

Submission to the Senate Legal and Constitutional References Committee
Enquiry into the Administration and Operation of the Migration Act 1958
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This submission addresses Part a) of the Terms of Reference:
'the administration and operation of the *Migration Act 1958*, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications.

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1. Introduction:

In early 2002 I began with other volunteers to teach English to the approximately 60 Afghan Hazara men on Temporary Protection Visas (TPVs) who were residing in Murray Bridge, South Australia. The terms of their visas denied them the right given other new arrivals to Australia to English lessons funded by the Federal Government.

In 2003 I also began to assist the men with preparing their cases for their interviews to apply for permanent residency (PPVs). I collected news articles about security in their areas in Afghanistan, listened to their stories and prepared them for their cases to be presented to DIMIA by their Migration Agents and lawyers.

I was subsequently employed by Murray Mallee Community Health to continue this work of assisting preparation for interviews.

Since late 2004 I have been employed by Lutheran Community Care to coordinate the Refugee Support Project in Murray Bridge. (Please note that this submission is made by me as an individual, and not as an employee of either agency mentioned.)

As a result of this experience I have listened to and recorded scores of stories, not only about the circumstances in Afghanistan from which these men fled, but of their dealings with DIMIA Case Officers, DIMIA appointed interpreters and so-called Language analysts.

It is on these experiences that I base my submission.

2. The TPV System

Mr [REDACTED] was a Hazara TPV holder, resident in Murray Bridge, who committed suicide in February 2003. *The 7.30 Report* of 27/5/03 aired translations of some of the things that Mr Wahidi said in the tape that he left to be read after his death, including the following:

'I lived in this land for three-and-a-half years, I was thirsting to see my children, also my father and mother and sister and brother, but I realise that I can no longer tolerate these pains.'

Father Tony Pearson, of the Catholic Otherway Centre in Adelaide, said Mr Wahidi died of fear. "It was mental illness induced by the dreadful stress and strain of an educated man coming to Australia filled with hope, being locked up behind razor wire for six months then being released without security for the future. He came to Australia with hope and became even more hopeless, and I am seeing the same stress and tension and gradually failing hope in hundreds of Afghan visa holders."

From 'Frightened to death by a return to Afghanistan', *Sydney Morning Herald* February 22 2003

The following cases further illustrate the inhuman stress that the TPV system has caused men already traumatised by violence in their native land, by their perilous journey of hope to Australia, by the enforced separation from their families, the danger in which their families remain while they wait, and the cruelty of waiting years for an outcome which could send them back to terror.

Mr. Wahidi was an example of the extremes to which the inhumanity and, in most cases, ultimate futility of the Temporary Protection Visa system drives its victims. The men who I shall refer to by their initials are, thankfully, still alive.

3. Effects of the long wait for interviews:

Temporary Protection Visa Holders are not entitled to apply for permanency before 30 months has elapsed since the award of their TPV. Most of the men in Murray Bridge, in fact, have waited between 40 and 60 months for the interview to decide their status.

H. J. considered suicide many times. Several times he went to a particular bridge and nearly jumped. Only the image of his youngest child stopped him. It is shameful to speak of such things in the Hazara culture, so there are probably many more men who have considered the same path than have spoken about it.

The Hazara culture holds drinking alcohol as anathema. Even though it is shameful, and therefore every attempt is made to hide the fact, I know of at least three men, M. M., A. A., H. S., who have become alcoholic while waiting.

A. K. and A.A. have become addicted gamblers.

Nearly every man I have worked with has complained of not being able to think clearly or to remember things.

All have complained of sleep difficulties. R. M. for example, told me that he considered three hours a good sleep – he usually got only two. His constantly red eyes bore witness to his difficulty.

4. Effects of refusal of visa applications:

L. M. is a very intelligent man, keen to learn. After his refusal he stopped coming to lessons because his 'mind did not work'. This has been a common complaint of men in English lessons.

A. H. drove taxis for 3 years with no traffic infringements. In the 6 months after being refused a Permanent Visa by his DIMIA case officer he committed driving offences that totalled 12 demerit points. He has, most sensibly, stopped driving altogether but as a consequence is unemployed.

G. J. did not sleep for several days after his DIMIA refusal and started driving recklessly and at high speed. This ended in a one-car accident in the freeway which totalled his car and put him in hospital for a week.

Z. H. waited 4 years for a DIMIA interview. He tried to hang himself and was discovered and cut down by friends, but has sustained damage to the vertebrae in his neck. Z. H. was run over recently, and bystanders claim he was lying on the road at the time.

A. H. could not be found after he received his refusal. I eventually made contact only to find that he had been driving and crying for 2 days. A.H. isolated himself from everyone for several months, and talked of suicide.

A. S. has been cut down from an attempted hanging, and months later friends found another rope coiled among his belongings.

L. M. could not eat anything except very soft food because of tension in his throat.

5. Suffering of families because of the long wait:

M. M.'s 15 year-old brother was murdered and his female relatives beaten and abused while he awaited his interview. He warned his case officer several times that he was concerned that this might happen, but his case was not expedited.

The men's families have, in general, fled to Pakistan and Iran while the men are in Australia. In most cases the families could not afford to pay a people smuggler for more than one person so only the fittest male only attempted the journey. Pakistan and Iran are not safe for Hazaras, let alone 'illegal Hazara migrants'. The men suffer great anxiety while their families wait in, for example, Quetta, where massacres of Shi'ites (the men in Murray Bridge are all Shi'ite) occurred only last year near Liaquat Market in Hazaratown, where most of the men's families live while they wait.

L. M.'s family was discovered hiding in Quetta, and was forced back across the border to Kandahar, the birth place of the Taliban, the most voracious of the persecutors of the Hazara people, beyond the sphere of influence of Hamid Kazai and the international forces.

6. Enormous power of junior officers

While the wait for the re-determination of refugee status has caused needless suffering, the ignorance, insensitivity and in some cases outright malignity of the Minister's Delegates – the 'case officers' – has compounded the distress of TPV holders.

There was one Delegate who was notorious for refusing the very great majority of the applicants who came before him. This man's record was so bad that in late 2003 the Department itself, after numerous complaints by applicants and their lawyers and Agents, finally removed him. This was not before several men whom I assisted, most notably K. R. and S. A., were refused by him. I read both of these men's decisions, and the kindest thing that could be said about this Delegate's decisions was that they displayed ignorance and illogic.

These men were doomed to many more months of worry while they waited for a hearing at the RRT.

It is well known among refugee circles that some Delegates will accept most applicants, while others reject the majority. Thus a positive visa decision is often a matter of luck.

All of the men living in Murray Bridge who were refused at the DIMIA interview went on to take their cases to the Refugee Review Tribunal (RRT) which subsequently determined that all but one of them were in fact 'Convention' refugees.

That this reflects the experience of Afghans around Australia is shown in the RRT Annual Report of 2003-2004. In that year the RRT received a total of 726 applications in relation to the refusal of further protection visas from persons from Afghanistan. As at 30 June 2004, 390 cases had been finalised, and the RRT had set aside the primary decision in 354 of those cases. Refugee Review Tribunal Annual Report 2003-2004, Part 1 Principal Member's Overview

7. Interpreters

The decision of whether or not to grant refugee status is based on both written submissions and oral evidence. Since these must be in English, it was necessary for the men to rely on interpreters.

Most of the violence in Afghanistan from which these men fled was perpetrated by ethnic group upon ethnic group – in most cases by the Pashtun Sunnis on the Hazara Shi'ites. It has not been uncommon, however, for the men to be provided with DIMIA-appointed interpreters who are Pashtun.

G. J. specifically requested that he not have a Pashtun interpreter. At the interview he found that he was indeed provided with an interpreter who was not only Pashtun, but a friend of a man about whom his case centred. He continued with the interview, in some distress. He was refused at that interview and went on to be successful at the RRT.

At the start of the visa interviews the applicant is asked if the interpreter present is acceptable to them. No man I know of has ever refused an interpreter when asked this question. The men are aware that there is a shortage of Dari-English interpreters, and to refuse the interpreter in question could mean extending their already very long wait for a determination for several months, and also risk the disapproval of the Delegate on whom their decision depends. (Once assigned a case officer/ Delegate, the applicant remains on their case list.)

Malyar and Sayar Dehsabzi are migration agents and have been DIMIA-appointed interpreters.

The following information is abstracted from *Lost in Translation: The dangerous undercurrents of refugee politics*, Julie Macken Australian Financial Review 25/09/2004:

The Dehsabzis are Sunni Pashtuns from Afghanistan, and in the mid-1980s worked for Afghan warlord and Osama bin Laden supporter

Ghulbuddin Hekmatyar. The brothers have openly expressed hostility to Hazaras.

Malyar Dehsabzi was employed by the immigration department as an interpreter at Australia's refugee detention centre on Nauru. An International Organisation for Migration officer who worked on Nauru at the time told the *Australian Financial Review*: "Interpreters were assigned 15 or so cases at a time. Malyar would regularly declare 10 out of his 15 to be Pakistani. Other interpreters found either none or one at most." Other interpreters found either none or one at most." The consequences of a declaration of ethnicity could prove fatal to an asylum seeker's chances of finding protection in Australia, because these remarks would become part of the application process.

A. H. had the misfortune to engage [REDACTED] as his Migration Agent to advise him and prepare his Statement for his primary interview. A. H. claims that [REDACTED] misrepresented his claims and as a consequence his application was rejected. His appeal to the Refugee Review Tribunal also failed because, as the Member noted, the primary decision maker had a right to rely on the statement that A. H. had presented. That statement was, however, flawed, and those flaws also led to the rejection of his claims by the Refugee Review Tribunal. "...the primary decision maker... is entitled to rely on that statement (the statement prepared by [REDACTED]) as setting out the Applicant's claims." (N03/47482 2 April 2004)

K. Z. had [REDACTED] assigned as his interpreter for his Unauthorised Arrivals interview. In his next interview K. Z. gave reasons for his flight to Australia, but this evidence was contradictory to that given in his initial interview. As a consequence of the inconsistencies in his statements his claim for a Protection Visa was rejected. In the Record of Decision the Minister's delegate noted that when K. Z. was asked to explain the differences in the interviews, K. Z. responded that 'the interpreter told him to speak as little as possible, and that there would be another interview.' (*Decision Record p.12*)

The DIMIA delegate found this explanation 'implausible' because 'the interpreter was a NAATI accredited interpreter... required to adhere to a strict code of ethics and professionalism that does not allow for this sort of conduct.'

The code of ethics of NAATI did in fact require [REDACTED] to act ethically, but in the meantime or professionally on many occasions when acting as an interpreter for DIMIA interviews.

[REDACTED]

8. Conclusion

This is a record of a few lives broken and twisted because of the inhumane and unnecessary system of Temporary Visas and the determinations of

refugee status carried out by officers who are often uninformed, misinformed and in some cases downright malign.

These are just a very small number of the people who have suffered under this system in Australia. I beg the Inquiry members to recommend the immediate cessation of the TPV system, and that where determinations of refugee status must be made, that they are made by a disinterested and well-informed body that is un beholden legally or financially to the Federal Government.