

I note that the senate committee will be interviewing members of the RRT on 31 January and believe that the cases here are germane to questions they need to be asked.

In the cases DIMA had supplied the applicants with Pakistan documents, the results of the RRT reading of those cases is pretty clear. All the members deemed that they were bogus documents, Ms Males even wonders where on earth they came from.

The only dissenting voice was Mr Karas whose summation of the case against his client was nothing short of lunatic. At the time of course it was illegal to do facial mapping without permission and now DIMA claim they didn't get the documents he relied on until 3 months after they were supposed to have been delivered to Ali Bakhtiyari.

Even more interesting is that Mr Giles Short knew in May 2003 that the Pakistani documents were probably not genuine but in the second of the RRT decisions I am enclosing he said of the document "the picture is not the applicant" but then relied on the document itself and newspaper reports.

If the new law goes through there will be more of this and no possibility of review because of s 157 - when this case went to the courts every judge could see the lunacy of it but could not repair it.

In questions on notice supplied to Senator Kirk during senate estimates it is clearly stated by DIMA that they didn't receive any Pakistani documents regarding Ali Bakhtiyari until 2 December 2002, yet in both RRT decisions enclosed he was sent them on 30 August 2002 and answered them on a number of occasions.

At what point were these documents allowed to pass through the RRT and then discarded for all but one case?

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/N0245263.html?query=cancel>

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/N0347484.html?query=cancel>

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/N0345769.html?query=cancel>

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/N0347021.html?query=cancel>

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/N0245490.html?query=cancel>

REFUGEE REVIEW TRIBUNAL

Applicant Asghar Ali, also known as Ali Asqar Bakhtiyari

RRT ref: NO2/45217

Country of ref: Pakistan

Member: Steve Karas

Decision: 4 March 2003

Sydney

BACKGROUND

The applicant arrived by boat in Australia on 22 October 1999 without a valid visa. He was refused immigration clearance and was taken into detention. An application form for a protection visa (Class XA) visa dated 29 May 2000 was lodged by the applicant with the department. The applicant was granted a sub-class 785 visa on 3 August 2000 on the basis that he was a refugee from Afghanistan allowing him to remain lawfully in Australia until 3 August 2003.

On 12 April 2002 the applicant was notified of the intention by the minister for immigration to consider canceling his subclass 785 visa. This notice of intention to consider cancellation under section 109 of the Migration Act 1958 was supplemented by letters dated 30 August and 25 October 2002 that were issued to and received by the applicant. The applicant and his adviser responded to this material. On 4 December 2002 the applicant's sub-class 785 visa was cancelled by a delegate of the minister and a copy of that decision and the reasons for it was made available to the applicant and his adviser. An application for a review of that decision was made to the tribunal on 5 December 2002 by the applicant.

EVIDENCE

The tribunal had before it documents of its own file NO2/45217 and departmental files CLF2000/2678, CLF2000/29832 and CLF2002/65102. Included were submissions on file from the applicant's legal adviser, a registered migration agent.

In his application form for a 785 visa dated 29 May 2000 the applicant gave the following answers to questions on the form relating to his date of birth, age, place of birth, occupation, citizenship, length of residence and status in Pakistan and employment history.

Q5: DOB 1/1/1957 – 43 years

Q6: Place of birth

City, town or village: Chaper or Charkh

State or province: Sharestan

Country: Afghanistan.

Q14: Occupation: Farmer

Q16: Citizenship at birth: Afghani

Q7: Current citizenship – if different to birth (no answer given)

Q18: Do you hold any other citizenship? No

Q20: Country of residence before arrival in Australia: Stayed illegally in Pakistan for 1 year and 3 months.

Q22: What was your status in that country? Illegal

Q28: Did you ever travel outside your home country or country of residence before your current journey to Australia? No

Departure date: Illegal time stated.

Q30: Give details of all addresses OUTSIDE AUSTRALIA where you have lived for 12 month or more in the past 10 years:

From birth to 1998.

Country Afghanistan

Address: Chaper or Charkh, Sharestan

From 1998 to 1999

Country: Pakistan

Address: Pendi village, Islamabad

Q34 Give details of your past employment. For the periods you were not employed, show the reason e.g. studying, unemployed, national service, in prison, etc. Make sure that you cover the whole time since leaving school, except for your current employment.

From: (unanswered to unanswered)

Employers' name and address: Only ever worked on his family's land – growing crops and raising animals.

Position/occupation: farmer

From 1976 to (-)

Employers name and address: Military service (under Dawood regime)

Soldier

In April 2002 the applicant was issued with a copy of a notice of intention to consider cancellation under section 109 of the Migration Act 1958. This notice referred to the answers given to questions in the applicant's application for a protection visa as detailed above.

Reference was made to a linguistic analysis obtained from a Swedish agency, Eqvator, that indicated with considerable certainty that the applicant was from Quetta in Pakistan and not Afghanistan. The notice considered to applicant had not complied with section 101 of the act and that his visa could be cancelled. He was asked to respond to the notice and reference was made to regulation 2.41 of the regulations.

The department received a response to this notice dated 17 May 2002:

1. A linguistic analysis by Jan Mohammad dated 11 May 2002 stating that there is "ample evidence to conclude that the applicant has resided in Afghanistan and his speech is the same as the speech of other Hazaras living in Afghanistan" and that the applicant's wife "speaks with the Hazaragi dialect spoken in Afghanistan".
2. A short biography of Jan Mohammad
3. Letters from Mr Ali Rezaee and Mr Ali Kamali stating that the applicant is from the province of Oruzgan in Afghanistan and that they have seen him in their home towns in Afghanistan; and
4. A printout from a website regarding linguistic analysis from companies commonly contracted by the department.

The adviser submitted that the applicant's visa ought not to be cancelled.

On 30 August 2002 a supplementary letter to the notice of intention to consider cancellation of 12 April 2002 was issued to the applicant. It referred to additional information that had come to the department's attention and which further brought into question the "validity" of statements made by the applicant in his application form for the protection visa. The additional information referred to was:

1. An application for registration (for Pakistani nationals) (Form A) dated 19 September 1975, including a photograph of the applicant named as Asghar Ali, a student born on 15 April 1957 in Quetta, son of Hussein Ali, and residing at Sardar Isa Khan Road, Hajiabad in Quetta.
2. A family registration (Form B) dated 18 August 1973 from Pakistan giving details of the dependents of Hussain Ali of Sardar Isa Khan Road, Hajiabad, in Quetta, including one Asghar Ali Bakhtiri
3. A further Form B dated 27 March 1982 from Pakistan naming Hussain Ali as head of a family including Asghar Ali, a shop keeper. Four other persons are listed as Asghar Ali's family members, his mother and three siblings including two males and a female.
4. Various newspaper articles from the AGE dated 23 August 2002, The Australian dated 14 August 2002 and the Sun Herald dated 28 July 2002 (incorrectly referred to as the Sydney Morning Herald in the letter) to the effect that the applicant was not known in the Afghan village or district that he had said he was from but that journalists in Quetta had shown a photo of the applicant to a number of the locals there including an alleged half-brother Sikander Bakhtiri and a former neighbour who identified it as a person who had lived and worked in Quetta as a plumber.

The applicant's adviser reported to this letter on 20 September 2002 submitting that the applicant had always maintained he was from Afghanistan, that he denied knowledge of the Pakistani documentation, that he relied on the linguistic analysis by Jan Mohammad and that the newspaper articles were incorrect. Enclosed with the adviser's letter were:

1. A further statutory declaration by the applicant dated 9 September 2002
2. An extract from a Sydney Morning Herald dated 25 July 2002;
3. A copy of an article "Bakhtiari's story is true says witness", from the Sydney Morning Herald dated 27 July 2002, reporting statements from Mr Kamali similar to those made in his letter referred to above;
4. A copy of an article "racial and religious tensions rife in Afghan community" from the AGE dated 27 July 2002;
5. A copy of an article "How tapes sent to Sweden alter thousands of lives", the AGE dated 27 July 2002;
6. A fax and translation of a letter to the district governor of the Wahdat Islamic Party in the District of Sharestan, Oruzgan province in Afghanistan and his response stating that the applicant and his family are "original residents of Sharestan district and became refugees during the Taliban era and went to Pakistan and left for Australia".

The applicant's adviser submitted that the evidence presented by the department that purported to address the applicant's nationality and former addresses was not substantiated.

The applicant was not the person referred to in the Pakistani documents, he did not have a brother named "Sikander" and he had no living sisters. His only sister had died. The adviser questioned the accuracy of locations and villages in Afghanistan and the practice there under the Taliban and the previous communist regime of denying knowledge of people being sought even by a photograph being shown and locals being asked about their whereabouts. Given that the persons sought were often collected and then disappeared and villagers were persecuted it was not uncommon for people in villages to deny knowledge of anyone. In relation to the AGE article dated 23 August 2002 the adviser submitted the article's tone was "hostile and there was a number of negative connotations on style and content indicting a bias on the journalist's part". The adviser also referred to personal experiences where he had been misquoted and further questioned the reliability of the articles.

A further supplementary letter to the notice of intention to consider cancellation of 12 April was issued to the applicant on 25 October 2002 indicating that additional information received by the department further questioned the validity of the applicant's statements in his application form for the protection visa. The department referred to and enclosed a facial mapping analysis report from Dr Robin Watt, forensic anthropologist. Dr Watt had compared a photo affixed to the application for registration (for Pakistani nationals) (Form A) dated 19 September 1975 referred to above with two photographs of the applicant taken at the Port Hedland IRPC and concluded with a high degree of confidence that the person in each of the photographs was one and the same person.

In a letter dated 8 November 2002 the applicant's adviser referred to conflicting matters in the newspaper articles and raised a number of questions in relations to Dr Watt's report. A further letter dated 3 December 2002 included a report by and a CV for Dr Richard Kemp. The report by Dr Kemp questioned the forensic value of Dr Watt's report on a number of grounds. The applicant's adviser submitted that Dr Kemp had "established qualifications" and that his report should be given greater significance or weight than that of Dr Watt. The adviser also reiterated that earlier questions he had raised with the department concerning Dr Watt and his report still remained unanswered.

The tribunal sent a letter pursuant to section 242a of the act to the applicant and his adviser responded to that letter by a submission dated 5 February 2003. Attached to that submission were the following documents:

1. A further statutory declaration by the applicant dated 16 January 2003;
2. A psychological report from Mr Zachary Steel, Dr Momartin and Dr Bateman, dated 4 February 2003, stating that the applicant is suffering from post-traumatic stress disorder;
3. A "linguistic analysis" by Mr Abdul Yousufi dated 31 January 2003 that supports the applicant's Afghan origins from the Oruzgan area;
4. A paper entitled "Linguistic identification in the determination of nationality, a preliminary report", by Drs Eades, Fraser, Siegel, McNamara and Baker, dated February 2003 questioning the reliability of the reports from Equator and other linguistic companies;
5. A letter from Medicins' Sans Frontiers dated 16 January 2003 referring to the present difficulties, problems and insecurities in Afghanistan and stating that the current government there does not have the capacity to accept many returnees even with the support of the international community.

The applicant's adviser submitted that the Pakistani documents or certificates were unreliable and contained inconsistencies that cast doubt on the documents. For example the family registration form dated 18 August 1973 refers to the children as aged 17, 15, 13, 11 and 7. This gives the birth dates as Maryam Hussain Ali in 1956, Asghar Ali Bakhtiri 1958, Zakia Hussein Ali born in 1962, Sikander Ali 1962 and Ghazanfar Ali 1966. The document dated 27 March 1982 gives the children there as Maryam 1957, Asghar Ali 1957, Ghazanfar Ali 1964 and Sikander Ali 1968. Zakia Hussain Ali does not appear on the second document and the ages of Sikander Ali and Ghazanfar Ali differ. Furthermore the applicant has stated repeatedly that he has no living sisters (although he states that one died some years before) and his brothers are Ghazanfar Ali and Muzzafar Ali.

A video conference hearing on this matter was held on 6 February 2003. The applicant attended and gave sworn evidence to the tribunal. His adviser attended and an interpreter was present to assist the parties. In summary the applicant stated:

1. His name is Ali Asqar Bakhtiyari and he was illiterate. He had only studied the Koran as a child during winter time when there was no work.
2. He was born in Charkh, Sharestan in Afghanistan and did not know the year of his birth although he stated he was 43 years of age. When asked by the tribunal about his earlier having stated that he was born in 1957 and then this was changed to 1961 he stated he told his age to the interpreter who converted this to a birth year of 1961.
3. His father was deceased and his mother, he was told by his wife, is living in Iran with his brother. He has two brothers, Ghazanfar Ali and Muzzafar Ali, and no other siblings. His father's name was Hussain Ali Bakhtiyari and his mother is Khorsheet. All were born in Afghanistan.
4. His wife Roqia was born in Sharestan, Afghanistan. She is now 33 years of age and they have 5 children. His wife and children are in detention with him in Baxter.
5. He and his wife married 16 years ago and he is 10 years older than her. Her father's name is Yousef Ali. They were married in Sharestan.
6. He had only worked as a farmer before coming to Australia and his wife mainly attended to the household and other chores.
7. His wife's brothers were Mazhar Ali and Jafar Ali and he did not know Teimor Ali, son of Abdullah although the tribunal noted from the letter to the district governor of the Wahdat Islamic party of Afghanistan in the district of Sharestan submitted on the applicant's behalf (folio 26) that this person knew the applicant and what had happened to him and his family and that it appeared he was his brother in law.

8. The applicant did not tell anyone where he was going when he left his village discreetly.
9. There are some 25-30 houses in Charkh and he would know all of the villagers there and they would know him as well. He opined that Teimoor Ali, son of Abdullah might have come there later.
10. The applicant stated he knew Messrs Ali Rezaee and Ali Kamali in Afghanistan. Mr Rezaee, a charity worker in Sharestan district, was known by all and Mr Kamali was a resident of Moqur in the Ghazni district. The applicant stated he met both these people in Afghanistan.
11. The applicant stated that he was assisted in completing his application form for a protection visa by a woman and they were assisted by an interpreter although he could not recall the interpreter's details.
12. Before coming to Australia he lived with his family in Charkh and he also stayed some 9 months in Pakistan.
13. When it was suggested that the applicant was born in Quetta, Pakistan in 1957 and named Asghar Ali he stated he was born in Sharestan and his name was Ali Asqar. His parents were Hussain Ali Bakhtiyari and Khorsheet. He was adamant he was not the person referred to in the Pakistani identity card, and that his name was Ali Asqar and he had only two brothers.
14. When asked to comment on the opinion of the expert that he was the person whose photograph was on the Pakistani ID card, the applicant stated it was not his picture.
15. When asked to comment on the newspaper articles that he was not known in the Charkh region of Afghanistan but was known in Quetta in Pakistan he responded that what the papers write is not necessarily true. He referred to a saying in Afghanistan that one denies seeing a camel for fear of being accused of stealing it and one would even deny knowledge of a brother as acknowledgement would lead to that person being taken away if the brother was being sought. This was part of the culture he stated. The applicant also noted "his issue was known to the world."
16. When asked to comment on the newspaper article in which it was reported that a person who had resided in Charkh for over 45 years and knew everybody had denied knowledge of the applicant, he reiterated that even his brother would say he did not know him.
17. When asked why his brothers names were Ghazanfar Ali and Muzzafar Ali when he was Ali Asqar he stated in the shia religion he, as Ali Asqar, would be known by all to be the son of Hussain. He reiterated his name is Ali Asqar and not Asghar Ali.
18. When asked about the linguistic analysis that indicated his speech showed he was from Quetta in Pakistan the applicant stated that he was an Hazaragi speaker and experts in the dari language had referred to the differences in the Hazaragi speakers from different areas.
19. The applicant worked in Australia for some 6 months before developing a back problem and being told by the doctor to rest. He has also received welfare payments from centrelink to support himself. He is not a member of any community, religious or sporting organizations here although he did watch part of the Olympic games. In his country there were many political parties. He was tired of these and he largely spent his time in the house or in the park when not in detention. The applicant stated he did not socialize much but was mostly on his own. He does not have any friendships here and as most of the Afghans here are younger than him he does not associate with them. Mr Rezaee who he knew in Afghanistan is 27 and Mr Kamali is older than him.
20. The applicant reflected that since coming to Australia he has been in prison and been sick. His son's escape for 12 days caused his distress in not knowing where they were and his beard turned white. His wife did not know where he was and he and his family have suffered since coming here, particularly in the camp.

At the hearing the applicant's adviser referred to the psychologists report dated 4 February 2003 indicating that the applicant was a simple man who had suffered. The advisor noted that given the applicant's experiences he had aged in a short time since arriving in Australia in October 1999. The applicant has always stated he is Ali Asqar. He submitted that the documents from Pakistan were inconsistent referring to a sister "disappearing" from the documents and the different ages of the siblings in them. He submitted that the applicant had been consistent in his story since coming here and had not changed his name which he could have if he was perpetrating a fraud. He questioned whether the Pakistani documents were reliable given the inconsistencies.

The adviser questioned the linguistic analysis from Ekvator and referred to the critique by Dr Eades and her colleagues. References were made to the other reports submitted in his matter from Jan Mohammad and the NAATI interpreter and translator Mr Yousufi. The applicant's adviser noted that Mr Yousufi had referred to the applicant changing his accent with different interpreters, a point also picked up by Dr Eades and her colleagues in her report.

The adviser noted that the department had not answered his questions submitted on 8 November 2002 about the facial mapping analysis report by Dr Watt and he questioned Dr Watt's report, referring to the critique of it by Dr Kemp indicating that Dr Watt's report was flawed in its methodology.

The applicant has a workers compensation claim for his back injury outstanding and his application for a permanent visa is still to be determined. The adviser stated that the applicant's family is with him in Baxter and he noted the high court case involving the applicant's wife and family has recently been decided. Reference was made to the stresses and anxieties suffered by the applicant with his sons being on the run for 12 days and the accompanying media interest. The applicant it was agreed lived a largely lonely and hermitic lifestyle in Australia. The applicant feels his Afghan community has abandoned him and members of it don't want to be involved with him as that perception may harm their case. Indeed it appears his attempts to stay clear of politics has "backfired" the adviser added.

The adviser submitted that the grounds for the cancellation of the applicant's temporary protection visa had not been made out. Reference was made to the applicant being a co-operative person in detention and that he did not pose a risk. Indeed he was referred to as a model detainee. The adviser added the applicant was not a person "hiding things", who was always available for interview by the department and that he was basically as simple man who could not understand why he was subject to all this attention.

After the hearing the applicant's adviser made a further submission dated 19 February 2003 in this matter. He enclosed a corrected translation of the document referred to above (folio 26). The applicant instructed his adviser that "Taymur Ali (the person referred to in the document at folio 26 as Teimor Ali son of Abdullah) married his sister Shagul. His sister was a few years older than Mr Bakhtiyari but died in childbirth when she was about 17 or 18. At that time Mr Taymur Ali was residing in Charkh Bargur, a village about 2.5 hours travel from Mr Bakhtiyari's village". The tribunal recalls that at the hearing the applicant was immediate, forthright and categorical in his denial and knowledge of Taymur Ali or Teimor Ali, suggesting he may have come to the district in Afghanistan after he had left. However, if as now submitted, this man was the brother-in-law of the applicant, having married his only sister Shagul earlier, then he would have known of him and not denied knowledge of him as he did so dismissively at the hearing. The tribunal does not accept that the applicant would not recognize the name of his only sister's husband even though she died in childbirth some years ago.

In the adviser's submission of 19 February 2003 reference was made to problems with evidentiary matters raised in this matter against the applicant. The adviser summarized these as follows:

1. The Pakistan documents are inconsistent regarding dates of birth and ages.
2. There are serious concerns about the validity of the linguistic analysis of Eqvator as it is either and invalid test, or given the two other tests I submitted it is incorrect.
3. The facial mapping report of Dr Watt has a number of unanswered questions and its reliability is questioned in the report by Dr Kemp.
4. The media reports are not reliable and a number of concerns were raised about the contents of articles.
5. Mr Bakhtiyari has been consistent about his case and his background through two DIMA protection visas interviews, the RRT hearing, two bridging visa interviews and two MRT hearings.

The submission also referred to the difference in signature of the applicant in documents with the department and that of the person identified as the Pakistani student in the "application for registration" dated 19 September 1975. It was suggested that the tribunal could seek a report from a handwriting expert in this matter pursuant to section 424 of the act, however the tribunal found it unnecessary to do so. The tribunal notes that the relevant documents have been available to the applicant's adviser for some months and he could have sought such a report had he wished. The weight which the tribunal attaches to the "application for registration" rests on the facial mapping analysis of Dr Watt which indicates that the applicant is the person whose photograph is affixed to the "application for registration".

If that analysis is accepted it follows that irrespective of any variations in his signature, the applicant is the person who made the "application for registration" and the personal details on that document are therefore the personal details of the applicant.

The adviser submitted that the situation in Afghanistan was difficult owing to the ongoing presence and activity of the Taliban there. He produced an article from the Guardian Weekly dated 13-19 February 2003 headed "Taliban stiffen resistance to Kabul" in support of this submission. The submission concluded that the contention that the applicant was from Afghanistan as he claimed and that the cancellation be set aside.

FINDINGS AND REASONS FOR DECISION

The issues for this review are the following:

- a. Was section 101 of the Act breached? Did the applicant give incorrect answers on his application form on 29 May 2000?
- b. If there was non-compliance with section 101 of the act is it appropriate that the visa be cancelled?

Was section 101 of the Act breached?

The applicant denies that he gave incorrect answers in his application form for a protection visa completed on 29 May 2000. In response to the delegate's notice of intention to consider cancellation and the supplementary letters referred to earlier the applicant maintains that he was born in Charkh, Sharestan in Afghanistan and that he is a farmer from that district. He has never lived in Quetta although he stayed there for some months before coming to Australia (**this is totally false**). He was not a student, plumber or shopkeeper there. He has two brothers, Ghazanfar Ali and Muzzafur Ali and has no living sisters. His mother Korsheet is in Iran with one of his brothers and his father Hussein Ali is deceased. He is a citizen of Afghanistan and not of Pakistan.

The tribunal notes that the applicant stated in answer to question 5 in his application dated 29 May 2000 (see folio 18) that he was born in 1957 and that he was 43 years of age. He gave the year of his birth in other forms submitted by him to the department. The applicant submitted that on subsequent advice with the assistance of an interpreter the birth date was changed to 1961. The tribunal notes that the interpreter, Nadir Saikal, who was involved with assisting the applicant in completing his application form is also the person who assisted with the statement by the applicant that accompanied the application form dated 29 May 2000. It was in this statement that it was noted that the age of the applicant given at his first interview (on his arrival in Australia) was incorrect but that the current date worked out by the interpreter was more accurate. However, there was no date of birth referred to in that statement from the applicant and it appears the only date of birth given for him at the time was that of 1957 referred to in the accompanying documents to the statement. The tribunal further notes that Mr Saikal stated that he was “proficient in the English language and the dari language” used by the applicant.

As referred to above, the department relied, in its notice of intention to consider cancellation and supplementary letters, on documents obtained from Pakistan. One of the documents, the application for registration (for Pakistani nationals) dated 19 September 1975, included a photograph. The department obtained a facial mapping analysis report from Dr Watt, forensic anthropologist, who concluded with some certainty that the person in the photographs of the applicant taken at the Port Hedland IRPC was one and the same as the person depicted in the photograph affixed to the Application for Registration (for Pakistani nationals) dated 19 September 1975.

Although the forensic value of Dr Watt’s report was questioned by Dr Kemp who concluded there must be some uncertainty regarding the validity of the conclusions reached by Dr Watt, Dr Kemp did not find or conclude that the person in the photographs submitted were not the same man or that the conclusion reached by Dr Watt was wrong. Given that Dr Kemp considered the images employed in the study to be of “high quality” it is significant that although he referred to “some uncertainty” he did not contradict Dr Watt’s conclusions that the person in the photographs was the same person, namely the applicant (of course two of them were of Ali, so they would be Ali wouldn’t they).

The tribunal accepts Dr Watt’s expert opinion that the person in the photographs of the applicant taken at the Port Hedland IRPC is one and the same as the person depicted in the photograph affixed to the Application for Registration, dated 19 September 1975.

In the Pakistani documents the birth year for Asghar Ali is given as 1957 (the same year of birth given by the applicant in his application form and other documents in May 2000). While the applicant’s adviser referred to inconsistencies in the Pakistani documents the tribunal notes that one should not always impose first world country standards on third world country documentation.

Although there are some inconsistencies or differences in the Pakistani documents as identified by the applicant’s adviser, for example, with regard to the number of sisters the applicant has and the year in which his siblings were born, the tribunal accepts that the documents are genuine, and regards it as significant that the information regarding Asghar Ali, such as his name, birth date, parentage, residential addresses and the like remain consistent. Importantly each of the documents refers to Asghar Ali, born in 1957 and taken together establish that he is the son of one Hussain Ali Bakhtiari. Indeed the coincidences between these documents and the details provided by the applicant as to his name, year of birth and parentage are quite stark and the tribunal gives them considerable weight in the circumstances.

On the basis of the photographic identification and the information contained in the Pakistani documents, the tribunal finds that the applicant is the person identified in those documents as

Asghar Ali, born on 15 April 1957 in Quetta and normally resident at Sardar Isa Khan Road, Hajiabad in Quetta, Pakistan.

The conclusion that the applicant is Asghar Ali, born in Quetta and resident in that city is reinforced by the linguistic analysis obtained by the department from Eqvator. As referred to above, tapes of the applicants's speech were analysed by Eqvator who concluded from their linguistic analysis "with considerable certainty" that the language/dialect variant of the taped speaker (the applicant) was from Quetta in Pakistan. The applicant provided a linguistic analysis from Jan Mohammad who concluded that there was ample evidence that the applicant resided in Afghanistan and that his speech was the same as other Hazaras living there and that the applicant's wife spoke the hazaragi dialect spoken in Afghanistan.

The applicant also provided a linguistic analysis by Abdul Yousufi, a NAATI accredited translator and interpreter who supported the applicant's contention that he was from the Oruzgan area of Afghanistan. The applicant also submitted a report by Dr Eades and others dated February 2003 critical of the reliability of the linguistic analysis by companies like Eqvator. The tribunal notes that the criticisms made by Dr Eades and the other authors of the report would appear to apply equally to the linguistic analysis from Jan Mohammad and Abdul Yousufi provided by the applicant.

The tribunal notes that the Eqvator language analysis was provided by a professional agency working in this field for government authorities and originally established in Sweden in 1969 as part of the Swedish Immigration Board. While there have been criticisms of Eqvator and its findings in submissions by the applicant the tribunal notes there are sufficient reasons for the anonymity of the language analyst and the tribunal is entitled to rely on the organizational expertise and rigour given the agency's standards, requirements and operating procedures, although these have been criticized in the reports submitted by the applicant. Mr Yousufi is a qualified NAATI translator and interpreter and the tribunal does not accept that this in itself qualifies him to make a linguistic analysis.

So far as the linguistic analysis from Jan Mohammad is concerned the tribunal prefers the linguistic analysis provided by Eqvator, having regard to greater rigour given by the agency's standards, requirements and operating procedures.

The conclusion that the applicant is from Quetta and not from Charkh in Afghanistan is also supported by the newspaper articles from the Sun-Herald dated 28 July 2002, the Australian dated 14 August 2002 and the AGE dated 23 August 2002. According to the articles in the Australian and the AGE people from Charkh who should have known of the applicant if he been from there did not: whereas, according to the Sun-Herald article he was recognized in Quetta as a person who had lived there and carried on a business as a plumber.

The tribunal does not accept the submission by the applicant and his adviser that given Afghanistan's troubled history one would even deny knowledge of one's brothers whereabouts. The journalists providing the newspaper reports were not persons of authority from Afghanistan seeking a person for some reason such as that of the Taliban for example, and the tribunal sees no reason why the villagers would think there would be adverse or other implications for them knowing of the applicant or not. Moreover it appears from the response of the elder who had lived in the region for 45 years that he would have admitted knowledge of the applicant if indeed he was from that area.

The tribunal accepts that newspaper articles are not necessarily reliable and that there may be some inaccuracies in these newspaper articles as submitted by the applicant's adviser; however the findings of the journalists in relation to the applicant in both Pakistan and Afghanistan, are consistent with the tribunals conclusion based on the documentary evidence referred to above. The applicant produced undated statements from Messrs Rezaee and Kamali (that appear to

have been made in or about May 2002) that they had seen him in Afghanistan; however the tribunal notes that they were not called to give evidence on the applicant's behalf and the tribunal was therefore unable to test their written evidence.

Although the adviser noted that Afghans in Australia did not want to assist the applicant for fear of jeopardizing their own cases it appears Messrs Rezaee and Kamali were prepared to do so by submitting the earlier statements referred to. The tribunal notes that Mr Kamali more recently made statements supporting the applicant in the article in the Sydney Morning Herald dated 25 July 2002 which the applicant's adviser provided. Without the benefit of oral evidence from Messrs Rezaee and Kamali the tribunal is not prepared to accept their assertions that they had seen him in Afghanistan or Mr Kamali's assertions as reported in the Sydney Morning Herald. (Of course the journalists were believed implicitly and never questioned)

The tribunal also notes the letter which the applicant provided from the District governor of the Wahdat Islamic Party of Afghanistan in the district of Sharestan, Oruzgan province in Afghanistan stating that the applicant and his family are "original residents of Sharestan district and became refugees during the Taliban era and went to Pakistan and left for Australia".

However the letter does not set out the basis on which the district governor makes this statement: that is whether he claims to be speaking from personal knowledge of the applicant and his family or whether he is merely relying on information supplied to him by others. The tribunal gives greater weight to the Pakistani documents and in particular to the "application for registration" to which a photograph that the tribunal accepts is a photograph of the applicant was affixed, than it does to the letter from the district Governor.

Having regard to the totality of the evidence the tribunal concludes with confidence that the applicant is from Quetta and not from Charkh Sharestan in Afghanistan. Given the accepted facial mapping analysis report from Dr Watt together with the Pakistani documentation indicating the applicant is the same person as Asghar Ali born in Quetta in Pakistan in 1957, the consistent references to Asghar Ali in these documents and the linguistic analysis report by Eqvator the tribunal finds that the applicant is Asghar Ali, born on 15 April 1957 in Quetta in Pakistan and normally resident at Sardar Isa Khan Road, Hajiabad, in Quetta.

The tribunal regards the newspaper articles reporting statements by people in Charkh and Quetta as supportive of this conclusion. The tribunal finds that the applicant's citizenship is Pakistani and not Afghani, and that he did not reside in Pakistan illegally. He lived in Pakistan longer than he stated on his application form for a protection visa and he was not a farmer or soldier in Afghanistan. The tribunal finds that at all material times the applicant was a resident of Quetta and that he carried on a business there as a plumber.

It follows that the applicant provided incorrect answers on his application form for a protection visa completed on 29 May 2000 in relation to his place of birth, occupation or profession, citizenship, status in Pakistan, the addresses outside of Australia where he had lived for 12 months or more in the preceding 10 years and his past employment. The tribunal finds that these constitute instances of non-compliance with section 101 of the act. Thus from all the evidence and material before the tribunal it finds to a high degree of satisfaction that the applicant has breached section 101 of the act by providing incorrect answers on his application form to the department for a protection visa on 29 May 2000.

As there was non-compliance with section 101, it is appropriate that the applicant's Subclass 785 visa be cancelled?

It is evident from the terms of sections 100 and 101 of the act that cancellation pursuant to section 109 is not necessarily based on fault and in some cases inadvertent non-compliance can lead to cancellation. However section 109 makes it clear that in cases where it is established that incorrect answers were given, the cancellation of the visa is discretionary. Although an exception is referred to in subsection 109 (2) the tribunal notes that no circumstances have been prescribed pursuant to that subsection and therefore there is no mandatory cancellation under section 109 at this time.

The task for the tribunal is to determine whether the decision that the applicants visa be cancelled was the correct or preferable one, given the circumstances of the case: *Drake v MIMEA* (1979) 24 ALR577. The tribunal notes that the applicant does not accept that he has not complied with section 101 of the act and has not provided any written submissions concerning the prescribed criteria or any other circumstances that might affect the decision to cancel his visa.

As noted earlier regulation 2.41 sets out the prescribed circumstances to be taken into account for the purpose of paragraph 109(1)(c) of the act. The tribunals findings on the matters referred to in regulation 2.41 are as follows.

a. the correct information

The correct information is that the applicant is not who he claims to be nor is he a citizen of the country he claims to be from, but that he is a citizen of Pakistan, the country of his birth.

b. the content of the genuine document (if any)

The circumstances would not appear to have any relevance in the present case where cancellation is based on incorrect answers given on the applicant's form rather than the giving of bogus documents (as referred to in section 103 of the act) **(a bit rich considering it was DIMA hanging him up due to the use of false documents)**

c. the likely effect on a decision to grant a visa..of the correct information or the genuine documents.

The likely effect of the correct information is that the applicant would not have been granted a protection visa, as he has made no convention claim against Pakistan, his country of nationality. Furthermore the correct information could have led to a conclusion that his claims relating to Afghanistan were fabricated.

d. the circumstances in which the non-compliance occurred

The applicant maintains his claim that he and his family are from Sharestan in Afghanistan and not Pakistan. He has not claimed that the non-compliance was inadvertent or a result of misunderstanding, nor has he submitted any explanation or provided any mitigating or extenuating circumstances. The tribunal is of the opinion that the incorrect information was provided in an attempt to obtain a benefit (residence in Australia) to which he would not otherwise have been entitled.

e. the present circumstances of the visa holder

The applicant and his family are presently in detention in Australia. He has an outstanding application for a protection visa that is yet to be decided. Until that application is decided he would not be removed from Australia. He is said to suffer from a back ailment and has a workers compensation claim extant. As well the tribunal notes from the report of Mr Zachary Steel and others dated 4 February 2003 their conclusion that he is suffering from post traumatic stress disorder.

The applicant has 5 children under the ages of 18 years in Australia. They were part of an application by his wife for a protection visa. That application was refused on the basis that the applicants were not Afghan nationals and were not owed protection by Australia. That decision was affirmed by this tribunal and by a majority the high court recent decision *Re Minister for:Ex parte Applicants s134* (2003) HCA 1 found the tribunals decision was not affected by error, jurisdictional or otherwise. The applicants adviser has also referred to this

high court decision. Furthermore the minister has declined to exercise his power under s417 of the act in relation to the applicant's family. If the applicant and his family were eventually removed from Australia this would more than likely not result in a fragmentation of the family unit as he has suggested occurred before he came to Australia without them.

- f. the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of part 2 of the act,

The applicant has not contacted the department to advise that he provided incorrect information to it in his application in May 2000. The incorrect information has remained uncorrected by the applicant who repeated it at the tribunal hearing. There has been no attempt by the applicant to remedy this and to present the correct information.

- g. any other instances of non-compliance by the visa holder known to the minister?

The tribunal is not aware of any other instances of non-compliance by the applicant.

- h. the time that has elapsed since the non-compliance;

The non-compliance has been ongoing since the applicant completed his application in May 2000 for a protection visa.

- i. any breaches of the law since the non-compliance and the seriousness of those breaches;

The tribunal is not aware of any breaches of the law since the non-compliance

- j. any contribution made by the holder to the community

The applicant noted that when he was not in detention he worked for some months but stopped on medical advice. He has lived a largely lonely and hermitic life in Australia with little contact with others. Although he has had a media profile he is not a member of any sporting, religious or community organizations here. He appears not to have any firm relationships but has some friends or acquaintances. It does not appear he has made or is making any contribution to the social or cultural life of the community here. As well the applicant appears to have no assets and no firm or ongoing relationship with Australian citizens or permanent residents other than with those in a professional or similar capacity.

The tribunal must also consider any matters that the applicant considers would be reasons why his visa should not be cancelled, however the applicant has not raised any such matters.

In accordance with departmental policy the tribunal has also considered the potential impact of the cancellation of the applicant's visa on the applicant's children, and on the family unit, and whether cancellation would lead to removal in breach of Australia's non-refoulement obligations.

The tribunal finds that if the applicant and his family were eventually removed from Australia this would more likely not result in a fragmentation of the family unit as was suggested occurred before the applicant came to Australia without his wife and children.

The tribunal has considered, having regard to all the material before it, whether cancellation would lead to removal in breach of Australia's non-refoulement obligations under the refugees convention as amended by the refugees protocol. Subject to certain exceptions not presently relevant, article 33 of the refugees convention prohibits refoulement to a country where the person faces persecution or removal to a country which is likely to remove the person to another country where the person faces persecution.

The tribunal has found above that the applicant is a citizen of Pakistan and the applicant has not claimed that he fears persecution for a convention reason if he returns to Pakistan. The cancellation of the visa will not therefore lead to the removal of the applicant in breach of Australia's non-refoulement obligations. The tribunal notes that for the same reason, it follows that the tribunal is unable to be satisfied on the evidence before it that the applicant is a person to whom Australia has protection obligations under the refugees convention.

The tribunal notes that an obligation to have regard to certain prescribed matters does not confine the consideration only to those matters, the tribunal accepts that some hardship may be experienced by the applicant and his family by his departure from Australia.

The tribunal has found that the applicant breached section 101 of the act. The tribunal has found that the applicant gave incorrect answers to the department on the application form he completed on 29 May 2000. This is not a case where the applicant has not co-operated with the department in not being available for interviews and the like but **he continues to insist he is from Charkh Sharestan when the evidence shows that in fact he is from Pakistan.**

He has committed a significant breach of the migration legislation. Applying for a protection visa with the full knowledge that incorrect information has been provided is a serious matter. The original breach was compounded by his continued adherence to his identity story.

The tribunal is reminded of the comments of the AAT in Lachmaiya (1994) AAR 148 at 155-6:

The observance of truth in dealing with officials in migration matters (particularly where the truth is known only to the person making the statement) is of fundamental importance to the control mechanism which this country exercises in visa applications when dealing with the many reasons for coming to Australia.

After considering the totality of the evidence in this case it is clear that the breach by the applicant is serious. The tribunal accepts that the applicant has been in Australia for over three years and worked for some months. Apart from this there is no other evidence of any significant involvement in or contribution to the Australian community. The tribunal finds that the negative factors outweigh the positive factors. This is not a case where the giving of incorrect answers can be overlooked. The hardship caused by canceling the applicant's subclass 785 visa is outweighed by the seriousness of the non-compliance and accordingly the tribunal has decided to affirm the original decision.

It is trite to say that the power to cancel a visa is an important component of the structure of migration law particularly as it relates to its deterrent nature for those seeking to circumvent the law and the government's orderly migration processes. Accordingly a breach of the law not only offends the law but also disadvantages those who wish to remain in Australia and who do so by lawful means.

Steve Karas.

REASONS FOR DECISION

RRT DECISION NO3/46575

ALI ASQAR BAKHTIYARI

25 AUGUST 2003

MEMBER - GILES SHORT

This is a true account as retyped by me on 28 December 2005 and the original can be made available to anyone who asks.

"The applicant repeated the point he had made at the hearing that if he had a good life he would not have destroyed the minds and the future of his children by being in detention. He said that he had been in the Australian community and his character proved that he was not a criminal and had never done anything against

the law. He said that Hazaras were being persecuted all over the world and did not have any place secure for them."

Under cover of a submission to the tribunal dated 5 February 2003 the applicant's then representative produced a psychological report in relation to the applicant dated 4 February 2003 stating that he was currently suffering from major depressive disorder and chronic post-traumatic stress disorder. The report suggested that the applicant had "particular difficulty with unstructured recall tasks" but that this could be partly overcome by providing him with a "highly structured environment when providing answers to questions."

The report said the applicant "was able to provide more detailed time estimates when he was specifically prompted about the possible year that the event had occurred by the provision of associated chronological (sic) events". The report stated that the applicant was suffering chronic post-traumatic stress disorder with major depressive disorder as a result of his experiences in Afghanistan. Since the author of the report did not claim to have any knowledge of the applicant's experiences in Afghanistan other than what the applicant had told them it would appear that in making the assessment they were relying on a history related to them by the applicant.

I accept the professional opinion of the authors of the report, based on the observation of the applicant, that he was suffering from major depressive disorder and chronic post-traumatic stress disorder at the time of the report. The applicant has not submitted any more recent evidence with regard to his medical condition to the tribunal as presently constituted but his situation has not changed materially since the date of the report produced by his then (end page 26, begin page 27 of decision.) representative.

There is therefore no evidence before me on the basis of which I could conclude that the applicant's condition has changed (for better or worse) since the date of the report produced by his then representative. While that report suggests that the applicant will have some difficulty with some aspects of a hearing it suggests ways in which those difficulties can be overcome. I do not read the report as suggesting that the applicant was not fit to participate in a hearing before the tribunal, nor was it submitted at that time that this was the purport of the report.

Specifically, the applicant's then representative did not submit to the tribunal (differently constituted) on the basis of the report, that the applicant would be unable to properly take part in a hearing before the tribunal nor did the applicant himself suggest at any time to the tribunal as presently constituted that his medical condition was such as to prevent him from properly taking part in a hearing.

In making my assessment of the applicant's credibility I have regard to the observations made in the report produced by his then representative with regard to the difficulties the applicant might encounter and the ways in which these might be overcome. However, it is relevant to observe that this is not a case which turns on the applicant's detailed recollection of events. Having regard to the psychological report produced by the applicant's then representative and having regard to my own observation of the applicant giving evidence at the hearing before me I find that the applicant was able properly to take part in the hearing (see *SGLB v Minister* and *SZACW v Minister*).

It is convenient to deal first with certain evidence upon which I PLACE NO WEIGHT. First, as referred to above, a note for file of an interview with the applicant conducted on December 24, 2001 by an officer of the Department of Immigration states that "information from a reliable source in the community is that he (the applicant) is an electrician and plumber from the city of Quetta in Pakistan". No further details about the source of this information are given and in the absence of any indication on the basis of which I might form my own opinion as to the reliability of the source I DO NOT GIVE THIS INFORMATION ANY WEIGHT.

Secondly, a linguistic analysis of the applicant's speech conducted in April 2002 by the Swedish agency, Eqvator, concluded that the applicant's dialect/language variant "may with considerable certainty be said to originate from Pakistan, Quetta"> A linguistic analysis of the applicant's wife's speech, likewise conducted by Eqvator in April 2001 concluded that her dialect/language variant "may with considerable (end page 27, begin page 28) certainty be said to originate from Pakistan, Baluchistan".

(I note that the analysis of the applicant's wife's speech is only relevant to the credibility of the applicant, specifically with regard to his evidence that his wife is also from Charkh, Shahrestan, and that she and the children only left Afghanistan around three months after he claims to have done, in March 1998. The analysis of the applicant's wife's speech is not directly relevant to the issue before the tribunal in this review, namely whether the applicant is, as he claims, a citizen of Afghanistan. It is obviously possible for a citizen of Afghanistan to have a spouse who comes from Pakistan, so that even if it were found that the applicant's wife was from Pakistan this would not be prohibitive of the applicant's nationality, one way or the other).

The applicant's representative produced analyses of the speech of the applicant and his wife which they commissioned from Mr Jan Mohammed, a native of Afghanistan and a graduate in linguistics at the time studying for this PHD from the Department of linguistics at the University of Arizona. Mr Mohammed concluded that the applicant spoke the Hazaragi dialect of Dari common among the Hazara people in Afghanistan. He said that there was no trace or influence by Urdu or other languages spoken in Pakistan in his speech nor was there evidence to suggest that he had lived in Pakistan for an extended period of time. He said that the applicant likewise used no borrowed words from Urdu or English as one would expect if he had lived in Pakistan for an extended period of time. Mr Mohammed likewise concluded that the applicant's wife spoke the Hazaragi dialect spoken in Afghanistan.

The applicant's representative also produced what purports to be a linguistics analysis by Mr Abdul Wahid Poya Yosufi dated 31 January 2003, based on the tapes of two interviews. Mr Yosufi stated that he was an Hazara from Afghanistan and an accredited interpreter and translator. He said that he had lived in Iran as a refugee for two years and in Pakistan for four years. He said he had worked in Australia as in interpreter since 1992.

Although he said that he had "constant exposure to the culture and the extensive experience in the field" he did not indicate when he had last visited Oruzgan or indeed Afghanistan, nor did he indicate a familiarity with any linguistic literature bearing upon the dialects in use in Pakistan and Afghanistan. He said that the applicant spoke the Hazaragi dialect with an Oruzgani accent and that he concluded with a high degree of certainty that the applicant was a Hazara from

Oruzgan "with very little time spent outside that country at the time of the interviews (May 2000).

Under cover of their submission dated 17 May 2002 the applicant's then representatives produced a "Fortress Europe" circular letter critical of language tests being used to determine (end page 28, begin page 29) the country of origin of asylum seekers in Sweden, Switzerland, the Netherlands and Germany. In their covering submission the applicants representatives criticised the linguistic analysis of the applicant's speech conducted by Eqvator, noting among other things criticisms which I had made in a previous decision (NO2/41949) relating to an applicant from Afghanistan.

Under cover of this a submission to this tribunal (differently constituted) dated 3 February the applicant's then representatives produced a report by five academics raising concerns about the use of "language analysis" by overseas agencies in the determination of the nationality of refugee claimants in Australia. In his covering submission he again criticised the report from Eqvator because the author was not identified and the report was "pithy". He said that the methodology used in the reports from Mr Jan Mohammed and Mr Yosufi (whom he called Mr Yousefi) was different and addressed some of the concerns raised by the five academics in the report which he had produced.

With respect, it appears to me that the concerns raised by the academics are as relevant to the reports from Mr Jan Mohammad and Mr Yosufi as they are to the analyses obtained by the Department from Eqvator. While it is true that the author of the Eqvator report is not identified and the author's qualifications are not given, it does not appear that Mr Yosufi (unlike Mr Mohammad) has any professional expertise in linguistics. AS the academics note in their report, Afghanistan is a geographical region whose linguistic situation is understood only poorly, in common with other war torn regions where the linguistic situation changes very rapidly and the conditions are not conducive to detailed academic study of language use.

The academics argue that by failing to take sufficient account of the fluidity of language boundaries or language spread and linguistic change the analysts used by agencies such as Eqvator have based their decisions on insufficient or specious evidence. However, it appears to me that the same conclusion can be reached with regard to Mr Mohammed and Mr Yosufi's reports. Neither reveals the basis upon which the claim to be familiar with the Hazaragi dialect of Dari currently spoken in Afghanistan and to be able to distinguish it from the Hazaragi dialect used among the Hazara of Pakistan.

It is true that Mr Mohammed points to the absence from the applicant's speech of certain words which he says are used among the Hazara of Pakistan but he does not indicate the basis or the currency of this knowledge of the dialect spoken by the Hazaras of Pakistan and the academics specifically state "that linguistic research shows that a person's nationality, ethnicity and/or place of origin normally cannot be determined solely on the basis of a few words in his or her speech".

Mr Mohammed places weight in his report on the absence of Urdu and English borrowings from the applicant's speech but once again he does not indicate the basis for his statement (end page 29, begin page 30) that the speakers of the Hazaragi dialect in Pakistan constantly use Urdu and English words, nor to the extent that he may be relying on his personal knowledge, does he indicate the currency of that knowledge.

As referred to above, it appears that Mr Yosufi has been resident outside Afghanistan for over a decade and it appears from Mr Mohammed's statement that he obtained his MA in linguistics from the University of Ohio in 1991, that he has been outside Afghanistan for at least the same period of time. It is of course, possible that both of them have made regular visits to Afghanistan to ensure that their knowledge of the relevant dialects is up to date, but the evidence before me does not enable me to draw this conclusion.

Furthermore, although both Mr Mohammed and Mr Yosufi state that the applicant's pronunciation is consistent with that of the Hazara's of Afghanistan the academics caution in their paper that such conclusions are often inaccurate and place too much reliance on "folk knowledge" of pronunciation difference without sufficient critique of its validity. Having regard to the criticisms made by the five academics of the theoretical basis of language analysis or linguistic identification and the flaws which I have identified both in the reports from Egvator and in those obtained from Mr Mohammed and Mr Yosufi , I DO NOT CONSIDER THAT I CAN PLACE ANY WEIGHT ON THESE REPORTS IN REACHING A CONCLUSION WITH REGARD TO THE APPLICANT'S NATIONALITY.

Thirdly, the department commissioned a "facial mapping analysis" from Dr Robin Watt, a forensic anthropologist, in which he compared the photograph attached to the application for registration dated September 19, 1975 obtained from the Pakistan National Database Registration Authority in Quetta with a photograph of the applicant taken at Port Hedland IRPC shortly after his arrival in Australia and a more recent photo of the applicant submitted with his application for a protection visa lodged in August 2000.

Dr Watt concluded that the photographs were of the same person. The applicant's representative commissioned a report from Dr Richard Kemp, a senior lecturer in forensic psychology, in which he criticised Dr Watt's methodology and the reliability of the technique of facial mapping itself.

Since Dr Kemp's CV revealed that he arrived in Australia from the UK only in 2001 I consider that he was somewhat disingenuous in casting doubt on the acceptance of facial mapping as a technique. NEVERTHELESS, I CONSIDER THAT DR KEMP RAISES SUFFICIENT DOUBT WITH REGARD TO THE DR WATT'S METHODOLOGY AND THE CONCLUSIONS HE DRAWS FROM THIS ANALYSIS THAT IT WOULD BE UNSAFE TO GIVE WEIGHT TO DR WATT'S OPINION THAT THE PERSON IN THE PHOTOGRAPH (end page 30, begin page 31) ATTACHED TO THE APPLICATION FOR REGISTRATION DATED 18 SEPTEMBER 1975 OBTAINED FROM THE PAKISTAN NATIONAL DATABASE REGISTRATION AUTHORITY IN QUETTA IS THE APPLICANT. (Read this sentence a couple of times carefully)

Having regard to the applicant's medical condition I PLACE NO WEIGHT on the inconsistencies in his evidence regarding his age, the name of the village in Afghanistan from which he claims to come or to the names of the neighbouring villages and the distance between them and his own village. However, I consider it relevant that there are also differences in the name of the village which the applicant is from as it is given in the various documents which the applicant has produced.

As referred to in the tribunals invitation to comment issued in accordance with s 424A of the Migration Act, the taskera which the applicant produced states that he was born in a village called Takht I Talag Barger. The letter to the Minister of the Interior which the applicant produced identifies him as being from the village of

Charkh Vanalej Bargar. The letter purporting to be from Teimoor or Taymur Ali identifies the writer as a resident of Charkh Bargar which the applicant said was the same as his village although he subsequently said he came from Charkh Noliye, a separate village from Charkh Bargar. (In light of the applicants medical condition I likewise PLACE NO WEIGHT on his statement at the hearing before the tribunal on 6 February 2003 that he did not know Teimoor or Taymur Ali, son of Abdullah, resident of Charkh Bargar).

IN his response to the tribunals invitation to comment the applicant said that he had claimed in all his interviews that he had come from Charkh Noliye. This is objectively untrue: the applicant has in fact claimed to be from Chaper or Charkh. He only claimed to be from Charkh Noliye at the hearing before me. However, once again having regard to the applicant's medical condition, I DRAW NO ADVERSE INFERENCE FROM THIS FACT. The applicant in any event said that Chaper or Charkh was the name of the village but that in this village there are small gatherings of houses at different distances which had separate names, hence the references to Charkh Talag Bazar, Chaper, Charkh, Charkh Noliye, Charkh Barger and Takht Talag Barger.

He said that it was difficult to make anyone understand any area when one was not present there at the same time, especially for an uneducated person. I ACCEPT THIS POINT but it is for this reason that I PLACE GREAT WEIGHT ON NEWSPAPER ARTICLES concerning the enquiries made by the reporters who actually went to the area and attempted to identify the village from which the applicant claims to come.

As referred to above, Russell Skelton's article published in the AGE on 23 August 2002 indicates that he gave villagers in the area the opportunity to talk directly to the applicant by satellite phone in an attempt to clarify where he was from.

The article in the AGE and the earlier article published in the Australian on 14 August 2002 indicate that neither in Chaper nor in Charkh nor in Noliye nor in Chaparsak (end page 31, begin page 32) was it possible to find anyone who knew the applicant, indeed the residents were quite definite in saying that the applicant was not from that area.

In his statutory declaration dated 9 September 2002 the applicant denied that he had had the telephone conversation reported in the article in the Age dated 23 August 2002. In his submission dated 20 September 2002 the applicant's then representative said that he was instructed that both the article in the AGE and the earlier article in the Australian were incorrect and that it was not clear that the reporter from the Australian had gone to the correct village.

In his further submission dated 8 November 2002 the applicant's representative criticised the article in the AGE dated 23 August 2002 as being "far from balanced", "quite hostile" in tone and "with a number of negative connotations in style and content". In his submission to the tribunal (differently constituted) dated 5 February 2003 the applicant's representative claimed that the newspaper articles contained errors and that he had been misquoted by the journalist in Australia partly credited with the article in the Australian dated 14 August 2002 while the journalist in Afghanistan credited with the article had since been killed in an accident. He submitted that "these media reports are highly unreliable given the inability of the media to accurately report what was said to them."

However, we are not dealing here with the accuracy of a quotation attributed to someone. The applicant's representative did not indicate the basis for his belief (or the applicant's belief) that the reporter from the Australian had gone to the incorrect village and I do not accept the allegation that the reporter from the AGE fabricated his account of the telephone conversations conducted by satellite phone between the villagers in Afghanistan and the applicant.

Although the applicant's representative criticised the tone of the article in the AGE he proffered no motive to explain why the reporter would have fabricated his account as alleged by the applicant. As the hearing before the tribunal on 6 February 2003 the applicant said it was not necessarily the case that whatever was in the newspapers was true and in his response to the invitation to comment issued by the tribunal as presently constituted he said that the courts would not give a verdict against someone on the basis of newspaper reports.

However, this tribunal is not bound by the rules of evidence which is applied in the courts and I consider it appropriate TO GIVE DUE WEIGHT to the accounts given by the reporters of the results of the inquiries they made in the various villages in Afghanistan from which the applicant claimed to come.

Both the applicant and his representative have also suggested that people in Afghanistan would be reluctant to identify someone when shown photographs of them because of bad experiences under previous regimes in that country. However, as I put to the applicant in the (end page 32, begin page 33) course of the hearing before me, in a recent case involving another asylum seeker from Afghanistan an Australian migration agent was able to go to the village from which the asylum seeker and his family claimed to come and to find people ready to identify the family, including the wife's sister. (transcript of story from the 7.30 report 19 June 2003, accessed 14 July 2003). The applicant said that this person had had a sister in the village and this had encouraged people to identify him but he had no-one.

I do not accept that this was the reason why people were ready to identify the family and I do not accept the applicant's evidence that people in Afghanistan generally, or in the Shahrestan in particular, are unwilling to identify former residents from photographs. The reports in the Australian and the AGE suggest no such reluctance. If anything the report in the AGE suggests that the villagers were angry with the applicant for claiming to be from that village when he was not.

I likewise GIVE GREAT WEIGHT to the article in the Sun-Herald on 28 July 2002 indicating that a reporter who went to Quetta had no difficulty in finding people who identified the applicant as Asghar Ali Bakhtiyari, a resident of Hajiabad area of the city who had run a plumbing shop with his brother Sikander Ali until he had gone abroad in search of a good future. The reporter, Saleem Shahid, spoke to Sikander Bakhtiyari who identified the applicant as his brother.

He said that their family had land in Oruzgan province and that the applicant had gone to Afghanistan but he then left there. The applicant's response to this article is a flat denial. He denies that he has a brother named Sikander, that he has ever lived in Quetta or that he has ever worked as a plumber. He says that he does not know any of the people quoted in the article. At the hearing before me he said that it was all fabricated.

When I asked him if he was suggesting that the journalist had invented all these people, that they did not exist, he said that it was all politics. He reiterated that he did not know any of them. When I asked them why someone would claim to be his brother if this was not the case he said that he did not know why and he

repeated that this person was not his brother. He said that even in the camp people said such things, they said this person was his brother or this person was his sister.

Once again there is nothing in the evidence before me which suggests a motive from the reporter to have fabricated his account of his inquiries in Quetta. I find it impossible to accept that a number of people, including a person claiming to be the Applicant's brother mistakenly identified the applicant. Moreover, as I put to the applicant in the course of the hearing before me, I consider it significant that the results of the reporter's inquiries in Quetta are consistent with the documents which the Department obtained from the Pakistan National Database Registration Authority.

These indicate that someone called Asghar Ali Bakhtiari (end page 33, begin page 34) who was born in 1957, whose father was called Hussain Ali Bakhtiari and whose mother's name was Khursheed, and who had younger brothers called Ghazanfar Ali and Sikander Ali, was resident at an address in Hajiabad in Quetta in 1973 and 1975 and was still living with his parents in 1982, by which time he was a shopkeeper.

The applicant said that these documents do not "belong to him" or relate to him. He said at the hearing before me that these were false documents and it was easy to get false documents in Pakistan. He suggested that they had been fabricated by a person called Ghulam Ali with whom he had had a dispute. Quite apart from the fact that the applicant had never suggested this before, despite being given the opportunity to comment on the documents in the context of the proposed cancellation of his temporary protection visa, it does not explain the fact that the documents are consistent with the details obtained by the reporter in Quetta as referred to above.

Unless one posits some gigantic conspiracy, reporter's enquiries reflect the fact that, as indicated in the documents a person called Asghar Ali Bakhtiari did grow up in the Hajiabad area of Quetta, that he has a younger brother called Sikander Ali and that he was a shopkeeper. This is the same person identified as the applicant by a number of residents in Quetta, including a person claiming to be the applicants brother Sikander.

In his submission dated 5 February 2003 the applicant's representative submitted that the documents which had been obtained in Pakistan contained inconsistencies such as to raise doubts about the documents. He noted that the form B, (Family register) dated 18 August 1973 identified the children as Mariam, Aged 17, Asghar Ali, aged 15, Zakia aged 13, Sikander Ali aged 11 and Ghazanfar Ali aged 7, which he submitted would result in birth dates respectively of 1956, 1958, 1960, 1962 and 196: where as the form B (family register) dated 27 March 1982 gave the following dates of birth Maryam, 1956, Asghar Ali 1957, Ghazanfar Ali 1964 and Sikander 1968.

He noted that the first document had Sikander Ali four years older than Ghazanfar Ali whereas the second had him four years younger. He also noted that Zakia did not appear on the second document. He noted that the applicant's evidence was that he had no sisters and that his brother's names were Ghazanfar Ali and Muzafar Ali. With respect, the differences are minor, given that the family register forms are filled out by or on behalf of the head of the family, the applicant's father, whose memory for dates of birth or the ages of his children may be as poor as the applicants own recollection of his date of birth or age.

With regard to the fact that Zakia appears in the 1973 family register but not in the 1982 family register there could be a variety of explanations including that she died, (as the applicant says did occur with a sister although he has identified her as Shagul, the wife of Teimoor or Taymur Ali) or that she married and moved elsewhere and so was not listed on the 1982 family register.

In summary, as I put to the applicant in the course of the hearing and again in the invitation to comment issued by the tribunal in accordance with s 424 A of the Migration Act, I consider that the articles from the Australian and the AGE referred to above indicate that he is not from the village in Afghanistan he claims to be from. I consider that the Pakistan National Database Registration Authority in Quetta indicate that the applicant is Asghar Ali Bakhtiari, born in Quetta in 1957 and resident until he left a few years ago in search of a better future.

As I put to the applicant, the document which the department obtained indicate that he is a citizen of Pakistan since registration under the National registration act 1973 is only available to citizens of Pakistan.

I prefer the evidence contained in the newspaper articles referred to above and the documents obtained by the department from the Pakistan National Database Registration authority in Quetta to the applicant's own evidence, the exchange of letters purporting to be between the applicant's brother-in-law Teimoor or Taymur Ali, son of Abdullah, a resident of Charkh Bargar and the governor of the district, purportedly confirming that the applicant and his family were residents of the Shahrestan district who left Afghanistan during the Taliban era, the taskeras or identity booklets purportedly issued in 1996 to the applicant AND HIS WIFE'S BROTHER, Mazhar Ali, and the letter dated 28 August 2002 from a person whose name is illegible to the minister of the Interior with a notation to the effect that a person naming himself as Mohammad Ali Mahdavi, the counsellor of the head of the Interim Islamic Government of Afghanistan, has knowledge that the applicant's family is from the district of Sharehstan, province of Oruzgan, and with an endorsement purportedly from the "Office of People's Identity" stating that the applicant and his family are originally citizens of Afghanistan and that their citizenship is solemnly confirmed.

As the applicant himself said at the hearing before me, it is easy to obtain false documents in Pakistan and, as noted in the tribunals invitation to comment further in accordance with section 424A of the Migration Act, a senior official of the Afghan Embassy in Islamabad told the Australian High Commission in Islamabad in 1995 that we was aware of fraudulent taskeras being printed in Pakistan and that he believed that for a payment a book could be issued to anyone with whatever details they required (Afghanistan birth registrations and identity books, 31 May (end page 35, begin page 36) 1995 CX19906). In his response the applicant said he did not deny this although he suggested that it was because Afghanistan did not have the resources to produce its own printing machines.

In his response to the tribunal's invitation to comment issued in accordance with s 424A of the migration act the applicant suggested that weight should be given to the decision of the delegate of the minister who granted him a sub-class 785 (TPV) on 3 August 2000. She accepted the applicant as a national of Afghanistan, referring to his fluency in the Dari language, the fact that at the interview he had been "questioned at length about his village of Chaper" and that he had been "able to demonstrate a detailed knowledge of this area including details about the surrounding villages, the mountain range, marriage customs and food" and "the absence of any evidence to the contrary".

However, as the linguistic analysis from Mr Jan Mohammed produced by the applicant's then representative makes plain, the Hazaras of Pakistan speak the Hazaragi dialect of Dari as do the Hazaras in Afghanistan. In accepting that the applicant had a detailed knowledge of the area from which he claimed to come in Afghanistan the delegate did not have the advantage of the evidence contained in the AGE indicating that the applicant does not in fact have a detailed knowledge of the area from which he claims to come in Afghanistan.

That he has some knowledge of Afghan marriage customs and food is no more surprising than that an Australian of Greek descent, for example, should have a knowledge of Greek marriage customs and food.

So far as the letters from Ali Yawar Rezaee and Ali Kamali and the press report of comments attributed to Ali Kamali are concerned, I consider it possible that the applicant's family has land somewhere in Oruzgan, as the applicants brother Sikander told the reporter from the Sun-Herald and that the applicant may have visited Afghanistan and may have been seen by Ali Yawar Rezaee and Ali Kamali as they state.

I note that neither states specifically the village from which they believe the applicant to come: they state that he is from Oruzgan province. I do not consider this evidence is inconsistent with the conclusion that the applicant is a citizen of Pakistan, although his forbears were from Afghanistan and his family may have land there.

To pursue the analogy drawn in the last paragraph, there are many Australian citizens of Greek origin who regularly visit Greece and some of whom have property there. I do not consider it necessary to make a finding as to whether the applicant's family does in fact have land in Afghanistan. I consider it sufficient to observe that in my view the evidence of Ali Yawar Rezaee and Ali Kamali does not in its terms cast doubt on the conclusion that the applicant is a citizen of Pakistan.

For reasons given above I find that the applicant is a citizen of Pakistan. I find that he is Asghar Ali Bakhtiari, born in Quetta in 1957 and a resident there until he left some years ago. Although I invited the applicant to do so at the hearing before me, he has not suggested that he has a well founded fear of being persecuted in Pakistan for a convention reason if he returns to what I have found to be his country of nationality, Pakistan.