

Afghanistan assistance Clinic

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LEGAL MEMO IN SUPPORT OF MR. X’S

AFFIRMATIVE APPLICATION FOR ASYLUM

Mr. X submits this application for asylum on the basis of his well-founded fear of persecution by the Taliban in Afghanistan on account of his race, his religion, his expressed and imputed political opinions, and his membership in particular social groups.

Since the Taliban took control of Afghanistan, they have been targeting and torturing anyone who they suspect might oppose them. This has often included ethnic Tajiks, Shia Muslims, Afghans who are associated with the United States, gender equality activists, musicians, and people who worked for the previous Afghan government and their family members. Mr. X fits into each of these profiles. In recent months, the Taliban have imposed increasing restrictions and punishments for opponents have only gotten harsher. *See* Exhibits A, K, L, M, N, T, V, W, Y, Z, AA, BB, CC, DD, EE.

 Mr. X was raised in an unusually progressive Afghan family in Kabul, Afghanistan. Mr. X’s family is ethnically Tajik, and they are Shia Muslims—a rare combination that puts them in the minority in Afghanistan. Mr. X’s mother was a prestigious doctor who worked for the previous Afghan government’s Ministry of Public Health as the head of Community Based Health Care. Mr. X believes in gender equality and global development and arrived at Cornell University on the very day that Kabul fell with the goal of advancing these political opinions in the future.

Mr. X is also a musician, and he has been playing musical instruments for around ten years. When he was in high school several years ago, he started his high school’s first music club, amidst opposition from some of his more traditional Islamist teachers. In early March 2022, the Taliban searched his family’s home and found Mr. X’s musical instruments, which the Taliban considers to be *haram* (forbidden in Islam). The Taliban threatened to beat to death or jail for life the instruments’ owner. Mr. X was fortunately in the United States at that time, outside of the Taliban’s reach.

Mr. X’s family lived in Kabul through bombings, suicide attacks, and other threats for years. Now, this terrifying attack on Mr. X’s family, on top of the Taliban’s public hostility towards Shias and Tajiks, forced them flee Afghanistan.

Mr. X would most likely be a target for Taliban harm or torture if returned to Afghanistan based on the above list of factors identifying him as a person opposed to the Taliban and its philosophies and methods. Mr. X respectfully requests that his application for asylum be granted so he may remain in the United States, where he is free to live without fear of persecution.

1. **Mr. X has a well-founded fear of future persecution on account of his various expressed and imputed Political Opinions, his Race, his Religion, and his membership in various Particular Social Groups.**
2. ***The asylum officer shall not require Mr. X to provide evidence that there is a reasonable possibility that he would be singled out individually for persecution.***

The Taliban has demonstrated their pattern or practice of persecuting musicians, Afghans associated with the United States, people who worked for the previous Afghan government, gender equality activists, Shia Muslims, and ethnic Tajiks. *See* Exhibits T-EE. ISIS-K has also demonstrated their pattern or practice of persecuting Shia Muslims. *See* Exhibits T, DD, EE. Additionally, Mr. X has established his identification with each of these groups, such that his fear of persecution upon return is reasonable. *See* Exhibits A-S. Accordingly, Mr. X fears persecution based on the "pattern or practice" of persecution of similarly situated individuals, and the asylum officer shall not require him to provide evidence that there is a reasonable possibility he would be singled out individually for persecution in evaluating whether the applicant has sustained the burden of proving that he has a well-founded fear of persecution. 8 C.F.R. 208.13(b)(2)(iii).

1. ***Mr. X Subjectively Fears Persecution on account of his various expressed and imputed Political Opinions, and this fear is objectively reasonable.***

A well-founded fear of persecution can be based on an expressed or actual political opinion or an imputed political opinion that the persecutor attributes to the applicant. *See* Matter of S-P-, 21 I&N 486 (BIA 1986). An asylum applicant can substantiate their well-founded fear of persecution based on their political opinion by providing direct or circumstantial evidence of their persecutor’s motives. Matter of S-P-, 21 I&N 486, 494 (BIA 1986).

Mr. X expresses through playing, teaching, and performing music that he believes music is an art, not a sin. That the Taliban has persecuted other musicians establishes that the house raid the X family suffered was not an aberration, but part of a pattern and practice of stamping out sinful acts like music. The Taliban would punish Mr. X for this political opinion if he were to return to Afghanistan because he is already well known in Kabul for playing music, teaching music, performing music at events, and having started the first music club in his high school in Kabul. Some of Mr. X’s Taliban-sympathizing, traditional teachers opposed his music while he was in high school, and they could leak this information to the Taliban to silence him. This fear of persecution is reasonable because the Taliban have been searching homes for musical instruments and burning the instruments they find, searching phones for music, and beating or killing the people they find with music or instruments. The Taliban already searched Mr. X’s family home in Kabul, found his instruments, and would have beaten to death or jailed for life Mr. X, had he been there that day. Mr. X believes that if he returned to Afghanistan in the future, the Taliban would then follow through on these threats.

Second, Mr. X believes in gender equality, and he genuinely fears that the Taliban would target and harm him because of this political opinion. Even if Mr. X tried to hide this political opinion, were he forced to return to Afghanistan, the Taliban would impute his belief in gender equality because of his mother and brother’s work for the previous Afghan government empowering women. This fear is objectively reasonable because the Taliban have been targeting and harming many gender equality activists in Afghanistan.

Third, Mr. X supports Afghan collaboration with the United States, and he genuinely believes the Taliban will target him because of this political opinion. Regardless of his actual or expressed opinion on the United States, the Taliban would impute to him a “pro-America” political opinion as he is currently a university student at an American University. The Taliban would see his U.S. visa in his passport and label him an “enemy” for his association with the United States. Mr. X’s fear of persecution because of this political opinion is objectively reasonable because the Taliban has been systematically tracking down and harming Afghans who have any association to the United States.

Fourth, the Taliban would assume that Mr. X supported the previous Afghan government, because his mother and brother worked and volunteered for the previous Afghan government’s Ministry of Public Health. This fear of persecution is objectively reasonable because the Taliban has been systematically tracking down and harming Afghans who worked for the previous Afghan government.

Fifth, Mr. X promotes global development based on “Western” ideals, and he genuinely believes the Taliban will target him because of this political opinion. The Taliban could also impute this political opinion to Mr. X because he is studying Global Development at Cornell University, and the Taliban could learn of this through his social media pages. This fear of persecution is objectively reasonable because the Taliban are known for targeting and harming sympathizers of “Western” ideals, including “Western” global development strategies.

1. ***Mr. X Subjectively Fears Persecution on account of his race, and this fear is objectively reasonable.***

Mr. X is Tajik, an ethnic minority in Afghanistan, and he genuinely believes the Taliban will target him because of his ethnicity/race. The Taliban would know that he is Tajik because this is labeled on his Afghan National ID/*tazkira*. This fear of persecution is objectively reasonable because the Taliban are known for targeting and harming Tajiks who have been known to resist and oppose the Taliban.

1. ***Mr. X Subjectively Fears Persecution on account of his religion, and this fear is objectively reasonable.***

Mr. X is Shia, a religious minority in Afghanistan, and he genuinely believes the Taliban will target him because of his religion. The Taliban would know that he is Shia because his family name, “X” is a name only used by Shias, and this surname is clearly labeled on his Afghan National ID/*tazkira* and his passport. This fear of persecution is objectively reasonable because the Taliban are known for targeting and harming Shias, as the Taliban believe Shias are not religiously strict enough.

1. ***Mr. X Subjectively Fears Persecution on account of his membership in various Particular Social Groups, and this fear is objectively reasonable.***

An asylum applicant whose well-founded fear of persecution is based on their "membership in a particular social group" must establish that 1) the group’s members share an immutable characteristic, 2) the group is defined with particularity and 3) the group is socially distinct. Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014).

The first requirement, immutability, includes both qualities that the members cannot change or are virtually impossible to change, or qualities that the members should not have to change because they are fundamental to their identities or consciences. Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014) at 237-38.

The second requirement, particularity, requires that the group’s boundaries must be discrete and clearly defined, that there is a definite “outer limit” to the group’s membership, that the particular social group’s common characteristic provides “a clear benchmark for determining who falls within the group” and that “the terms used to describe the group have commonly accepted definitions in the society of which the group is a part.” Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014) at 238-40.

The third requirement, social distinction, requires that the people in the particular social group “are set apart, or distinct, from other persons within the society in some significant way” based on their shared characteristic, and that people in that society would be able to distinguish or perceive who is in the group. Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014) at 240.

Here, Mr. X is a member of the particular social group of “Afghan musicians,” and he genuinely believes the Taliban will target him because of this. The Taliban would know that he is in this particular social group because they found his instruments in his parent’s home in Kabul in March 2022. Also, they could learn of this from his high school teachers who opposed his starting a music club, his neighbors who heard him playing music for around ten years, or anyone who heard him perform at a graduation ceremony in Kabul. Additionally, they would learn about this if they looked at his social media accounts. This fear of persecution is objectively reasonable because the Taliban are known for targeting and harming musicians.

Mr. X cannot change that he was known for being a musician for the past ten years while he lived in Kabul, he cannot change the fact that he started a music club in his high school or that he performed publicly in Kabul on several occasions in front of hundreds of people. Given how unusual this is, Afghans will likely associate Mr. X with his love for music for a long time to come. These factors make his identity as a musician immutable.

This particular social group is particular because there is a clear and discrete boundary to the particular social group of Afghans who identify as musicians. As learning or playing music is rare and often looked down upon in Afghanistan, there is a limited and definite number of people in Afghanistan who publicize their identity as a musician.

This particular social group is socially distinct because Afghans would notice when someone publicly portrays themselves as a musician, given how rare and looked down upon this is. Afghan society distinguishes Afghan musicians from “typical” Afghans who do not approve of playing musical instruments.

Second, Mr. X is a member of the particular social group of “Afghans who have studied in American Ivy-League universities,” and he genuinely believes the Taliban will target him because of this. The Taliban would know that he is in this particular social group because his passport contains his U.S. visa that documents his F-1 visa to study at Cornell University, which is well-known in Afghanistan for being an American Ivy-league university. Additionally, they would learn about this if they looked at his social media accounts. This fear of persecution is objectively reasonable because the Taliban are known for targeting and harming Afghans associated with the United States and Afghans who attend universities in non-Muslim countries.

Mr. X can never change the fact that he has studied at Cornell University. This makes his identity as an Afghan who has studied in an American Ivy-League university immutable.

This particular social group is particular, because there is a definite and limited number of Afghans who have studied in American Ivy-league universities. The boundaries on this particular social group and discrete and clearly defined, as it would be possible for the U.S. government to count exactly how many Afghans have come to the United States to study in Ivy-league universities.

This particular social group is socially distinct, because Afghans generally know whether someone has studied in an American Ivy-League university, given how academically impressive this is, given how few Afghans have studied in American Ivy-league universities, and given Afghanistan’s recent relationship to the United States. Afghan society would be able to distinguish who falls within this particulate social group because this kind of fact is something people would know about others in their community.

Third, Mr. X is a member of the particular social group of “family members of Dr. Y,” and he genuinely believes the Taliban will target him because of this. Dr. Y is Mr. X’s mother. Dr. Y worked for the previous Afghan government, and Mr. X fears the Taliban will target Dr. Y and her family members because of this work.

The Taliban would know that Dr. Y worked for the previous Afghan government because they have access to lists of people who worked for the previous Afghan government. Additionally, the Taliban has access to the national registry, in which Dr. Y documented her previous position with the Ministry of Public Health when she registered for her new Afghan National ID/*tazkira*.

The Taliban would know that Mr. X is Dr. Y’s son because the Taliban has control over the national registry which lists how people are related to each other. Mr. X recorded his relationship to Dr. Y in this database when he applied for his new Afghan National ID/*tazkira*.

Mr. X’s community members could also leak this information to the Taliban—both that Mr. X is Dr. Y’s son, and also that Dr. Y worked for the previous Afghan government. They knew this because they’d see her government car pick her up for work each day.

The Taliban will likely continue targeting Afghans who worked for the previous Afghan government, as they have been doing since they took power last August. When they get to Dr. Y, they could easily search her family members in this digital database and learn that Mr. X is her son.

Now that Dr. Y has fled Afghanistan, the Taliban has more reason to target Mr. X on account of his mother’s work for the previous Afghan government. This fear of persecution is objectively reasonable because the Taliban are known for targeting and harming Afghans associated with the previous Afghan government and their family members.

Mr. X’s membership in this particular social group is immutable, because he can never change the fact that Dr. Y is his mother, or that she worked for the previous Afghan government.

This particular social group is particular, because the people who are immediately related to Dr. Y is limited, discrete, and the boundaries on this particular social group are clearly defined.

This particular social group is socially distinct, because Afghans generally know who is part of the same family. Afghan society could perceive that Mr. X is part of Dr. Y’s family.

1. ***Mr. X’s fear of being targeted for persecution by the Taliban based on any one of these identities is compounded by the combination of these traits that increase the chance that the Taliban would want to harm him.***

Mr. X has a well-founded fear of future persecution based on any one of the arguments listed above, as the Taliban has demonstrated their will and capacity to target people in each of these groups that Mr. X identifies with. The likelihood that the Taliban would personally target Mr. X is magnified, though, given the number of reasons the Taliban would have to target and harm him, increasing the danger the Taliban would pose to Mr. X if he were forced to return to Afghanistan.

1. ***Mr. X’s fear of persecution is “well-founded.”***

In *Matter of Mogharrabi*, the BIA established a four-part test for "well-founded fear." 19 I&N Dec 439 (BIA 1987). The Second Circuit has adopted this test:

The requirement that an applicant show that her fear of persecution is well-founded may be broken up into four elements: the applicant must provide evidence (1) that he has a belief or characteristic that a persecutor seeks to overcome by means of some mistreatment, that the persecutor has the (2) capability and (3) inclination to impose such mistreatment, and (4) that the persecutor is, or could become, aware of the applicant's possession of the disfavored belief or characteristic.

Tun v. INS, 445 F.3d 554, 565 (2d Cir 2006) (citing Mogharrabi, 19 I&N Dec. at 446).

This test enables the court to determine whether there is a "reasonable possibility" of persecution on account of the applicant's protected ground.

Mr. X has provided evidence (1) that he has numerous beliefs and characteristics, listed above, that the Taliban and ISIS-K seek to overcome by harming or killing him, that the Taliban and ISIS-K have the (2) capability and (3) inclination to harm or kill him, and (4) that the Taliban and ISIS-K are, or could become, aware of the applicant's possession of the disfavored belief or characteristic. The house raid and ransack by the Taliban looking for musical instruments at Mr. X’s family home in Kabul, followed by detention of his older brother, whom they assumed owned and played the instruments, is one example of this. Accordingly, Mr. X’s personal testimony, as well as the voluminous country conditions evidence included with this application, establish Mr. X’s well-founded fear of persecution in Afghanistan on account of his protected grounds.

1. **Mr. X is Unable to Avail Himself of the Protection of the Afghanistan Government.**

Since the Taliban took over Afghanistan last August, they have been in control of the country, acting as the national government. Regardless of whether the United Nations or the United States recognizes them as an official government, there is no other Afghanistan government that Mr. X could avail himself to for protection from the Taliban. As the Taliban is both the acting government and his potential persecutor, Mr. X is unable to avail himself to the acting government for protection from his potential persecutor.

The Taliban has repeated announced amnesty for certain individuals like previous Afghan government officials who feared Taliban retaliation, only to then hunt down and kill these promised recipients of this amnesty. The Taliban has repeatedly announced that they will be less restrictive and less harsh on gender equality activists, only to then tighten their restrictions and target and silence gender equality advocates. The Taliban cannot be trusted to protect Mr. X from Taliban persecution.

1. **Mr. X is Unable to Relocate Within Afghanistan.**

“In cases in which the persecutor is a government…it shall be presumed that internal relocation would not be reasonable, unless DHS establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.” 8 C.F.R. 208.13(b)(3)(ii).

Here, the Taliban is the acting government of Afghanistan. Even if the United States doesn’t recognize the Taliban as an official government, the Taliban is the closest thing to a government in Afghanistan. Accordingly, the persecutor here is the government and it shall be presumed that internal relocation would not be reasonable.

DHS could not establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate. There is no safe place for Mr. X within Afghanistan. The Taliban controls the majority of the country. Wherever the Taliban are, they would find him and persecute him. In the parts of the country where the Taliban is fighting ISIS-K for control, Mr. X would still be in danger, as both of these radical extremist groups would seek to harm him.

Furthermore, even if there was a chance Mr. X could live safely in some part of Afghanistan, he would not be able to get there safely. As soon as Mr. X would arrive in the country, whether at an airport or crossing a border, a Taliban agent would inspect his passport and see that he came from the United States where he was studying at Cornell University. The Taliban target people associated with the United States. They would also see his name “X” which would indicate to them that he is Shia, as this name is only used in Shia families. The Taliban have been targeting Shias. They would also see his birthplace listed as “Herat” which is predominantly inhabited by Tajiks. The Taliban have been targeting Tajiks. These are three traits that the Taliban would count as strikes against Mr. X, and this would tip them off that he may be someone who opposes them.

They would likely investigate Mr. X and see his social media accounts which document him playing music. They may learn more about him from his hometown, where his neighbors and high school teachers and peers (who opposed Mr. X even before the Taliban took power) could easily leak to the Taliban how Mr. X started the first music club at his high school, how he played and taught music, how his mother was a prominent doctor who worked for the previous Afghan government to empower women, or how his brother also volunteered for the previous Afghan government to empower women. The Taliban would likely remember finding Mr. X’s instruments in his family’s home, given how unusual this was and how against music the Taliban are. The Taliban would have so many reasons to target Mr. X, and there would be nothing stopping them. It is too dangerous for Mr. X to return to Afghanistan.

1. **Conclusion**

Based on the above, it is clear that Mr. 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.