking water. There were rodents, spiders and cockroaches in their living areas. Skin diseases, vomiting, diarrhoea, dramatic weight loss and unidentified tumour-like growths are fairly common. Despair is universal.

While in Indonesia, Jessie Taylor met a flustered, overworked UN Refugee Agency representative in a Jakarta prison. The UNHCR representative informed her that she had conducted 20 interviews the previous day. Based on an eight-hour day, this allows 24 minutes per interview. The interview is the only opportunity asylum seekers have to present their full claims to the UNHCR. Twenty-four minutes is a hopelessly short time for such an interview, but half of that time is taken up by the process of interpreting, and half of the remaining time is taken up by the UNHCR representative explaining the process and asking questions. That leaves the applicant just six minutes to explain the circumstances which forced them to flee. Any qualified migration agent or solicitor will attest to the fact that this process, done properly, normally takes many hours, over a number of interviews, allowing the applicant to go slowly and carefully when describing the trauma that has caused them to leave their homelands in search of safety.

That Australia is responsible for these conditions is a fact that should keep the Immigration Minister awake at night.

Most of the asylum seekers are Iraqis, and Afghan Hazaras. Hazaras are the ethnic group considered by the Taliban to be overdue for genocide. A modest number of Hazaras have managed to get to Australia already: more than 95% of them have been found to be genuine refugees. They have been quickly resettled in Australia and are already contributing to Australian society. So here we are, paying the IOM about \$8 million dollars of Australian taxpayers' money to hold people in shocking conditions, potentially for many years.

For more than a decade, the Taliban has terrorised the Afghan people. Many Australians have fought and died in battle against the Taliban. Australia recognises the terrible deeds this group has committed against their countrymen. Why is it that so many Australians can readily recognise the evils of the Taliban or other oppressive forces, but they cannot extend that understanding to the victims of those groups? Most Australians denounce the Taliban's shocking human rights abuses, but few are willing to welcome the victims of those abuses, and provide them with safety and protection.

It is to our eternal shame that the best bet for the men, women and children held at our expense in Indonesia is to get on a leaky boat and make for Christmas Island. Instead we should be contributing to swift and safe processing and resettlement directly from Indonesia; not a game of maritime Russian roulette.

Many of the people held at our expense in Indonesia have plausible ties to Australia: some were caught up in the Pacific Solution but were forced back to Afghanistan or Iraq; some have family here. Australia should assess their claims for protection and resettle them here without delay: not only is it the decent thing to do, it will be cheaper. And it will go some way to restoring our tarnished reputation.”

And then this horror story in the AGE and Sydney Morning Herald which shows that the ERC reports of Deporting to Danger have not been read or digested by anyone in either political party and if they have been read the parties simply don't care.

Afghans sent back to war zone

Tom Allard, Jakarta
September 12, 2009 - 12:00AM

HUNDREDS of Afghan asylum seekers caught in Indonesia as they sought to reach Australia have been sent back to their war-ravaged homeland in the past few months after being offered a financial inducement and allegedly told they have next to no chance of being resettled in another country.

Indonesia's director for immigration law enforcement, Muchdor, said 376 asylum seekers - almost all of them Afghans - had been repatriated recently, flown to Dubai and then Kabul under a program managed by the Jakarta office of the International Organisation for Migration (IOM).

The surge in repatriations has prompted criticism from refugee advocates that the policy is endangering lives, and represents a recasting of the Howard government's abandoned Pacific Solution with a similarly inhumane "South-East Asian solution".

It comes as Indonesian authorities yesterday said they had detained 56 Afghans off the eastern island of Lombok who were attempting to travel by wooden boat to Australia. Three Indonesian boat crew were also arrested.

Australia provides funding for the IOM in Indonesia, including its repatriation programs. It also funds the detention centres that hold asylum seekers in Indonesia.

Muchdor, who like many Indonesians uses only one name, said all of the asylum seekers had volunteered to go home. But while many are interviewed by the United Nations High Commissioner for Refugees to ensure they are genuinely willing to return, *The Age* has learned that as many as half of them do not go through these checks.

A huge influx of asylum seekers this year has overwhelmed the UNHCR in Jakarta. Many have to wait more than six months before they register with the UNHCR. It can then take years for a claim for protection under the Refugee Convention to be ruled on.

Asylum seekers say they are placed under extreme pressure and feel they have no choice but to take up the offer to go back to Afghanistan, currently in the grip of its worst violence since the fall of the Taliban in 2001.

"The IOM officials come around and they tell us 'don't bother, nothing is going to happen for you'," said one asylum seeker, who asked not to be named.

He said that individuals were being offered "about \$2000" in cash payments by the IOM to return. It is understood that families get more.

Australia allocated \$8 million for the IOM in this year's budget. A spokesman for Immigration Minister Chris Evans rejected the notion that the sharp increase in repatriations had been driven from Canberra.

The IOM was an "independent organisation" that "counsels people about their options and assists them to return to their homes with dignity", he said.

Australia has also funded the refurbishment of Indonesian detention centres, including one in west Jakarta where conditions were harsh - another factor in encouraging Afghans to return home, according to one asylum seeker.

"It's very tough here," said Hamid Amiri. "We are locked in a cell all day. I have requested many times to go outside, to walk around the grounds but we are not allowed to do that."

David Manne, co-ordinator of the Refugee and Immigration Legal Centre, said all the Afghans who had made it to Australian shores in the past year had been found to be genuine refugees.

"When someone flees Afghanistan, they have done so to avoid systematic brutality. It's an extremely dangerous place, and that's one of the reasons why we have our troops there," he said. "What is going on here is an extremely dangerous game of human ping-pong."

He said Australia had to bear responsibility for what was going on in Indonesia because "Australia bankrolls the system and the refugee camps".

"We are subcontracting border protection to countries like Indonesia. The Pacific Solution has been replaced by the South-East Asia solution."

Despite repeated requests for an interview, and emailed questions, the IOM declined to comment on the surge in repatriations, and its practice of paying people.

However, one immigration official in Indonesia noted that it was not inaccurate to tell asylum seekers they had a slim chance of being resettled.

"In the end, the problem lies in the fact that rich countries don't take that many refugees." There are currently 16 million registered asylum seekers. Last year only 67,000 were resettled.

An Indonesian navy official said last night that some of the men who were detained near Lombok had been carrying identity cards issued by the Jakarta office of the UNHCR.

With AFP

This story was found at: <http://www.theage.com.au/national/afghans-sent-back-to-war-zone-20090911-fku8.html>

Latest saga in life on the run ends in another detention centre

Tom Allard, Jakarta

September 12, 2009 - 12:00AM

HAMID Amiri cries frequently. The shoemaker from Qarabagh in Afghanistan, one of the war-torn country's most violent provinces, has spent almost his entire adult life on the run and it has taken its toll.

From Pakistan, to Indonesia, to Christmas Island and Nauru, back to Afghanistan, then to Iran and Pakistan again, over a decade Amiri, 29, has been imprisoned, consigned to refugee camps, deported and spent long stretches in immigration detention.

Now, the shoemaker from Afghanistan's long-persecuted Hazara minority is back in Indonesia after being caught in April aboard a vessel making its way from Jakarta to Australia.

It was his second attempt to reach a country he longingly calls a "very, very nice place".

The first, in 2001, ended with the vessel foundering on Ashmore Reef. As the boat sank, two women died. Amiri clambered aboard the reef but the promised land of Australia proved elusive.

After a stint on Christmas Island, he was packed off to the desolate and remote Pacific island of Nauru, caught up in the Howard government's Pacific Solution.

"I was there for two years. The situation was very, very desperate," he recalls. "They said you can't stay in Australia and no other country will take you. They were always saying, 'What are you doing here?'"

With no way out, Amiri agreed to go back to Afghanistan. He lasted barely a month.

"I managed to escape the Taliban, [but] when I arrived in Kabul I ran into problems with the Tajiks," he said. "They locked me up. They were always hitting us with sticks. I saw people killed with my own eyes. Shot dead."

He says he escaped while the guards were sleeping, fleeing to Pakistan and then Iran. He plied his trade as a shoemaker in Tehran but after a year he was caught by immigration authorities and deported to Afghanistan. His brother Wahid, he soon discovered, had been captured and would later be killed.

He fell in love, and had two children with a local girl but later found she had been promised to another man.

"He is a powerful man, his family is very important and he said he would kill me," said Amiri.

The family fled to Pakistan. Their life savings were pulled together and, for \$US5000, a smuggler named Irfan promised him passage to Australia.

He got as far as the waters off Jakarta, and the intensely depressing frustrations of Nauru have returned.

"I haven't even had an interview [to begin the assessment for his refugee claims] and I have been here five months."

While other Afghans are giving up and going back to Kabul, Amiri says he is determined to stay, even as he often spends 24 hours a day locked in a cell.

"Afghanistan is too dangerous for me. I know I will die there," he said.

This story was found at: <http://www.theage.com.au/national/latest-saga-in-life-on-the-run-ends-in-another-detention-centre-20090911-fkuq.html>

Add to these horror stories the long essay in the Monthly magazine written by David Marr and what we see is a new government that is just a shammed up version of the old government, breaching every human rights standard that we agreed not to breach and then piously proclaiming that it is about stopping people smuggling, smuggling that Sharman Stone finally revealed by chance does not exist

The federal opposition has stepped up its attack on the government's border protection policies as another boat suspected of carrying asylum seekers was intercepted near Darwin.

A vessel carrying about 50 people was stopped by a navy patrol boat late on Wednesday, making it the fifth arrival since September 7.

Opposition immigration spokeswoman Sharman Stone says there has been a complete breakdown of immigration policy and border protection.

It's an example of this government completely out of control, she told reporters in Canberra on Thursday.

The government was trumpeting its interception of these vessels, but doing nothing to stem the flow of asylum seekers reaching Australia.

For (Home Affairs Minister) Brendan O'Connor to say, 'Look how clever we've been, we've found another boat,' that's nonsense.

Dr Stone said people smugglers wanted to be found by Australian authorities.

The latest arrival takes to 263 the number of suspected asylum seekers arriving in Australian territory during the past 10 days.

It is the 32nd boat to have arrived in Australia since the Rudd government took office in 2007.

Except Stone is not talking about people smugglers because no-one is being smuggled.

Thursday, 10 February 2000 SENATE—*Legislation L&C 205*
LEGAL AND CONSTITUTIONAL

Senator McKIERNAN—I am talking particularly about the boat people. They are the people who arrive on our shores – mainly on Ashmore Islands – and who put their hands up and say, ‘Find me, find

me! Take me in.’ They do not use these exact words, but they want to be found. These are not people who are escaping the scrutiny of our Coast Watch people.

Senator Vanstone—Senator, I cannot resist! Perhaps you could tell Mr Beazley that so he does not keep raving on about this silly idea that we need a Coast Guard to locate the people. You at least realise that they want to be found; it would be helpful if your party realised that as well.

Considering that the committee completely ignored the People smuggling protocol which forbids punishing those who arrive after being “smuggled” and anyone who helps them perhaps they need to ponder the stories now coming out of Indonesia and re-consider their language. And consider that Senators McTiernan and Vanstone recognised there is no smuggling way back in 2000 and now Sharman Stone accidentally tells the truth.

We seem to give Afghans in particularly the most appalling choices.

1. Stay and be bombed, tortured, persecuted, killed by the Taliban, imprisoned or pay to leave and if you pay to leave,
2. Arrest by the Indonesian and Australian police in what is laughingly called a “regional agreement” which costs millions to the Australian taxpayers and leaves the Afghans in the hideous conditions described or sent back
3. Escape the rat infested shitholes Australia pays for and get a boat to Australia where they are locked up on Christmas Island at huge expense in the guise of health and security, never mind that not one person has been found to be ill and if they are they are becoming ill in our pre-paid rat infested shitholes.

What sort of complementary protection will the people trapped in Indonesia at our expense be granted? Anything? A decade in the rat infested shithole?

Or do they get a shithole on Christmas Island for some weeks before reluctant acceptance that Hazaras are the most persecuted people on earth and need protection.

<http://www.themonthly.com.au/monthly-essays-david-marr-indian-ocean-solution-christmas-island-preview-1951>

In a tin shed on Phosphate Hill, a brisk woman from the Department of Immigration and Citizenship sits facing a slight kid of 17. Though Ali Jaffari knows something of what is coming, he is battling nerves. His face is grey. One leg is trembling. His father, Sharif, sits quietly beside him, his head bowed. An air-conditioner thunders in the background. Both men keep an eye on the envelopes the DIAC officer has on the table: brown envelopes that hold the answer to the rest of their lives.

The Jaffaris are Hazaras from Afghanistan, a people long persecuted as Shia Muslims in a country overwhelmingly Sunni. Sharif was still a boy when he fled the country to grow up in the large Hazara community in Iran. At some point, he moved to Pakistan and raised a

family in Quetta. But as inter-faith violence intensified in Pakistan over the last year, the city became dangerous. Sharif talks of more than 60 Hazaras murdered in the city. The Jaffaris narrowly escaped death. "Two persons came by motorcycle. They stopped. They fired on us and they escaped." It was time to leave. "There were rumours Australia accepted refugees and it's a safe and secure country. So therefore we decided to come to Australia. That was our plan."

Their arrival on Christmas Island in early May, along with another 185 refugees collected by HMAS *Tobruk*, provoked fresh denunciations by the Opposition of Labor's 'soft' response to boat people. "There cannot be any serious argument about it now," said Malcolm Turnbull. "It has failed to stop the dreadful business of people smuggling." Hate was back in the air. The press noted the biggest spike in "unauthorised boat arrivals" since the heyday of the Pacific Solution in 2001. The island was said to be reaching bursting point. As always, Christmas Islanders gathered to watch the refugees brought ashore. It's a spectacle that predates the *Tampa* affair by a decade. But things have changed: the islanders were no longer held back by police barricades, and there were no guards in riot gear on the barges.

Flying Fish Cove lies under cliffs covered by dark forests. Jurassic birds wheel overhead. The dusty hulk of the phosphate loader waits for ships. Along the shore are barracks, warehouses and a little mosque. This was not where the Jaffaris expected to find themselves. That all boat people heading for Australia are now held on Christmas Island came as a complete surprise. "No one told us." They hadn't heard of attempts by Labor and Coalition governments over nearly two decades to deter people like them from coming here by boat. The messages had fallen on deaf ears. The Jaffaris paid a smuggler to bring them to this country because, where they come from, Australia has a vague reputation for decency.

As Ali was only 17, father and son were not taken to the high-security immigration detention centre at North West Point but to the old Construction Camp on Phosphate Hill above the town. The immigration minister, Chris Evans, says Labor converted the facilities here to give children and families a "community environment". It's a grim fib. A high fence was torn down, but what's left is a cluster of tin boxes and concrete walkways surrounded by gravel. Workers building roads in the bush sleep in dongas like these and are well paid for their discomfort. But on Phosphate Hill families sit behind closed doors day after day with air-conditioners working away. There is little privacy. Heavy rain turns the camp into a mosquito-ridden swamp. Although the guards have gone from the gates, no one is free to leave without an escort. "It's not a community," said an islander who knows the place intimately. "It's a shithole."

Under John Howard, boat people were held in detention for years as a harsh warning to those who might follow in their wake. Labor has dramatically sped things up. The Jaffaris have waited only two months and twelve days for this encounter in the rec room with the woman from DIAC.

Her news is all good and delivered swiftly: “The paperwork has gone very quickly and I’m pleased to let you know that the minister has granted you a protection visa.” Ali sags a little and thanks her quietly. The father nods. In real life, victories aren’t marked by shouts and high fives, but relief that mimics exhaustion. She slips documents from the envelopes for them to sign. Ali asks that word be sent to a friend he made on the boat who is being held at North West Point. Ali wants to say goodbye. “I only know his name as Said.” Promises are made. (And kept.) There follows a last, bizarre interrogation. It’s so pointless it’s almost insulting, yet it’s proof the Jaffaris have now achieved the privileged status of ordinary travellers.

“Are you,” asks the woman from DIAC, “carrying goods that may be prohibited or subject to restriction such as medicines, steroids, firearms, weapons of any kind?” Ali and his father confer. “No, we don’t have any.” Nor do they have \$10,000 or its equivalent in foreign currency. Nor any dried, fresh, preserved, cooked or uncooked food. The translator labours away and the woman from DIAC crosses each box in their entry cards. Tomorrow they will be driven to one of the most fickle airports in the world, where a plane will be waiting to take them 2600 kilometres to Perth. The scene is not quite finished. The air-conditioner is turned off and in the silence that fills the shed, Ali thanks those who have looked after them on the island. “We can’t consider them as human beings,” he says, “but better than human beings, like angels. We are very pleased being treated well and feeling safe and secure here. It can’t be described by words.”

For all the ALP’s fine words about better treatment there is little to be seen in reality as the ALP still has not read the Refugee convention or Australian law that has enshrined that convention in the Migration Act at Article 36.

Instead we continue the Orwellian nonsense of “unauthorised”, “unlawful”, “people smuggling” and other rubbish while we treat people as 10th rate citizens of the world because we know not too many people will complain.

The ALP still has not read the Universal Declaration of Human Rights which states that no person shall be arbitrarily detained, that every person must have legal advice and assistance and the right to challenge detention.

Complementary protection is much needed and long over due in light of cases where women and girls might be mutilated but we already have rights for victims of domestic violence under the high court case of Khawar.

I have sat in court cases where young girls have been told they are lying because the Iranian government would not allow acid attacks on them or young men who have had their faces slashed open in Iran and they spent 4 years in detention and denied protection for all those years.

I have had 6 year old Amina Bakhtiyari beg me to shoot her after 32 months in detention and the cruel and unusual treatment that entire family received.

I believe that any family with children be granted refugee status because children have no choice, they are legally not allowed to make claims and we have sent Afghan children home only to have them killed or forced to flee again. And let's look at what we call our generous grants to other countries which we claim means we don't have to accept refugees here, it is another grand regional plan.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 MAY 2009

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(24) Program 2.1 Refugee and Humanitarian Assistance

Senator Hanson-Young (L&CA 110) asked:

How much money is being directed towards those other locations outside Indonesia to settle displaced populations?

Answer:

In 2008-09 the Department of Immigration and Citizenship has committed \$16.5 million under the Displaced Persons Program to maintain protection space, identify and implement durable solutions and reduce the vulnerability of displaced persons and refugees to irregular movement. In 2008-09 funding has been committed as follows¹:

- \$2.6 million to Jordan (Austcare, CARE Australia and IOM) – 501,000 or \$5 per person per annum
- \$1.7 million to Syria (UNHCR) – 1.47 million refugees or \$1 per year per person
- \$1.3 million to Egypt, Lebanon and Turkey (IOM and UNHCR) Egypt -112,605, Lebanon – 50,000, Turkey – 21,000 = 183,000 or \$7 per person per annum
- \$1.5 million to Afghanistan (CARE Australia and IOM) – 3.73 million or 40 cents per person per annum
- \$1 million to Pakistan (UNHCR) – 1.93 million or 51 cents per person per annum
- \$1.9 million to Malaysia (UNHCR) – 147,000 or \$12 per annum per person
- \$500 000 to Thailand (UNHCR) – 3.65 million or 13 cents per person per annum
- \$1.1 million to Bangladesh (IOM and UNHCR) – 28,000 or \$39 per person per annum
- \$1.4 million to Sri Lanka (IOM and UNHCR) – 528,000 or \$3 per person per annum
- \$800 000 to Iran (UNHCR and UNICEF) – 981,911 or about 90 cents per person per annum
- \$2.8 million to Indonesia (IOM and UNHCR – 21,000 or \$133 per person per annum

Perhaps the minister or someone could tell us why the amazing discrepancy and why they think such miserly sums will ever convince anyone to stay and starve to death under the eye of our amazing generosity.

Meanwhile we squander \$1700 per day per person on Christmas Island, \$218 million per annum to keep out the few people who get to Indonesia, \$74 million per annum to lock up the few that do and pretend we are good global citizens.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 27 MAY 2009

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(12) Program 3.1: Border Management

Senator Fierravanti-Wells (L&CA 84) asked:

How many of the 25,700,000 crossing the border are non-Australian?

Answer:

In 2007-08, there were 15 million movements across the border by non-Australians made up of

14.2 million movements at Australian airports – 38,900 per day and

0.8 million movements at Australian seaports. – 2191 per day.

How many asylum seekers all up?

Lets see now – 4750 or 13 per day.

By boat? - 900 or 2.4 per day

And we need to examine who is accepted judging by our own departmental figures from the last year to see and understand the cruelty of the system we operate. Only 14.6% of the Chinese who fly here are granted refugee status yet they have a 100% entitlement to appeal all the way to the high court for years and are not locked up in the process. Indians are worse yet with a 98% approval rate for Afghans they are automatically locked up and denied all legal rights and challenges.

Granting asylum: winners and losers

08:00 AEST Tue Jun 9 2009

73 days 11 hours 29 minutes ago

By Erin Tennant, ninemsn

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Aug 21, 2009

Australian immigration officials settled 2887 applications for onshore protection visas over the past year, hearing claims of persecution from all over the world.

However, just 1750 applicants were able to convince the Department of Immigration to grant them asylum.

Below is a table of the top 15 countries of origin for asylum seekers whose applications were settled between 1 May 2008 and 30 April 2009.

The figures do not include the outcome of Refugee Review Tribunal hearings.

Country of citizenship	Protection visa applications	Protection visas approved	Success rate (%)
China	1270	186	14.6
Sri Lanka	442	354	80.1
India	364	6	1.6
Pakistan	230	161	70
Malaysia	226	5 or less	*
Zimbabwe	210	164	6.7
Indonesia	187	10	5.3
Iraq	178	161	90.4
Iran	168	141	83.9
Afghanistan	159	155	97.5
Bangladesh	123	41	33.3
South Korea	118	5 or less	*
Lebanon	103	20	19.4
Fiji	86	8	9.3
Burma	84	68	81

*The Department of Immigration withheld the precise figure for countries with five or fewer citizens granted protection visas in Australia during this 12-month period, citing concerns for their personal privacy.

For information on individual home countries, visit the [UN Refugee Agency website here](#).

It is Afghans and Sri Lankans on Christmas Island that Sharman Stone thinks we should send home.

And as reading recent RRT decisions show that nothing much has changed since this decision was handed down it is time the tribunal actually became a tribunal of three instead of one person making such disparaging and ignorant remarks about an innocent woman. Senator Crossin in particular will remember that Paul McGeough discovered that the department had lied all along about this poor mother.

ROQIA'S REASONS FOR DENIAL

RRT number V01/12921 Date 26 July 2001.

Member - Genevieve Hamilton.

BACKGROUND

The applicants are a mother and her five children. They claim to be citizens of Afghanistan. They arrived in Australia on 1 January 2001. On 21 February 2001 they lodged an application for protection. On May 22 2001 a delegate of the minister refused to grant protection visas and on 23 May 2001 the applicants applied for a review of that decision.

CLAIMS AND EVIDENCE

The applicant mother has made specific claims under the Refugees convention, and given evidence in relation to those claims. For convenience, therefore, I will refer to her as the applicant. (The applicant also alluded to claims relating specifically to her children, and her oldest son gave evidence. To the extent the children's claims are specific to them, they are dealt with in the "finding's and reasons" below, concerning their nationality.)

The tribunal has before it the departments file, which includes a record of interview with an immigration inspector on the applicant's arrival in Australia, the protection visa application, written statements in support of the application, and a record of interview with an officer of the department.

The tribunal also has before it written submissions in support of the application for review. The applicant gave oral evidence to the tribunal on Friday 13 July 2001.

Applicants arrival interview was conducted with an interpreter in the Dari language. The applicant said she was born in a village in Shahrestan, Oruzgan province Afghanistan, that this was her most recent address and that she was an Afghan citizen. She was 31 years old. She had not lived at any other address (at least in the last 20 years).

She had no identity documents. She had not been to school - she was illiterate. She had never been employed. She belonged to the Hazara ethnic group. She has been married for 14 years. Her husband disappeared two years ago. He would have been 40 years old. He was an Afghan farmer.

Her parents lived in Afghanistan, her father is a salesman. She has a brother (10 years old) and a sister (16 years old) also living in Afghanistan. She had a brother on the boat. She left Afghanistan one and a half months before her arrival interview. She could not identify the countries she passed through on her way to Australia as she was illiterate. She used a blue passport coming to Australia, it was returned by or to the person who organised her travel. In answer to the question whether it was genuine, the applicant said it was all provided by her

father who provided the money. She had no contact with the UN or the UNHCR en route, in fact she did not know of the UN or the UNHCR.

The applicant said she had left Afghanistan because of the Taliban. Asked what contact she had with the Taliban the applicant said they came to her house. They took young people and no one would know where they were. They took her husband. He was in prison for three months. During this time they tortured her father in law. They took things from the applicant's house and land. The father in law became ill as a result, with high blood pressure, and died. The applicant said the Taliban took her husband two years ago.

In her personal particulars submitted with her protection visa application the applicant said her passport was false.

In her protection visa application the applicant gave a different birth date for her husband (it appears as 1950 instead of 1960 or thereabouts). His birth place was the same as hers. She confirmed that her natural mother was deceased and she now has a step-mother, as well as two step-siblings in Afghanistan.

She said she speaks Dari/Hazaragi and is a Shia muslim and an Afghan citizen. She did not have a travel document and did not use one to enter Australia. She did, at one stage, have a false Afghan passport which she never saw (therefore did not know the name in it). The smuggler still has it. She did not know what her port of departure from Afghanistan was - she was unwell and it was night time. She crossed over land. She had never applied for a passport.

In the statement accompanying her application the applicant said that about 2.5 years ago the Taliban came to her area for the first time and took away as many young men as they could capture. Most of the men never came back to their homes. The applicant's husband was among these men. But he escaped from prison after about three months and came home for one night. He told his wife what had happened to him and the next day left the country with the help of a smuggler.

Her father in law died from the harrassment and the applicant moved back to her father's house. The Taliban would come and ask for land and animals and hit the children. The Taliban took two women away from the village who never came back. The applicant's father arranged for her to leave the country with the same smuggler who helped her husband. The applicant said she would be killed if they went back to Afghanistan because they are Hazaras, and Shia and not regarded as true muslims. (Sunni Wahabi's, a fundamentalist sect) by the Taliban.

DIMA INTERVIEW

The delegate interviewed the applicant on 22 February 2001 with a Dari interpreter (**This was false, the interpreter was an agent of Gulbaddin Hekmatyr who has since been deregistered as an agent**). The applicant said her father told her she was 31 years old. She had never travelled outside Afghanistan before commencing her current journey to Australia. She had never been to other provinces in Afghanistan. She speaks Dari-Farsi and no other language. She said she could understand the interpreter.

The applicant said she was born in the village of Charkh, Oruzgan. She knows her village and its surroundings but does not know the names of the surrounding provinces because she has never been outside her village. She stayed in her own sub-village. She does not know the names of any provinces passed through on her way out of Afghanistan. They were travelling during the night, she left her village in the evening for safety, using torches.

Because she had not been out of her village she does not know any of the larger cities or towns in her area. Women are not allowed out of the house. There is a mountain, very high, with a shrine on it nearby. The applicant has been there. Her father in law is buried there. (There followed a discussion of burial practices). There are no rivers in her area, only springs, which form a creek running through their lands.

Asked about climatic conditions in the last few years, the applicant said there had been a drought.

The applicant did not know where her husband was: she said "they left Afghanistan". Asked who "they" referred to, the applicant said her husband left at night and she didn't know if someone was with him or not. The smuggler came back and said that he had taken her husband to a safe place. Then her father arranged for her and her children to leave, especially because her son was 13 years old and in danger himself.

Her father took her to his own sub-village which is 5 or 10 hours (later corrected to minutes) distant. She has not had money or any contact with her husband since he left. The smuggler said he would take her and her children to the same place he took her husband. She does not know if the smuggler told her father where her husband was. Asked whether she was curious to know where her husband went, the applicant said she did not know where he went. She now has no way of contacting the smuggler to find out.

Asked where she crossed the border into Pakistan, the applicant said only she was illiterate and only her brother knew these places. Asked if she had any contact with the Pakistani border police, she said she arrived there by car, the car stopped and they went to an area called "Sar-e ab". Asked if they crossed on foot or by car she said they went by another car

to a place where they were told to stay in the room and that their photo would be taken and the work done for them. Asked if she had any contact with the border guards she said she did not know, she had her children on her lap, the car was small, and her face was covered so she did not notice much.

She did not know whether passports were displayed, she did not know what the smuggler did at the border. A man came and took their picture, this was in "Sar-e ab" in Pakistan. Asked whether she had to present the resulting passport to any Pakistani authorities the applicant said that after 4 or 5 days the smuggler said he had made their ID and that they should now leave. They made a blue document and showed it to her but kept it with him.

They they took a train and travelled two days and nights. The stopped, she did not know where it was and therefore did not know if it was still in Pakistan.

Asked what the currency was, the applicant said ladies in Afghanistan do not ask their male relatives for money, and therefore she did not know the currency. She did not shop at the markets - her male relatives brought provisions home. She never handled money. She had not even seen it. Women were busy working in the house and did not leave without permission. There was then a discussion of Hazara food.

Asked to count to ten the applicant did so. She could not name all the months but could name the seasons, and the names of the lunar months in which Haj and Ramadan take place.

The adviser addressed the applicant's use of the word "farsi", acknowledging that this word is not used much in Afghanistan, and was contrived for the immigration authorities. The adviser also corrected the applicant's evidence saying her father's village was not 10 hours but 10 minutes away.

On 9 May the department wrote to the applicant enclosing a linguistic analysis of her taped interview. The analyst concluded that the applicant spoke the Hazaragi dialect. Her accent was that spoken in Quetta, Pakistan. She used Iranian words and used an Iranian pronunciation of some words that is also used in Pakistani Hazaragi and in the Afghan dialect, Herawi.

The pronounces some words with an Urdu accent. Urdu is not spoken in Afghanistan. In general the applicant's choice of words and pronunciations show Farsi and Urdu influences. The Pakistani Hazaragi dialect contains words borrowed from Farsi and Urdu as well as English. The applicant's language variant could be said with considerable certainty

to originate from Baluchistan, Pakistan. (Of course all the language tests were discredited by then)

On May 15 the applicant responded to the language analysis. On her use of Iranian words the applicant suggested that priests and learned persons in Afghanistan got their qualifications from Iran. Uneducated people learned the names of things from these people. Afghan traditions were influenced by neighbouring countries. Some words may have been misunderstood by the analyst. The applicant denied she could be speaking words with an Urdu accent as she did not know Urdu. Some words were imported from Pakistan. The applicant said the Hazaragi dialect was very diverse, and the analysts knowledge was insufficient. Non-Hazara translators and analysts were biased against the Hazaras.

On 18 June the adviser made a submission to the tribunal concerning the applicant's case. The advisor suggested the tribunal act in accordance with the best interest of the applicant's young children. The advisor queried the currency of the linguist's knowledge, and said that in the case of interpreters, there was evidence to suggest prejudice against applicants. The advisor said the delegate had focussed too much on credibility and had not given enough attention to the claims of persecution.

Inconsistencies between claimed citizenship and language/local knowledge should not, without further questioning be considered proof that the claims were false. The advisor argued that testing uneducated rural Afghans on geographical matters was very challenging. It warned of the considerable cross-pollination of Afghan languages due to travel by some Afghans. There was some word usage and accent common to provinces on either side of the Afghanistan/Pakistan border.

The advisor suggested the applicant might be one of those applicants who are afraid to speak freely and give a full and accurate account of their case due to the very persecution they fear. The submission goes on to provide country information about the persecution of women by the Taliban in Afghanistan. The submission criticises the delegates failure to refer to the considerable evidence of persecution of Hazaras in Afghanistan.

THE HEARING

The applicant said the Taliban came to her region about three years ago. She said "we are Shia and they bothered and persecuted us a lot". Younger people could not go out or go to school. They were taken to the war. The Taliban took her husband too. Asked where they took him, the applicant said they took him to battle. The tribunal reminded the applicant that she had said in her earlier claims that her husband was taken to prison. The applicant affirmed this.

Asked to explain the contradiction, the applicant said that they first took him to battle and when he would not fight they put him in gaol. They came to her father in law and punished him too. Two months after her husband was taken the father in law died. About 10 days later the applicant's husband came back for one night. Asked where he had been, the applicant said her husband did not know where he was taken to, it was a very bad place.

Asked for more information about life under the Taliban, the applicant said the Taliban displaced her, bothered her and punished her, persecuted her and did everything to her. Asked to elaborate on this the applicant said that ladies could not go out of the house, especially the young. Her son (13) could not go out of the house. The Taliban hated Shi'as. The applicant was afraid of the Taliban.

The tribunal observed that the Taliban had conquered southern Afghanistan about 5 or 6 years ago. The applicant said her region did not come under the Taliban until after the capture of Bamiyan. The Tribunal asked the applicant what was the district centre for Shahrestan. The applicant said her father told her it was Olqo. Her own village was several days walk away from this place - she did not know how long it would take in a car.

She married her cousin. He sold Kilims in the city, in different towns. He would be away for weeks on end. When he left with the smuggler he did not say anything about where he went..

The tribunal noted that the applicant had said in her

DIMA interview that she had never handled money. The applicant said she knew something about the money, it was Afghanis. Asked why she had not been able to give this information in the DIMA interview the applicant said she had not been feeling well at the time and had trouble following the discussion.

The tribunal asked the applicant why she used the expression "Farsi" annexed to "Dari" to describe her language - would not the word "Dari" be used by itself to describe her language in Afghanistan? The applicant said she used the same expression she used at home.

The tribunal asked the applicant what had happened to her husband. The applicant said she only knew that he had fled. She did not know what had happened to him. He left on foot in the middle of the night. He was on his own. The tribunal asked whether her husband had left the country and if so who helped him to leave. The applicant said that about 6 months later someone came and told her father he had taken her husband out of the country.

Her husband's relations were farmers. The farm belonged to them. It measured 40 sehr (a unit of measurement based on the amount of seed needed to plant the area). The produced wheat and animal feed for domestic use, and produced everything they needed at home. Her father used to sell oxen and sheep at the market where he would get about 2 lakh per oxen. She was not told this: her father would report it to her husband. She never went out to buy anything. Asked what her husband got for the kilims, she said it was about 18 or more lakh per kilim.

Asked how her husband escaped from prison the applicant said she did not know.

The applicant repeated that the Taliban came and took things and tortured and bothered them a lot. They came after her husband. Her father told her he was arranging a smuggler for her and she left Afghanistan in late autumn. At evening prayer time she left, travelling for 6 days and 6 nights. They travelled at night.

The went to Sang-e Masher and her father went out and

bought a vehicle. She went to Kandahar and then to Spin Boldak, and over to a place called "Sar-e ab". The smuggler told her the names of the places. The tribunal reminded the applicant that during her DIMA interview she had said she did not know where she crossed the border. The applicant said she had been suffering left, head and neck pains and nervous problems especially when speaking to people.

She then named a number of towns passed through in Oruzgan on her way out of Afghanistan and said she crossed the Hilmand River. She went through the districts of Malestan and Jaghourri. She was with her father and brother.

They met the smuggler is Sang-e-Masher. He was an Afghan but he spoke a different language. He could speak some Dari. The tribunal asked the applicant what language the smuggler spoke and she said she did not know. The tribunal asked the applicant if she could recognise the Pashto language if she heard it and the applicant said she could not. The tribunal asked how the applicant knew the smuggler was an Afghan and she said her father told her.

It took 12 hours to get to Kandahar; the road was rough and it was night time. It took 3 hours to get to Spin Boldak. Asked how she knew when she had crossed the border out of Afghanistan, the applicant said her brother told her. They were in a place called "Sar-e ab". She does not know the country she was in.

The tribunal then asked if the applicant then obtained a passport. She said she did not know. The tribunal reminded the applicant that she had previously claimed to have been given an Afghan passport. The applicant said the smuggler told her it was an Afghan passport. The tribunal put it to the applicant that she did not know the nationality of the document. The applicant said she was told they were making something like a Taskera (an Afghan identity document) for her.

The tribunal asked the applicant why she was now able to give such a detailed account of her departure from Afghanistan when she had been unable to do so before. The applicant said she did not understand what was being asked. She did not know what the interpreter

was saying, she did not know their language.

The tribunal asked the applicant what year each of her children was born in. The applicant could not say but they were born a year apart. She knew that a year was 12 months and was able to name the 3 months of each season.

The tribunal expressed surprise that the applicant had not asked the smuggler where her husband was. The applicant said she did not speak to the smuggler, only her father and brother did. Her brother spoke to the smuggler with the help of the driver who could interpret both languages.

The tribunal asked the applicant whether she now knew the names of the countries she had passed through on her way to Australia. The applicant said she had been in a place called Jakarta.

Asked for her views of the linguistic analysis, the applicant repeated the comments in her submission on that point. Finally the applicant emphasised that she did not want to be separated from her brother.

The applicant's older son addressed the tribunal. At the applicant's request he had been present throughout her evidence so the tribunal did not seek to question him in order to verify details of her evidence. (The tribunal had explained to the applicant that it would not be useful to do so if he stayed in the room.) The applicant son asked to be released from the detention centre. His father was not here and his sisters were crying to be let out of the detention centre.

The taliban used to beat him when he went out, to try to find out where his father was. Asked how the Taliban changed life for Afghan children the applicant son said they could not go out.

The adviser made oral submission criticising the conduct and brevity of the DIMA interview, saying his client had been distressed and concerned about her children at the time and may not have understood the purposes of some of the questions. The advisor argued that reliance on the language analysis could be challenged and should not be regarded as conclusive.

Then the advisor argued the tribunal would need evidence in order to find that the applicant had effective protection in Pakistan and referred to judicial authority on that point.

A psychologist (Dr O'Neill) was present in the hearing and the tribunal invited her to give evidence if she wished to do so. She said that the applicant was very distressed but responded well to emotional support. Her claims were consistent with what she had told the witness. She fears for her husband and the children are very upset at his loss. She was suffering from a post-traumatic stress reaction (not disorder).

COUNTRY INFORMATION

In his book on the Hazaras of Afghanistan, Sayed Akkar Mousavi discusses the following groups of Hazara existing outside Afghanistan: The Pakistani Hazaras, the Iranian Hazaras, (the Barbaris or Khawaris) the Central Asian Hazaras (Mousavi, S.A 1997, The Hazaras of Afghanistan.

A DIMA country information report, which is sourced to DFAT advice dated May 2000 comments on the estimated number and location of Hazaras in Pakistan.

According to an international organisation in Islamabad there are between 120,000 and 160,000 Hazaras currently in Pakistan. Of that number between 80,000 and 100,000 have Pakistani nationality - most if not all having been born in Pakistan, the remaining 40,000 to 60,000 are considered to be refugees.

80% of Hazaras living in Pakistan are located in the city of Quetta, with around the remaining 20% located in other areas of the province of Balochistan. There are also small communities of Hazaras scatter in the north west frontier province and in the city of Karachi. (DIMA country information service 2000, Country Information report No. 97/00 - Hazara refugees in Pakistan, sourced from DFAT advice of 10 May 2000, 11 May CISNET CX41933.)

The tribunal also referred to the following document by way of background (CX19906)

AFGHANISTAN BIRTH REGISTRATIONS AND IDENTITY BOOKS

Forensic Document examiner (DIEA Canberra, 31 May 1995.

Question and response from the Australian High Commissioner, Pakistan response by Mr John Brook, second secretary (immigration).

Information to the question was supplied by a senior official of the Afghanistan embassy, Islamabad, Pakistan.

Q. Identification book (correct name if known) can be issued at anytime, regardless of age?

A. The name is TAZKARA and can be issued at any age.

Q. Fraudulent documents readily available on the black market?

A. The official was aware of fraudulent books being printed in Pakistan and Afghanistan. He believes that for a payment a book can be issued to anyone and with whatever details they require.

FINDINGS AND REASONS

The tribunal accepts that the applicant is an Hazara and a shi'ite, and accepts that Hazara and Shia's are persecuted in Afghanistan. But the evidence is that Hazaras live in Pakistan, Iran and parts of Central Asia. So the fact that the applicant is a Hazara does not establish her nationality as Afghani. The language analysis does not satisfactorily establish that the applicant is a national of Afghanistan. (Nor does it establish that she is a NATIONAL of Pakistan).

In this case the tribunal is not satisfied that the applicant's country of nationality is Afghanistan.

The applicant was unable to name the currency of Afghanistan when questioned along these lines by the delegate. If she was a national of Afghanistan as claimed the tribunal would expect her to know this basic information. Her explanations for being unable to answer the question were not convincing. It is barely plausible that she had never handled money and it is not plausible that she had never seen it. Furthermore, even if she rarely went out of the house and did not do the shopping herself, she could not have failed to be aware, by the age of 31, what money

was used in her claimed country of origin.

When queried by the tribunal about this and other matters the applicant relied sought to explain her answers by claiming that she did not understand the interpreter or the questions during the DIMA interview, or that she was feeling unwell or stressed at the time. While sympathising with her condition the tribunal does not find this explanation persuasive.

The applicant said at the start of the DIMA interview that she understood the interpreter and her answers to a number of the questions during the interview reflect this comprehension: she did not subsequently display a lack of comprehension in relation to the specific questions of concern to the tribunal. This is the case even if she did not fully understand the purpose or intent of the questions. Furthermore, a matter so basic as the name of the money in one's claimed country of nationality is not the sort of question that is made hard if one is feeling unwell or nervous.

The applicant's evidence concerning her escape route from Afghanistan was at first negligible. She did not know where she crossed the border out of Afghanistan, did not know what provinces she went through to get to the border. But if she was really from Afghanistan she would be able to give at least some information in response to these questions. She was making a very significant journey with her five children, even with her brother as a chaperone, she must have registered something about the journey.

The tribunal does not accept that the applicant's illiteracy satisfactorily explains this. An inability to read, write and compute does not amount to ignorance or stupidity. The applicant's claim to be equally ignorant of the world beyond Afghanistan (i.e. the countries passed through on the way to Australia) is a contrivance designed to support her claim to be generally ignorant.

But it is not plausible either in the manner put. Someone fleeing persecution, knowing they have left the country of persecution behind, cannot remain wilfully ignorant of the name of the country they have first escaped to (Pakistan is the country over the

border from Spin Boldak).

At the tribunals hearing the applicant's knowledge of the escape route from Afghanistan, including the names of the district in the neighbouring provinces, and important and lesser towns and the major river in the region have considerably evolved. She also used the word for an Afghan identity document. The tribunal does not accept this as evidence that the applicant genuinely travelled this route. She has clearly been coached in the intervening months (HERE I MUST MAKE A COMMENT - SHE TALKED TO HER BROTHER)

The applicant was unable to name the years in the Afghan calendar in which her children were born. The tribunal finds this implausible. It is not explained by illiteracy. It is a life skill required of mothers and achievable and likely to be achieved by them through memorising, even if they cannot read, write or perform arithmetic. The applicant's inability to work in this elementary way in the Afghan calendar was further evidence that she is not from Afghanistan.

The applicant's claims about life under the Taliban and persecution of the Hazaras and shia's in particular, were put in very general language using legal or emotive terms (persecution, torture, displacement and punishment) instead of descriptive or narrative terms. This indicated she has no real personal familiarity with the situation claimed and that her claims were rehearsed.

The tribunal encouraged the applicant to be more specific but no more concrete or honest responses were revealed. This cast further doubt on her claim to be from Afghanistan.

The applicant also made the surprising claim not to be able to recognise the Pashto language when she hears it. This is simply not possible if she lived in Afghanistan. Pashtu is the other major language in Afghanistan and would have been spoken by at least a proportion of people in the village or who passed through the village the applicant claimed to have lived in all her life. The tribunal does not accept that the applicant's life experience could have been so limited as to prevent her hearing Pashtu often enough to be able to recognise it.

The tribunal as constituted for this case usually avoids commenting on an applicant's overall credibility. But in this case the applicant's credibility in general was remarkably poor. In addition to the matters above, which weigh directly on her claims to be from Afghanistan the tribunal finds it implausible that the applicant did not seek to question the smuggler about her husbands' whereabouts, even through an intermediary.

Her account of her husband's disappearance was also contradictory as the tribunal put to her in the hearing. Her response to this observation was facile. The information as initially stated remained contradictory, either her husband was taken to fight or he was taken to prison, if he was in prison for 3 months why would the applicant start out the hearing by saying he was taken to fight? Her ignorance about how her husband escaped or where he was imprisoned was not believable, if he had really been in such a situation.

Concerning the other applicants: the tribunal accepts that they are the primary applicant's children. The primary applicant is not an Afghan national and there is no evidence the children have any other nationality than hers. (the tribunal does not accept that the applicant's husband is an Afghan national as there is no evidence supporting this claim) Consequently the tribunal is not satisfied that the children are Afghan nationals.

The applicants have not claimed to be from any other country and there is no satisfactory evidence that they are nationals of any other country, so there is no basis for evaluating their chances of persecution in any other country.

The tribunal is not satisfied that the applicants have a well founded fear of persecution in Afghanistan.

Senator Crossin and other senators have been aware for years now that this RRT decision was wrong but I enclose it so the committee can see what nonsense is asked of refugees who cannot understand the point of them.

It is time to not only grant complementary protection but to stop locking up refugees. The claim by Senator Evans that we have no space on the mainland is utterly absurd when we consider that millions of people come

here each year without having to live on the streets. Because if Australia cannot abide by the conventions we must withdraw for the sake of innocent refugees who are treated like garbage by Australia.

And there is a certain hideous cruelty in continuing to blame and jail Indonesian fishermen who dare to help refugees escape the hellish rat infested shit holes that we have created and then dare to claim that they have no regard for the lives of the very refugees we have paid to jail in rat infested shitholes. With these vile prisons in Indonesia, the shithole described by citizens on Christmas Island and the refoulement of refugees from Indonesia without a hearing and any hearings amounting to 6 minutes to put a case we reek of stinking hypocrisy don't the committee think?

Marilyn Shepherd