

Afghanistan assistance Clinic

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LEGAL BRIEF IN SUPPORT OF AFFIRMATIVE APPLICATION FOR ASYLUM SUBMITTED BY X

Applicant submits this application for asylum on the basis of his well-founded fear of persecution in Afghanistan on account of his his political opinion (member of previous government; opposed to Taliban) and his ethnicity (Tajik). In addition to the identity documents required as part of his application, X also submits extensive additional evidence regarding the threat of persecution facing members of the former Afghan government, particularly in the security and national defense sector. X respectfully requests that his application for asylum be granted so he may remain in the United States.

An applicant qualifies as a refugee by showing either (i) actual past persecution or (ii) a well-founded fear of future persecution on account of one of the enumerated grounds. INA 101(a)(42). *See also* Matter of Mogharrabi 19 I. & N. Dec. 439 (BIA) (“An applicant for asylum under section 208 of the Act has established a well-founded fear if a reasonable person in his circumstances would fear persecution.”)

 X qualifies for asylum on grounds that (i) he cannot return to Afghanistan owing to his well-founded fear of persecution and (ii) that a reasonable person in X’s circumstances would fear persecution.

 X respectfully requests that his asylum application be adjudicated as persecution on account of his political opinion and his ethnicity.

1. **X is a former member of the democratic Afghan government and a Tajik**

*\*Please refer to X’s Statement in Support of Application for Asylum (Exhibit A)\**

1. **Past Threats**

"If an alien establishes that he has been persecuted in the past for one of the five reasons listed in the statute, he is eligible for a grant of asylum." Matter of Chen, 20 I. & N. Dec. 16 (BIA 1989).

X has experienced threats from the Taliban for years prior to their assumption of control of Afghanistan. After graduating from high school, X hosted a radio station in his native Town, which played music and permitted women to call into the show. U.S. military funds contributed to the station’s budget (*See* Exhibit A). X received repeated anonymous threats from the Taliban, warning him to stop running the station or he would be harmed. Talibs also contacted his family and friends, ordering them to make X stop running the radio station and stop allowing women to speak on air.

As a graduate of the Fulbright Scholars program and a member of Afghan’s democratic, American-backed government, X became a more significant target for the Taliban. Afghanistan’s government provided officials of X’s level with armored cars for daily travel through City out of concern for the threat posed to them by agents of the Taliban. X was listed by name in a letter circulated through the government of individuals at particular risk of assassination by the Taliban (*See* Exhibit O).

After the unexpected fall of Kabul in August 2021, X’s apartment was raided by the Taliban, and his armored car was stolen (*See* Exhibits A and L). As the Taliban is now the effective government of Afghanistan, with American forces pulled out and the former democratic government in exile, no protection exists to keep the Taliban from carrying out violence or persecution against X.

Past persecution creates a rebuttable presumption of future persecution. 8 CFR 208.16(b)(1)(i). Here, X has been targeted by the Taliban in the past for his work, and is therefore very likely to continue to be targeted by them in the future.

1. **X has a well-founded fear of future persecution based on his political opinion and his ethnicity**

Matter of Mogharrabiestablished both a subjective and an objective standard for the “well-founded fear” requirement, a stance which has been adopted by the Second Circuit (19 I&N 439). Mr. Ahmad has a genuine and objectively reasonable fear of persecution should he return to Afghanistan.

In In re O-Z- & I-N- 22 I. & N. Dec. 23 (B.I.A. April 2, 1998), the BIA cited the 9th Circuit case of Singh v. INS 94 F3d 1353 (9th Cir 1996), wherein the Court affirmed that “persecution meted out by groups that the government is *unable* or *unwilling* to control constitutes persecution under the Act.” (emphasis added).

 The facts below illustrate how X’s case aligns with these legal precedents and requirements for asylum.

1. **Political opinion**

X fears reasonably that the Taliban government of Afghanistan will subject him to torture and likely death if he returns to Afghanistan. In the months since the Taliban took control of Afghanistan, they have shown a pattern of reprisal attacks against former members of the democratic Afghan government, particularly those in the security sector (*See* Exhibits DD [pg. 6], Q and R). As a former member of Government Office (*See* Exhibits D, J and M), whose duties included government resistance against the Taliban insurgency, X is at risk of being a victim of such a reprisal attack.

Furthermore, Talibs from X’s hometown, who were familiar with him and his civil engagement work prior to university may see this as the ideal opportunity for reprisal violence. Since August 2021, X’s family home in Town has been raided twice by the Taliban, and approximately 3 hectares of their land was taken from them and given to a Talib fighter. X’s sister, who currently lives in the home with her husband and children, was told that “[X] is welcome to return and get back his land.” (*See* Exhibits E and L).

X’s American colleagues are aware of the particular danger facing him due to his work and political views. He has been recommended for both a Special Immigrant Visa (SIV) and a P-1 visa, and his American peers were eager to get him out of Afghanistan as the Taliban closed in on Kabul (*See* Exhibits G, H, and I).

While the Taliban leadership’s stance is that reprisal killings will not and should not take place, they have proven already to be either unable or unwilling to control the rank and file, who have carried out over 500 known killings of former government personnel (*See* Exhibits DD [pgs. 4, 17], Q and S). The Taliban have been famed for their brutality and their severe penal code since they first rose to power in the 1990s, and the developments in Afghanistan since August have shown that little has changed in their methods.

1. **Ethnicity**

Matter of Acosta 19 I. & N. Dec. 211 (BIA) states that a well-founded fear of persecution may exist where

“(1) the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware, or could easily become aware, that the alien possesses this belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien.”

X is Tajik, a group viewed with suspicion by the Taliban due to their historical opposition of the Taliban. The Taliban is made up primarily of Afghanistan’s largest ethnic group, the Pashtun (*See* Exhibit P). Afghans are able to identify Tajiks by their surnames, which evince their ethnic identity. Tajiks also speak Farsi (Dari) as a mother tongue, while the Pashtun speak Pashto. While X is fluent in Pashto as well, his accent gives him away as a Tajik.

News reports suggest the Taliban is already taking a harder stance against Tajiks, subjecting them to more frequent and more invasive home searches. In Afghanistan, where the sanctity of the home is of great value, these searches are considered especially invasive and disrespectful (*See* Exhibits P and W).

Statements by the United States’ military attaché in Afghanistan show that X’s American colleagues viewed him to be at risk of persecution by the Taliban and sought to evacuate him for his safety (*See* Exhibits H and I).

1. **Inability to internally relocate**

In Matter of M-Z-M-R 26 I&N Dec 28, the court held that

“for an applicant to be able to internally relocate safely, there must be an area of the country where he or she has no well-founded fear of persecution… Moreover, because the purpose of the relocation rule is not to require an applicant to stay one step ahead of persecution in the proposed area, that location must present circumstances that are *substantially better* than those giving rise to a well-founded fear of persecution on the basis of the original claim.” (emphasis added).

Due to X’s front-facing work and high level of national visibility, he is unable to relocate safely within Afghanistan, even outside City or Hometown.

1. **Visibility**

Due to his prominence, it is impossible for X to resettle safely elsewhere in Afghanistan. Even outside his hometown and his previous residence of City, he is likely to be well-known. X has published many articles on the development of the democratic Afghan government and its resistance to the Taliban, and he has appeared multiple times on TOLO News, Afghanistan’s national news program, as well as on the BBC news program (*See* Exhibits N and CC). This publicity, combined with the high-visibility aspect of his role in Government Office, which involved traveling to local provinces and speaking to local governance and leaders there, make it virtually impossible for X to relocate somewhere in Afghanistan where he will not be recognized and his opinions on the Taliban will not be known.

1. **Biometric identification**

The biometric system developed by the United States to register Afghans and track their data was handed off to the Afghan government, and has since fallen into the hands of the Taliban. This biometrics program includes information such as “iris scans, fingerprints, photographs, occupation, home addresses, and names of relatives.” (*See* Exhibit U and V). X entered his data into this system as was required for government employees, and therefore he can say with certainty this information is accessible to the Taliban. At any legal point of entry into Afghanistan, X will be required to scan his fingerprints, which will bring up his profile in the system. Therefore, X is not able to legally re-enter Afghanistan without announcing his arrival to the Taliban and confirming his previous occupation as a member of the democratic government.

1. **Conclusion**

Based on the above, it is clear that X satisfies the refugee definition found in the INA and meets all the legal requirements to receive a grant of asylum. We ask that you process this case and grant his asylum request as early as possible.

* Egan A. Hiatt