

Boylan & Co.

Barristers, Solicitors, Conveyancers & Notaries

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Your Ref:

20 December 2004

The Editor
The Australian
GPO Box 4162
SYDNEY NSW 2001

By Email: letters@theaustralian.com.au

Dear Sir,

Re: The Bakhtiyari Family

Your comment in today's edition of your paper that "nobody can suggest that the courts have not had a good look at the family's claim" grossly misleads the Australian public. While several courts have seen the evidence of the family's Afghan nationality, collected by my firm since the decision by the Refugee Review Tribunal to revoke Mr Bakhtiyari's temporary protection visa, not one of those courts has been able to weigh it against the evidence from the Government that the family come from Pakistan. This is because of Section 474 (the Privative Clause) in the Migration Act. That clause provides in part that Mr Bakhtiyari's Refugee Review Tribunal decision "must not be challenged, appealed against, reviewed, quashed or called in question in any court". The courts can have a good look, but that is all they can do.

The new evidence is:

- An affidavit of Hassan Ghulam, President of the Hazara Ethnic Society of Australia, who has examined the Pakisani ID card relied upon by the RRT and who confirms that it is fraudulent and does not belong to my client.
- British Library records confirming that Ali Bakhtiyari's father, Ali Hussain, was in the regiment of the 106th Hazara Pioneers - comprised completely of Afghan Hazaras.
- Statement of Simon Russell, Norwegian Refugee Council in Afghanistan, who has met with Roqia Bakhtiyari's brother, Mazhar Ali, after he was deported from Australia. Simon Russell confirms that he is Afghani.
- Confirmation from the District Governor of the Province of Ghazni (District of Jaghoori) that Roqia Bakhtiyari and her family are Afghan citizens.
- Confirmation of the Governor of the Province of Oruzgan in relation to Ali Bakhtiyari's origin.

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- Confirmation from the residence of Jaame Mosque of Balu Daoud, Province of Ghanzi (Jaghoori District) that Roqia and Ali Bakhtiyari are from the district.
- Document from the Transitional Islamic Government of Afghanistan containing confirmation from a representative of the Daoud village confirming the residency of the relatives of Mazar Ali, the brother of Mrs Bakhtiyari. The document also contains confirmation from the Department for Zirak Daoud High School that Mazar Ali is from the village of Balu Daoud.
- Confirmation from the Acting District Governor of Shahrestan (Shahrestan High Commission) that Ali and Roqia Bakhtiyari are Afghan citizens.

You seem satisfied that the family comes from Pakistan, however Mr Justice Hayne of the High Court of Australia said on 13 December 2004 it is at least arguable that the family are all Afghan citizens as they claimed. We are not however, allowed to argue that before a court.

Yours faithfully

Paul Boylan

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