

Afghanistan assistance Clinic

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LEGAL MEMORANDUM IN SUPPORT OF R- B-’S APPLICATION FOR ASYLUM

R- B- submits this application for asylum based on a well-founded fear of persecution if he is forced to go back to his home country of Afghanistan. Mr. B- has a well-founded fear of persecution by the Taliban on account of: 1) his imputed political opinions (supportive of the United States government), and 2) his race (Hazara) and his religion (Shia Muslim). Mr. B- also has a well-founded fear of persecution by Islamic State Khorasan Province on account of his race and religion.

1. **Summary**

Mr. B- fears persecution because he is the recipient of a U.S. government-funded Fulbright scholarship and is currently a master’s student at the Rochester Institute of Technology. The U.S. government has issued P-1 letters to a number of Afghan Fulbright students in recognition of the particularly grave risk they face if they are forced to return to Afghanistan. The Fulbright scholarship program has close ties to the U.S. government, the Taliban is aware that the scholarship is funded and administered by the U.S. government, and the Taliban has been targeting and persecuting those with close ties to the United States. Mr. B- is easily identifiable as a Fulbright scholar and therefore would be at risk of persecution by the Taliban.

Mr. B- also fears persecution because he is part of the Hazara ethnic minority group in Afghanistan and is of the Shia Muslim faith. These closely linked groups have historically been persecuted by the Taliban, and continue to be targeted by them now that they are in power. The Taliban would be able to easily identify Mr. B-’s ethnic group and consequently deduce his religion as well. By belonging to these two groups, Mr. B- faces an inherent risk of persecution by the Taliban.

Mr. B- also has a well-founded fear of persecution by ISIS-K, as a group that the Taliban is unwilling or unable to control. ISIS-K has launched violent attacks against the country’s Shia and Hazara minority. By belonging to these two groups, Mr. B- faces an inherent risk of persecution by ISIS-K.

1. **Well-founded Fear of Persecution: General Requirements**

Mr. B- has a well-founded fear of persecution on account of an imputed political opinion, race, and religion. The BIA in *Matter of Moghrrabi* established subjective and objective elements to the well-founded fear standard. *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Mr. B- satisfies the subjective element because he has a genuine fear of returning to Afghanistan. A fear of persecution is well-founded even when the persecution is not more likely than not to occur; a 10% chance of persecution would satisfy the objective element. I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987). As discussed further below, Mr. B- submits evidence that he would be at grave risk of persecution based on his imputed political opinion, race, and religion, satisfying the objective element.

An asylum applicant is not required to provide evidence that he would be singled out individually for persecution; he may instead show that there is a pattern or practice in his home country of persecuting similarly situated individuals. 8 C.F.R. § 208.13(b)(2)(iii). Mr. B- submits evidence that the Taliban have a practice and/or pattern of persecuting: 1) those with ties to the U.S. government, 2) those whose faith is Shia Islam, and 3) those belonging to the Hazara ethnic minority group. Mr. B- also submits evidence that ISIS-K has a pattern and/or practice of persecuting: 1) those whose faith is Shia Islam, and 2) those belonging to the Hazara ethnic minority group.

1. **Persecution Based on Imputed Political Opinion**

Since the fall of the previous Afghan government, the Taliban, now the recognized government of Afghanistan, have targeted and persecuted people who have a connection with the U.S. government or the previous Afghan government on account of the previous government’s close ties with the United States. *See* Exhibit DD to Mr. B-’s declaration. As soon as the Taliban took control of Afghanistan, the U.S. government facilitated evacuation flights and special visas for those who had worked with the United States, including interpreters, contractors, and aid workers, demonstrating that these individuals were in grave danger of persecution by the Taliban. *See* Exhibit I to Mr. B-’s declaration.

The Taliban oppose Western ideals of democracy, women’s rights, education, and religious and ethnic diversity. *See* Exhibit H andExhibit I to Mr. B-’s declaration. In particular, the Taliban attribute these Western ideals to the United States because of the U.S. military and political involvement with the previous Afghan government. This puts anyone that has a strong connection to the United States in danger because these opinions are imputed onto them. *See* Exhibit L (Taliban soldiers saying “"congratulations on liberating our homeland from the US occupation") and Exhibit I to Mr. B-’s declaration.

The Fulbright scholarship program has a clear connection to the U.S. government and was indended to promote a diplomatic relationship between the United States and Afghanistan. *See* Exhibit O to Mr. B-’s declaration. The program is administered by the U.S. Embassy in Kabul. The mission statement on the embassy website specifically identifies that applicants are chosen based partly on their potential to promote mutual understanding between the United States and Afghanistan. In fact, Mr. B- does believe in these “Western” ideals that the Taliban would impute onto him. *See* his declaration. Therefore, Fulbright scholars are at grave risk of persecution by the Taliban because the Taliban would impute pro-U.S. and pro-Western political opinions on them. *See* Exhibit M to Mr. B-’s declaration.

The State Department has issued P-1 letters to a number of Fulbright scholars, meaning that they are first priority for refugee status. *See* Exhibit G to Mr. B-’s declaration. This demonstrates that the U.S. government is aware of the particularly high risk of persecution of this small subset of Afghans.

Many of the current Fulbright semifinalists still in Afghanistan have similarly expressed worry at being targeted. *See* Exhibit M to Mr. B-’s declaration. The Taliban are trying to identify who these individuals are, including by trying to infiltrate a Twitter space for Fulbright scholars. *See* Exhibit P to Mr. B-’s declaration. Furthermore, members of the Fulbright Foreign Scholarship Board responsible for Afghanistan have expressed concern that the scholars that remain in Afghanistan “may be hunted down and killed as a result of the Western-style education that they already received.” *See* Exhibit H to Mr. B-’s declaration.

The Taliban are aware of the Fulbright scholarship and its connection to the U.S. government. The U.S. Embassy in Afghanistan consistently posted on social media about the program, there were numerous news articles in Afghan newspapers discussing the Fulbright program, and several prominent Afghans in the government, media, and NGOs were Fulbright scholars, including the President of the former Afghan government, Ashraf Ghani. *See* Exhibit N and Exhibit O to Mr. B-’s declaration. Many ordinary Afghans knew about the program and aspired to be Fulbright scholars. According to one news article, “[e]very Afghan kid wants to be a Fulbrighter.” *See* Exhibit M to Mr. B-’s declaration.

The Taliban would be able to identify that Mr. B- is a Fulbright scholar. The Taliban have enacted a policy of door-to-door searches and generally look for personal documents during these searches. *See* Exhibit L to Mr. B-’s declaration. The Taliban raided Mr. B-’s brother’s home and specifically searched for personal documents. They then questioned the family about any other family members in the United States. *See* Exhibit L to Mr. B-’s declaration. Mr. B- would be subjected to these home searches should he have to go back to Afghanistan. The Taliban would then be able to find his Fulbright documents and the U.S. visa in his passport. Mr. B- also posted on his public social media accounts that he had been awarded the Fulbright scholarship, and frequently posts about his experience studying in the United States. *See* Exhibit CC to Mr. B-’s declaration. Additionally, the Taliban likely have access to biometric information on Afghans with electronic IDs, including Mr. B-’s. *See* Exhibit K to Mr. B-’s declaration. The system stores extensive biometric information about many Afghans and would allow the Taliban to immediately identify who Mr. B- is. *See* Exhibit K to Mr. B-’s declaration.

1. **Persecution Based on Race and Religion**

The Taliban are ethnic Pashtuns and have a historic animosity towards Hazaras. *See* Exhibit Q and Exhibit S to Mr. B-’s declaration. Even when Afghanistan was under the control of the previous democratic government, the Taliban targeted Hazaras because of their ethnicity. *See* Exhibit DD to Mr. B-’s declaration. Now that the Taliban is the recognized government of Afghanistan, these attacks have continued. In July 2021, the Taliban killed nine Hazara men in Ghazni province. *See* Exhibit R to Mr. B-’s declaration. In August 2021, thirteen Hazara men were killed in Daikundi province. *See* Exhibit R to Mr. B-’s declaration. Further, numerous graphic videos of the Taliban killing Hazaras have appeared on social media sites in the past few months. One such video shows several individuals, one with a Taliban flag on his head, approaching a lone unarmed man and shooting him several times as they exclaim “Hazara!” *See* Exhibit T to Mr. B-’s declaration.

The Taliban also target Hazaras because of their Shia Muslim faith. Shias and Hazaras are very closely linked groups in Afghanistan, with the vast majority of Hazaras being Shia and vice versa. *See* Exhibit S to Mr. B-’s declaration. The Taliban believe in a fundamentalist interpretation of Sunni Islam and do not believe that Shias are Muslims. *See* Exhibit S to Mr. B-’s declaration. They believe they are justified, and in fact encouraged, to kill Shias (and therefore Hazaras) because they are “infidels.” *See* Exhibit S to Mr. B-’s declaration. Therefore, the evidence establishes a clear nexus between the persecution and the ethnic and relious groups Mr. B- belongs to.

The Taliban would be able to identify that Mr. B- is Hazara because it is clearly written on his national ID. *See* Exhibit B to Mr. B-’s declaration. The biometric information system also stores this information. Thus, the Taliban would be able to confirm that Mr. B- is Hazara even if he did not have his national ID on him. *See* Exhibit K to Mr. B-’s declaration. The Hazara ethnic group also have very distinctive facial features, and generally have distinctive names, such as Ali. Certain areas in Afghanistan are well known for having a largely Hazara population, such as Bamiyan, Daikundi, and Behsud, which is where Mr. B-’s family is from. *See* Exhibit S to Mr. B-’s declaration and his declaration. The Taliban would consequently be able to infer Mr. B-’s Shia faith. Thus, the evidence establishes that Mr. B- would not be able to escape the persecution suffered by similarly situated individuals in Afghanistan.

**Race and Religion – ISIS-K**

In Matter of O-Z- & I-N-, 22 I. & N. Dec. 23 (BIA 1998), the BIA cited Singh v. INS, 94 F.3d 1353 (9th Cir. 1996), where the court of appeals affirmed that persecution meted out by groups that the government is unable or unwilling to control constitutes persecution for asylum purposes.

Mr. B- is at grave risk of being persecuted by ISIS-K, a terrorist organization as designated by the State Department, due to his Shia faith and membership in the Hazara ethnic minority group. Since its advent, ISIS-K has systematically committed acts of violence against Shias and Hazaras. *See* Exhibit X to Mr. B-’s declaration. Most recently, ISIS-K has executed a string of deadly attacks in Dasht-e-Barchi area of western Kabul, which is home to a largely Hazara Shia population. *See* Exhibit X and Exhibit Y to Mr. B-’s declaration. ISIS-K members believe in an even more fundamentalist interpretation of Sunni Islam than the Taliban, and similarly don’t believe that Shias are Muslims. They believe they are justified in their killing of Shias (and therefore Hazaras) because they are “infidels.” *See* Exhibit X and Exhibit Y to Mr. B-’s declaration.

There has been no effort to investigate these attacks or to curb them. In fact, the frequency and intensity of these attacks has increased since the Taliban have come to power. *See* Exhibit AA and Exhibit Z to Mr. B-’s declaration. Therefore, ISIS-K falls within the definition of a group that the Taliban is unable or unwilling to control.

As detailed above, ISIS-K members would be able to identify Mr. B- as a Hazara through his identity documentation, facial features, name, and home town. Further, ISIS-K routinely attack places largely frequented by Hazaras and Shia, including the Dasht-e-Barchi area of western Kabul and Shia mosques. *See* Exhibit Y to Mr. B-’s declaration. This evidence establishes that Mr. B- would not be able to escape ISIS-K’s persecution suffered by similarly situated individuals in Afghanistan.

**Internal Relocation Is Not An Option**

Due to the above stated bases of Mr. B-’s well-founded fear of persecution and the Taliban’s access to information demonstrating Mr. B-’s falling under these bases, Mr. B- cannot safely relocate within Afghanistan. The Taliban is the current government and thus have control of the country’s resources and information. Where the persecutor is the government or the persecution is government-sponsored, internal relocation is presumed unreasonable. 8 C.F.R. § 208.13(b)(3)(ii).

**Conclusion**

Mr. B- has a well-founded fear of persecution on account of an imputed political opinion, race, and religion. Please approve his asylum application in a timely manner.