

Introduction

Albany is a major port on the south coast of Western Australia, servicing a rich rural hinterland. An export abattoir, Fletcher International, opened here in 1999. At this time a number of Hazara refugees came to Albany to work in the abattoir and other rural industries such as horticulture and viticulture. By 2003 there were close to 100 refugees living and working in Albany, most of whom held Temporary Protection Visas (TPV), although a number of men who had obtained permanent protection in 1999 and 2000 had settled with their families. The Hazara settled in well and were regarded as hardworking and reliable employees. Because of the rules attaching to their TPVs they were unable to access Adult Migrant English courses so a significant number signed on to the voluntary Adult Literacy programme known as Read-Write-Now. Through this programme and other leisure activities, many developed strong links with members of the Albany community. Their tutors acted as support people and scribes during their interviews with the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) when, after three years, assessments were being made of their continued claims for protection. When it became clear that the majority of Hazara had had their claims turned down and that they would be forced to return to Afghanistan, a meeting of Read-Write-Now tutors and their students was convened. Initially this focussed on preparing the men for return, and assisting their supporters maintain their own and their students' psychological health. This was felt to be especially urgent in the light of the recent suicide of a refugee in South Australia. A number of other meetings was held, out of which grew our group, Albany Community for Afghan Refugees (ACFAR). The refugees have been full members of the group and in spite of real fears as to the consequences of being too outspoken, worked hard to bring their case to the Albany community. Over the next few years ACFAR organised public meetings and raised awareness of the situation facing the Hazara men. These events included a large rally, a community roundtable and culminated in the City of Albany council passing a motion supporting their permanent residence in Australia. Although the urgency of the campaigning has died down, ACFAR members continue to support the refugees who remain in Albany and to campaign to bring change to Australia's refugee policy.

In our submission we will largely confine our comments to Reference A of the Inquiry's Terms of Reference as these are the areas with which our members have had most experience. Many of the incidents we describe below are small in themselves, but each one illustrates some aspect of the problems being examined by the Inquiry, and taken over the thousands of asylum applications submitted to the DIMIA over the past six years, adds up to a significant toll in emotional and physical anguish.

1. Nature of the Migration Act 1958

The *Migration Act 1958* is a very lengthy and complicated piece of legislation which changes frequently. This has led to the development of a significant industry providing migration advice. Although regulation of Migration Agents has been tightened considerably over the past years, the process for refugees and asylum seekers attempting to navigate the labyrinth of the *Migration Act* is frequently confusing and expensive. Organizations such as CASE for Refugees offer help but their resources are limited. There are substantial penalties for people who provide immigration advice without registration by the Migration Agents Registration Authority (MARA). While aimed at curbing

exploitation these act as a very powerful disincentive to volunteers. Refugees are forced to pay for assistance, particularly when making appeals to the Refugee Review Tribunal (RRT).

Sections of the *Migration Act 1958* bring us into conflict with international conventions to which we are signatories. In many of the ways in which it operates, the *Migration Act* appears more designed to prevent people coming to Australia at all and to punish them for exercising their right to seek asylum, than to regulate the flow of people into and out of Australia in an orderly and fair manner.

The system of Humanitarian visas was made harsher and much more complicated by the 27th September 2001 changes which severely curtailed the rights of asylum seekers to claim protection if they entered Australia at an "excised offshore place". This has resulted in different classes of protection and enabled the establishment of "offshore processing centres" from where access to permanent protection in Australia is extraordinarily difficult.

The numbers of different Humanitarian visas available and the varied conditions attached to them also make unnecessary difficulties for asylum seekers and their supporters.

These points are illustrated in the case of A. Five ACFAR members travelled to Katanning, a wheatbelt town north of Albany, to obtain further material for this submission. During our meeting we were introduced to A, who had recently returned to Western Australia from Sydney. He had settled in Katanning and his friends there were very concerned at his plight. With his friends' assistance and his limited English we were able to piece together the following story.

A arrived in Australia in November 1999 and spent 5 months in detention in Port Hedland. Just before his first interview with a DIMA officer, his interpreter, a Tajik man, warned him not to speak of his political activities in Afghanistan, otherwise he would be sent back. A followed this advice. He did note that the interpreter explained his description of persecution by Pashtuns as persecution by the Taliban. This interview was recorded.

A eventually received a TPV and travelled to Sydney. Again, at his next interview with the Department he did not recount his political experience, for fear of being seen to have changed his story and because of the first interpreter's threats. His application for protection was rejected and he took his case to the RRT. On both occasions, a Pashtun interpreter was used. A was represented at the RRT by a migration agent who requested an expedited result. Again, A did not mention his political affiliations. A's application was rejected by the RRT and he does not understand on what grounds. He paid \$1400 for mounting an unsuccessful case in the RRT. His migration agent then wrote on A's behalf to the Minister. A response took over a year to arrive. We assume that this may have resulted in his current TPV.

A does not understand the system in which he is enmeshed and was unable to explain it clearly. He did tell us that he had taken part in a Magistrate's Court interview on June 17th 2005 on his mobile phone, while sitting in his car. A thought this action related to an appeal to the High Court. A migration agent had drawn up a statement for A to present to the Court, at a cost of \$800. A has not received a copy of this statement. On July 6th he was told that the Court had again found that he was not a refugee. He has since received an invoice from DIMIA for \$6000. A thought this was a "fine". In addition to the emotional

toll on A since his arrival in Australia, he has disbursed substantial amounts of money for assistance and is worried that he will not be able to meet his most recent debt to DIMIA.

2. The TPV system

The TPV system is very cruel as it has the effect of keeping those accepted as being genuine refugees in a state of limbo. They have justifiable worries about the conditions under which their families live overseas and yet, are not allowed to leave to deal with emergencies, if they wish to return to Australia. They feel guilty at having left their wives and children facing the dangers of their homelands. They miss their families and worry about their children growing apart from them. Above all, they live with the knowledge that they must again prove that they require protection and will need to provide detailed information on the situation in their home villages and districts to substantiate these claims. This is often difficult as communication with the mountainous rural areas of Afghanistan is erratic or impossible and any such communication could place remaining family members in danger. Sometimes, their families have no knowledge that they have reached safety.

B's mother died fleeing Afghanistan and before he could let her know that he was safe. For over three years he had no knowledge of his family's situation, then found out that his mother and siblings were dead. Months later, he discovered that although his mother had died, his siblings, for whom he was now responsible, were alive and living tenuously in Iran. It is no wonder that while riding this emotional roller coaster he sustained a serious work place injury.

The Hazaras in Albany were able to support each other through this process and were able to make links with the wider Albany community which also helped support them. Because they were working, many were able to make use of mobile phone and internet technology to find family members and keep abreast of political developments in Afghanistan. The incidence of mental health problems caused by the uncertainties of their lives seemed relatively low, but it is noteworthy that many suffered workplace injuries and reported troubled sleep and nightmares. Many stayed in jobs that their Australian colleagues considered too onerous, because they felt that they had no choice but to stay.

(i) The 7-day rule

On September 27th 2001, Regulation 866.215 (1) came into effect. It means that any person who had spent more than 7 days in a country en route to Australia and who had arrived without a valid visa, was not eligible to receive permanent protection. The Minister was however, granted discretion to waive the requirement if satisfied it was in the public interest to do so. This has the effect of discriminating against refugees who arrived in boats or without valid documentation and meant that TPV holders would be required to regularly prove again their refugee status. If they were found to still be owed protection they might only ever receive another TPV, unless the Minister (or her delegate) exercised the discretionary power. It is inequitable however, that the method by which an asylum seeker reaches Australia will determine the rules under which their claims are processed.

(ii) Slowness of decision-making process

In Albany, in 2003 35 Hazara men were interviewed at the end of their TPVs. All the applications for permanent protection were rejected. Two men returned to Afghanistan, while the others appealed the decisions in the RRT. The hearings began in November 2003 and extended through 2004. The Tribunal remitted all cases to the DIMIA for reconsideration and PPVs were eventually granted. However, the length of time taken for these decisions and then, for the grant of the visa was excessive.

C, whose case was remitted to the DIMIA for reconsideration in late June 2004 finally received his PPV on 19th April 2005.

D appeared before the RRT in November 2003 but did not receive his visa until February 2005.

(iii) Inconsistency of application

Refugees taking part in 30 month interviews in Albany from May 2004 onwards have been affected by the "7 day rule". They were able to submit statements requesting the Minister to waive the operation of this rule. All except E received PPVs.

E, whose route to Australia was the same as the others, undertaken in similar conditions, received another TPV and the case officer, when informing E of the results of his application, did not offer him the chance to appeal to the Minister. E knows that the majority of those who arrived on the same boat and others who arrived on later boats, have received permanent visas and some have already been joined by their families. E was given no reason why his case officer chose to apply Regulation 866.15(1) to his application. E's Hazara friends with permanent visas want to support his case but are worried that to do so will jeopardise their own applications for family reunion.

There also appear to be differences in the way that various state offices of the Department make decisions.

3. The "Culture" of the DIMIA

Many officers of the Department seem to view all applicants for Humanitarian visas as fundamentally dishonest. Interviews attended by ACFAR members have appeared in some instances to be interrogations rather than a civilised inquiry into the facts of a humanitarian claim. In addition to hectoring tones, some DIMIA officers seem poorly trained in conducting interviews. Some displayed inappropriate body language, appearing disinterested in the people before them who were recounting tales of appalling abuse.

Enormous power is wielded by junior officers who, especially in the early period of Hazara arrivals in Australia, knew little or nothing about the circumstances facing Hazaras in Afghanistan. Interpreters from ethnic groups hostile to the Hazara were often used to interview asylum seekers. Adequate maps of Afghanistan were not used until 2003. This lack of knowledge flowed through to RRT hearings. In one case a Tribunal member was unaware that Hazara political parties had been fighting each other.

Letters sent to refugees were often unsigned or the signature block carried only an indecipherable signature and a position number. It is a strange experience to contact the Department and request to speak to "Onshore Protection, Position Number 6000****".

Telephone calls are often not returned and the address blocks did not carry the Department's freecall number, causing further expense to country-based refugees..

D was dealing with the DIMIA Freedom of Information section and had been given a direct line to use when enquiring about his case. He called on at least 5 occasions and left messages which were not returned.

Many officers with whom we have dealt show a complete absence of any commitment to providing good Customer Service and no understanding of the difficulties faced by their clients, especially those who have to obtain documentation to support family reunion applications.

F is sponsoring a close relative to Australia. Gathering the required documents (identity, proof of relationship, police clearance, supporting Statutory Declarations, signatures on forms, certified copies of passports and visas, taxation information) took more than ten weeks. The documents were submitted to the appropriate Australian Mission for processing, along with a credit card payment. When F contacted the DIMIA office at the Mission some months later, he was told that his application could not be processed because that Post did not accept credit card payments. The documents had been returned by courier. When the documents did not arrive, F's Australian friend contacted the Mission on his behalf. The DIMIA officer then told F's friend that, "As the documents contained nothing of value, I sent them through the ordinary mail." A subsequent call to the same officer failed to elicit any further assistance in tracing the documents. F had to cancel his credit card and recommence the whole application process.

When the Department makes mistakes no responsibility is taken. We are aware of at least two cases where Departmental mistakes in the spelling of a refugee's surname have led to additional expense and frustration for the clients, because the DIMIA officer refused to correct the spelling.

In one case, a refugee had to apply and pay for, an additional Australian Federal Police clearance while in the other, the issuing of the visa and travel documents was held up for three months.

The family reunion process for refugees is overly complicated and onerous. Form 842, the main application form is 27 pages long, while Form 681, required of the proposer is 12 pages. Applicants are asked for documentation which simply does not exist, such as birth and marriage certificates and death certificates. In a country such as Afghanistan, wracked by decades of war, the civil infrastructure that could provide these documents has been destroyed. The Taliban government refused to issue girls and many Hazaras with the national identity document known as the Tazkera.

Refugees frequently flee with very little so obtaining adequate documentation is onerous, if not impossible. Afghanistan Consulates-General in the regional cities of Iran and Pakistan often refuse to issue passports and identity documents to Hazara applicants unless the applicant provides a letter from the Australian mission documenting the visa application. However, an application received by DIMIA without correct documentation is likely to be returned or held up.

In a war-ravaged country, many children are orphaned and become part of other families. Requiring the adoptive families of such children to provide legal documents substantiating

these adoptions adds significantly to the delays in re-uniting families. When these children are included as immediate family members at the asylum seeker's arrival interview they should be accepted as eligible for family reunion with their adoptive family, without the need for extensive documentation.

Recommendations

1. The *Migration Act 1958* be repealed and replaced with an entirely new *Migration Act* in which the Humanitarian and Refugee functions are handled by a statutory body outside any new Department of Immigration. This would enable the development and application of policies in line with our international treaty obligations, and our role as compassionate global citizens. An organization outside the Departmental framework would be better able to resist political pressure when making decisions. It would be possible to develop a considerable pool of specialist knowledge which could be used to monitor and advise on situations where potentially serious outflows of refugees were likely. Expert advice could be obtained from neutral outside bodies such as universities in order to inform decision making. This would help departmental officers avoid the mistake of using interpreters from opposing ethnic groups and would ensure that determinations are based on adequate knowledge of the asylum seekers' situations.

With changes to the world's weather patterns and potential conflicts over resources, many people may be forced to leave their homes. Australia needs to prepare its responses to these refugees and should also take part in negotiations at an international level to update the UN Convention on Refugees and the Protocol.

2. All TPVs should be abolished. If a person meets the requirements for refugee status, they should be entitled to permanent protection.

3. All "offshore excised areas" should be returned to the migration zone.

4. All DIMIA officers dealing directly with members of the public and with visa applications, need sound customer focussed training and education. This should not be confined to brief courses but should be part of any induction programme and continuing professional development. If possible, officers should be discouraged from seeing themselves as administrative border guards.

5. Make the definition of "close family" uniform across all Sections of the *Migration Act* which will broaden the family reunion available to refugees, so that, for example, unmarried refugees are able to propose parents and siblings as family.

6. A longitudinal study be made of refugees caught up in the TPV process, to monitor the success of their settlement, their emotional and physical well-being and that of their families, especially adolescent boys.

Conclusion

The past few years of work with the Hazara refugees in Albany have been immensely rewarding, though frustrating. We have made many new friends both here and across Australia, and have shared both deep sadness and great joy. Clouding this however, has been our realisation that the policies and practices of one of the most important Federal Government departments have frequently been cruel, capricious and less than transparent. For some of us, our belief in the rationality of our public service processes has been seriously undermined. A's story illustrates all too clearly the grave concerns we have at the processes and application of our refugee policies. Our system for protecting asylum seekers has clearly failed A. If four Australian citizens with tertiary qualifications and a sound knowledge of our political culture could not comprehend the process he described how can Australia claim it to be a fair and transparent system that adequately meets our obligations to asylum seekers?

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