

Faculté de droit et de criminologie

APPRENTISSAGE AU CŒUR DES PROJETS DE LA CLINIQUE JURIDIQUE ROSA PARKS POUR LES DROITS HUMAINS

Évoluer par l'action...

Auteur: Victoria DE VUYST
Promoteur(s): Christine
FLAMAND et Sylvie SAROLEA
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Description du mémoire

Dans le cadre de la clinique juridique de Rosa Parks, j'ai eu l'opportunité de participer à deux projets très instructifs. Le premier consistait à aider des demandeurs d'asile à se préparer pour leur entretien avec l'Office des Étrangers et le deuxième à participer au Moot Court.

Concernant le premier projet, nous avons tout d'abord assisté à un entretien d'une avocate avec un demandeur d'asile et suivi deux formations afin de nous préparer au mieux à interviewer les demandeurs. Par la suite, formant des binômes, nous avons mené des entretiens avec trois demandeurs d'asile. Nous débutons chaque session par une présentation bienveillante, expliquant notre rôle d'aide à la préparation de leurs entretiens à venir, avant de leur poser les questions similaires à celles qu'ils rencontreraient à l'Office des Étrangers. Ensuite, nous consignons ces entretiens dans des rapports rédigés avec soin, agrémentés de données contextuelles pertinentes que nous avons recueillies sur leurs pays d'origine.

Quant au second projet, il nous a emmenés vers une expérience stimulante : participer au « International Migration and Refugee Law Moot Court Competition ». Pour ce faire, nous avons commencé par rédiger deux plaidoyers écrits : l'un pour la partie requérante, représentant une demandeuse d'asile fuyant l'Afghanistan, et l'autre pour le défendeur, représentant l'État fictif où la requérante cherchait refuge. Nous nous sommes d'abord mises d'accord sur la structure à suivre, ensuite nous avons chacune noté tous les arguments que nous trouvions pour les deux parties. Une fois cela réalisé, nous avons divisé notre équipe de quatre étudiants en deux. La première équipe composée de Lisa Gobert et Camille Druet s'est davantage penchée sur la situation de l'état tandis que Saloua Mbr et moi nous sommes davantage concentrées sur la partie de la requérante. Nous avons alors approfondi les arguments, diversifié les sources et pour finir nous avons tout traduit en anglais et effectué la mise en page.

Une fois l'équipe sélectionnée pour plaider oralement, nous avons repris nos textes initiaux, ajouté de la jurisprudence récente, adapté et résumé les textes de manière à ce qu'ils respectent la limite de temps imposée dans les règles du Moot Court. Nous avons également préparé des arguments pour les « répliques-dupliques » sur la base des plaidoyers que nous avons reçus. Nous avons eu deux rendez-vous en ligne avec les coachs et nous avons également pu bénéficier d'un cours d'anglais en ligne. Une fois rentrées d'Erasmus, nous avons bénéficié d'entraînements en présentiel à Louvain-la-Neuve, affinant ainsi nos compétences oratoires.

Pour finir, nous sommes parties 2 à 3 jours à Anvers pour réaliser le concours. L'équipe qui défendait la requérante a plaidé dans la matinée contre une équipe venant d'Angleterre et l'équipe représentant le défendeur a plaidé contre une équipe venant de Pologne dans l'après-midi.

Notre satisfaction a été immense lorsque nous avons été sélectionnées pour la demi-finale, où nous avons eu 30 minutes pour introduire de nouveaux éléments dans le cas fictif initial. Le temps de trouver une salle et de lire le casus, il ne restait déjà plus que quelques minutes pour se préparer.

Le lendemain, nous avons pu aller voir les juges qui nous ont fait un retour très positif sur nos plaidoiries. Nous avons ensuite assisté à la finale, où se sont affrontées les équipes de Leiden et de Singapour, clôturant ainsi cette expérience mémorable.

Les Enseignements tirés du mémoire

Ces deux projets au sein de la clinique juridique de Rosa Parks ont été une expérience véritablement enrichissante. Ces opportunités nous ont permis d'appréhender de manière concrète la réalité du métier d'avocat et de développer un ensemble de compétences essentielles pour notre avenir professionnel.

Tout d'abord, ces projets nous ont sensibilisés à la complexité de la problématique de la migration et aux défis juridiques associés. Nous avons appris à rédiger des rapports détaillés et à analyser en profondeur les situations des demandeurs d'asile, tout en prenant conscience des limites du droit dans la résolution de ces problématiques. Les échanges avec les demandeurs d'asile nous ont également sensibilisés à la souffrance vécue par les personnes qui sollicitent ce statut.

De plus, ces projets nous ont permis de développer des compétences extrêmement utiles pour notre avenir professionnel. En effet, l'une de ces compétences est la capacité à travailler en équipe. Bien que nous ayons chacune des méthodes de travail très différentes, cela a nécessité un temps d'adaptation pour comprendre le fonctionnement de chacune et trouver la meilleure façon de s'accorder sur notre rythme de travail. Cela n'a pas toujours été facile, mais finalement, nous avons réussi à faire valoriser nos différences et à trouver une belle complémentarité dans nos approches respectives.

Ensuite, nous avons eu l'opportunité d'apprendre l'art du plaidoyer oral qui a également été une étape importante de notre parcours. Nous avons non seulement bénéficié des précieux conseils des coaches, mais également de ceux de plusieurs intervenants qui nous ont prodigué des conseils variés, que ce soit sur la prononciation en anglais, le volume et le débit de la parole, ou encore la posture. Nous avons ainsi amélioré notre prise de parole en public et notre capacité à défendre nos arguments de manière convaincante.

Malgré les défis rencontrés, tels que les délais à respecter pour les travaux écrits qui coïncidaient avec les sessions anticipées ou les adaptations à faire en tant qu'étudiantes en Erasmus, nous sommes convaincues que ces expériences ont été inestimables pour notre formation. La clinique a donné un sens à notre mémoire. Elle l'a rendu concret et vivant. Ce mémoire se différencie des travaux classiques que nous avions l'habitude de réaliser durant les autres années d'études en droit. Nous y avons énormément appris et au-delà de ça, nous avons pris énormément de plaisir à le réaliser.

Annexe

Document 1. Rapport du 1^{er} entretien : 25 avril 2023

Document 2. Rapport du 2^e entretien : 17 octobre 2023

Document 3. Rapport du 3^e entretien : 7 novembre 2023

Document 4. Plaidoirie écrite : Partie requérante

Document 5. Plaidoirie écrite : Partie défendeur

Document 6. Plaidoirie orale : 2^e partie de la partie requérante

Rapport du 1^{er} entretien : 25 avril 2023

Monsieur X. est né le 30 novembre 1990 à Teseney en Érythrée. Pour assurer sa sécurité, sa famille l'a envoyé vivre au Soudan chez un ami de son père à l'âge de 3 ans. Il n'a d'ailleurs plus eu de nouvelles d'eux depuis ce jour-là. Il sait juste que son père biologique (resté en Érythrée) est décédé. Monsieur X. n'a pas d'enfants ni de femme. Il n'a plus aucune nouvelle de sa famille et ne sait pas qui est encore en vie.

Monsieur X. n'a été qu'à l'école maternelle et n'a jamais suivi de formation. Pour subvenir à ses besoins, il a fait toutes sortes de jobs, par exemple réparateur de chaussures, taxi pendant deux ans ou encore ouvrier dans le bâtiment.

Quant à son **trajet migratoire**,

Depuis le Soudan, Monsieur X. a rejoint la Turquie par avion. Il y est resté à peu près un mois. Il s'est ensuite rendu en Grèce, là où ses empreintes digitales ont été prises et où il a obtenu une protection par la reconnaissance du titre de réfugié. Plus tard, Monsieur X. a décidé de rejoindre la Belgique. Pour ce faire, il a d'abord traversé la France. Les dates et durées sont assez floues.

Quant aux questions types,

- Avez-vous déjà été arrêté et/ou incarcéré par la police ou par des milices ?

Concernant *l'Érythrée*,

N'y ayant presque pas vécu (seulement jusqu'à ses 3 ans environ), il n'a jamais été arrêté ou emprisonné en Érythrée.

Concernant le *Soudan*,

Monsieur X. n'a jamais fait l'objet d'une arrestation ou d'une détention dans ce pays.

Concernant la *Grèce*,

Monsieur X. y a rencontré la police à 3 reprises. Dès qu'un problème se produisait dans le centre dans lequel il était hébergé, la police arrivait et demandait les identités.

La première fois, il s'agissait d'un problème dans le centre. Monsieur X. faisait partie des personnes interceptées à qui on a demandé ses papiers.

La seconde fois concerne un problème lié à la pandémie de la Covid-19. Sorti sans masque, Monsieur X. a été interpellé et a reçu une amende.

La troisième fois, le 14 mai 2022, la police l'a également intercepté parce qu'il ne portait pas de masque alors que la pandémie de la Covid-19 n'était pas terminée.

- Avez-vous déjà été condamné par un tribunal ?

Monsieur X. n'a jamais fait l'objet d'une condamnation par un tribunal, ni en Érythrée, si au Soudan, ni en Grèce.

- Êtes-vous actif dans une association/organisation/parti politique ?

Que ce soit en Érythrée, au Soudan ou en Grèce, Monsieur X. n'a jamais participé à quelconques mouvements militants ou pris part à une organisation politique.

Son père biologique était un opposant politique en *Érythrée*. Celui-ci est décédé d'une mort naturelle.

Son père adoptif, l'homme chez qui il a vécu au *Soudan*, était un opposant politique aussi. Celui-ci est décédé d'une mort naturelle en 2005 ou 2006. Le reste de sa famille ne prenait pas part à ses activités.

- Que craignez-vous en cas de retour dans votre pays d'origine ?

- Pourquoi pensez-vous que ceci (ce risque) peut vous arriver ?

Concernant *l'Érythrée*,

Ce pays en guerre est porté par une dictature effrayante. Les restrictions de libertés individuelles sont nombreuses – les personnes n'osent pas se laisser à rêver d'un avenir meilleur ou à donner leur avis sous peine d'être arrêtées. Les prisonniers politiques y sont nombreux.

Il y existe un service militaire universel obligatoire dès l'âge de 17 ans et sans limites de durée. L'armée est responsable d'à peu près tous les services du pays, ainsi presque toutes les personnes sont réquisitionnées. Par ailleurs, ce service national est très mal payé, voire pas du tout.

Si Monsieur X. retournait en Érythrée, il se ferait décapiter. Il est interdit de quitter le pays de manière illégale et d'ensuite y revenir. Le paragraphe 37(3) de la proclamation 82/1995 du service national, qui porte sur « l'évasion du service national », prévoit ce qui suit : « Tout citoyen qui, sachant qu'il a le devoir d'accomplir le service national, évite de s'acquitter de son devoir en fuyant à l'étranger, verra son nom inscrit aux registres du ministère de l'Administration régionale et du ministère de l'Intérieur et, s'il ne revient pas pour accomplir son service avant

l'âge de 40 ans, il sera passible de sanctions ou d'une peine d'emprisonnement de 5 ans jusqu'à l'âge de 50 ans, et ses droits relatifs à la licence, aux visas et à la propriété et son droit de travailler seront suspendus ». De plus, selon la commission d'enquête des Nations Unies sur l'Érythrée, qui a recueilli auprès des témoins des renseignements sur le rapatriement forcé des Érythréens, a affirmé que « les personnes qui sont rapatriées de force sont inévitablement réputées avoir quitté le pays illégalement, et on les considère donc comme des délinquants graves, et aussi comme des "traîtres" » (Nations Unies 5 juin 2015, paragr. 431). Les Nations Unies ont également ajouté qu'ils sont interrogés au sujet des circonstances de leur fuite. Les rapatriés subissent systématiquement des mauvais traitements, voire des actes de torture, pendant l'interrogatoire. Après l'interrogatoire, ils sont détenus dans des conditions particulièrement difficiles, souvent dans le but de s'assurer qu'ils ne s'enfuiront pas de nouveau¹.

Concernant le *Soudan*,

Monsieur X. n'a jamais reçu de papiers au Soudan. Les Érythréens n'y ont pas accès et n'ont d'ailleurs aucun droit dans ce pays. Il n'avait donc accès ni aux soins ni au travail.

Le pays est en guerre et n'offre aucune garantie d'avenir. La répression, les contrôles de police et les emprisonnements sont abusifs. Il ne peut pas y retourner, car il n'a accès à rien dans ce pays – ni papiers, ni famille, ni droits, ni maison – et n'y est pas considéré à la juste valeur d'un être humain. Un article dit d'ailleurs ceci « *L'impression générale est qu'il n'y a quasiment aucune différence entre les conditions de vie des réfugiés vivant dans les camps gérés par l'État et subventionnés, et celles de la majorité pauvre des réfugiés spontanés. Se pose alors la question de savoir où passe le budget consacré à l'aide aux réfugiés. Malgré les sommes dépensées pour les camps, rien ne permet de dire que ceux qui ont le statut de réfugiés sont plus favorisés que les autres. Ce qui signifie, ou bien que l'aide accordée ne suffit pas à couvrir les besoins réels de ces camps, ou bien que la nature de cette aide ne répond pas véritablement aux besoins des réfugiés* »².

Concernant la *Grèce*,

¹ <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=577b6caa4&skip=0&query=%C3%A9rythr%C3%A9e&coi=ERI>, consulté le 26 avril 2023.

² <https://journals.openedition.org/ema/1095> (20), consulté le 26 avril 2023.

Selon lui, les officiers de la police grecque sont racistes et les menacent, à chaque arrestation, de les renvoyer en Turquie, et ce même lorsqu'ils ont obtenu une protection par le pays. Les hôpitaux sont également racistes et refusent de soigner des étrangers. Monsieur X. souffre de douleur de dos qui l'empêchent de travailler, mais à chaque fois qu'il allait à l'hôpital, on le renvoyait au centre sans le soigner.

Pourquoi la Belgique ?

Monsieur X. souhaite être considéré, à juste titre, comme un être humain et avoir accès aux services de soins et d'éducation. À son arrivée en Belgique, il s'est rendu chez un médecin qui lui a prescrit des médicaments et des séances de kinésithérapie pour ses douleurs de dos. Monsieur X. parle arabe, a des connaissances d'anglais et souhaite prendre des cours de français dans le centre dans lequel il est accueilli pour le moment.

Rapport du 2^e entretien : 17 octobre 2023

1) Identité

Nom : Monsieur Z.

Date et lieu de naissance : Darfour (Soudan) le 1/04/1990

Composition familiale : Son père et son petit frère sont décédés. Sa mère et ses 2 sœurs sont actuellement en Égypte. Sa maman, atteinte d'un cancer, dispose d'une carte de la Croix-Rouge qui permet d'être soignée malgré qu'elle n'ait pas demandé le statut de réfugié.

Trajet : Monsieur Z. a quitté le Soudan pour rejoindre la Grèce. Il y est finalement arrivé après être passé par Istanbul et Izmir (bateau jusqu'en Grèce). Il a quitté le Soudan grâce à un faux passeport. Monsieur Z. a obtenu le statut de réfugié en Grèce. Il a ensuite pris l'avion entre Athènes et Charleroi.

Éducation : Il a été à l'université où il s'est fait arrêter et où il subissait de la discrimination

Monsieur Z. souhaite le regroupement familial dans un avenir proche. Il exprime l'avoir déjà demandé en Grèce, mais on lui a répondu que cela n'était possible que pour les époux et/ou enfants.

1) Avez-vous déjà été arrêté et/ou incarcéré par la police ou par des milices ?

Au Soudan, 2 incarcérations :

- 10 juin 2016 :

1 mois d'incarcération à Bahia. Il a été arrêté par les services de renseignements. Ceux-ci sont liés à l'ancien régime. Il a été arrêté en raison de son engagement dans un parti politique

contre l'ancien président, Omar el-Bechir. Il a été violenté et frappé pendant plusieurs jours. Monsieur Z. a de nombreuses cicatrices sur le corps.

Il était à l'université de Khartoum quand cela s'est produit. À l'université, toutes les personnes s'opposant au parti politique en force (abdelouahed Mohamed Nord) sont renvoyées ou

arrêtées. Monsieur Z., venant de Darfour, est également visé à cause de son origine et sa tribu. Le trajet jusqu'à son lieu d'emprisonnement a duré 1 heure, en voiture.

Lors de ce premier emprisonnement, son oncle s'est porté garant. Son père étant déjà décédé.

- Mars 2019 ne se rappelle pas de la date exacte :

15 jours d'incarcération. Son frère a été tué après avoir participé à des manifestations. Monsieur Z. a alors voulu porter plainte. C'est à cette occasion qu'il a été arrêté et emprisonné. Il a été libéré au bon vouloir la police.

En Grèce, les contrôles en Grèce sont quotidiens. Il arrivait même qu'on lui demande ses papiers plusieurs fois par jour.

2) Avez-vous déjà été condamné par un tribunal ?

Au Soudan, non, jamais. Au Soudan, on ne passe pas au tribunal quand on est arrêtés. Souvent, les arrestations sont illégales et gérées seulement par la police qui arrête, emprisonne et libère comme elle veut. Pour être libéré par la police, il faut un garant (souvent la famille) qui assume la responsabilité de la libération, afin que l'acte pour lequel on est enfermé ne se reproduise plus.

Lors de son premier emprisonnement, son oncle s'est porté garant. Son père étant déjà décédé. La deuxième fois, il a été libéré au bon vouloir la police.

3) Êtes-vous actif dans une association/organisation/parti politique ?

Monsieur Z. est membre actif d'un parti politique dont l'objectif est de faire tomber tous les membres de l'ancien régime. La majorité voire tous les habitants de Darfour sont membres de cette association, car le Soudan ne leur reconnaît aucun droit - l'origine de leur tribu posait problème pour le gouvernement.

Les arrestations et emprisonnements ont été brutaux : racisme et violence extrêmes. Des propos liés à l'esclavage ont également été proférés : *« même si tu continues tes études, tu ne pourras jamais avoir d'emploi pour l'État. Tu resteras esclave. Tu feras toujours ce qu'on te demande ... »*.

Il est entré en tant que membre dans le parti en 2012. Dès 2021, Monsieur Z. a joué un rôle actif en son sein en étant président auprès des jeunes de son université. Il était chargé de leur soutien ainsi que du recrutement. Leur rôle était d'apporter du soutien aux étudiants, aux femmes veuves, aux personnes plus démunies et pauvres. Son frère décédé faisait également partie de ce parti.

4) /6) Que craignez-vous en cas de retour dans votre pays d'origine ? Et, pourquoi pensez-vous que ceci (ce risque) peut vous arriver ?

Au Soudan,

Pas d'identité : Au Soudan, Monsieur Z. n'avait pas le droit de posséder un passeport, car il était fiché auprès de la police, dû aux arrestations précitées. On lui interdirait également de rentrer sur le territoire –

Racisme : « *Tout le monde sait que pour les gens de Darfour, il y a discrimination et racisme.* »

Risque de mort : Il a fui la mort. Ses amis et collègues d'université ont été tués en prison. Ils ont succombé aux tortures infligées.

Traumatisme : Il explique que tous les dimanches, la police leur attachait les mains et les tirait comme des bêtes pour les faire tourner en rond dans un hall toute la journée, comme du bétail. Ils étaient plus ou moins 20 dans une cellule plus petite que la salle dans laquelle nous étions pendant cet entretien. Monsieur Z. a également été témoin de scène de viols dont il ne veut pas se souvenir ni parler.

En Grèce,

Refus d'effectuer le regroupement familial : Quand il a voulu faire venir sa famille, cela lui a été refusé. On lui a dit que ce n'était que s'il avait une femme et/ou des enfants.

Condition de vie pitoyable : Les conditions de vie y sont très mauvaises. Il a été voir une association (Helios) pour l'aider à trouver un logement et un travail. Ses coordonnées ont été prises, mais la liste d'attente recense plus de 1000 personnes.

Le racisme et la discrimination raciale en Grèce sont très importants : Il a travaillé et explique qu'il devait être payé 5€/H, mais qu'au moment du paiement, le prétendu patron ne lui a donné que 30€ pour 12 heures prestées, en disant que le reste suivrait. Lorsqu'il a insisté pour être payé, ce patron l'a menacé de le renvoyer en Turquie. Il disait travailler pour l'État et pouvoir faire ce qu'il veut. Il l'a également menacé de ne pas lui rendre ses papiers s'il apprenait que Monsieur Z. avait été le dénoncer à la police.

Avant de commencer le travail, on lui a demandé les papiers pour les déclarer pour toucher quelque chose en cas d'accidents / perte de travail.

À cause de sa couleur de peau, les personnes blanches à côté de qu'il s'asseyait dans les transports en commun changeaient de place.

Il n'y a pas non plus de logements prévus pour eux là-bas. Il donnait 5€ à un monsieur pour passer la nuit chez lui, mais pour louer un logement, il faut donner une caution de 2/3 mois, ce qu'il ne pouvait pas se permettre financièrement.

- Pourquoi la Belgique ?

Il sentait que la Belgique lui conviendrait et effectivement, il n'a plus subi de racisme et/ou discrimination depuis son arrivée. Il loge actuellement dans une maison d'accueil. Monsieur Z. est arrivé en Belgique le 19/12/2022.

- COI du Soudan

Le conflit soudanais de 2023 (parfois surnommé guerre des généraux) est un conflit armé qui a débuté au Soudan le 15 avril 2023 entre l'armée au pouvoir dans le pays et les forces paramilitaires. Des affrontements ont éclaté dans tout le pays, principalement dans la capitale Khartoum et dans le Darfour. `

- Quelques faits :

Plus de 470.250 personnes ont cherché à fuir le conflit dans les pays voisins du Darfour 1,7 million de déplacements internes

Nombre élevé de civil tué et blessé a Darfour
Bien que le nombre réel de victimes ne soit pas connu, il y a eu une pique de blessés et de décès depuis le début du conflit le 15 avril. Le secteur de protection à Darfour affirmerait qu'il y aurait eu 3.900 personnes tuées et 8.400 blessées entre le 15 avril et fin aout 2023.

Au moins 29 villes et villages complètement ou partiellement détruits dans Darfour

Destruction, endommagement, pillage et/ou occupation généralisés des bâtiments publics, des installations de fourniture de services essentiels et d'autres structures dont dépend la population civile. (16 structures de gouvernance y compris les bureaux des ministères, 16 marchés, 14 installations de maintien de l'ordre dont des commissariats de police, 21 établissements de santé dont des hôpitaux et des cliniques, 6 installations de transport, y compris les aéroports, 52 établissements d'enseignement, dont des écoles)

Rapport du 3^e entretien : 7 novembre 2023

1) Identité:

Nom : Monsieur Y.

Date de naissance : 1/1/1996 (il ne se rappelle pas vraiment quand il est né donc il donne une date au hasard). Il n'a jamais vu un passeport de sa vie. Il avait des papiers d'identité d'Érythrée mais il les a donnés aux autorités suisses qui ne les lui ont jamais rendus.

Lieu de naissance : Il vient d'Érythrée. Il est né et a toujours vécu à Hageaz.

Situation familiale : Il vivait là avec sa famille. Ils étaient 6 personnes. Il a une sœur qui est au Canada depuis 4 mois. Avant ça, elle a vécu en Israël pendant 11 ans (il ne sait pas si elle a eu des papiers là-bas). Son grand frère est marié et travaille à l'armée en Érythrée. Il n'a plus eu de contacts avec ses parents depuis 4 mois.

Il est fiancé à Madame Z. qui se trouve actuellement en Éthiopie (elle vient du Soudan et a fui en Éthiopie). Ils ne sont pas partis ensemble parce qu'il est parti en premier puis elle. Il aimerait la retrouver en Belgique.

Scolarité : il est allé à l'école jusque 16 ans puis il a arrêté pour aider son père qui est handicapé.

Trajet : Il a quitté l'Érythrée pour le Soudan puis est allé en Italie puis en Suisse puis en France. L'Italie a pris ses empreintes. La Suisse a repris son dossier pour aider l'Italie. Il est resté en Suisse 4 ans puis la Suisse a refusé sa demande. Il n'a pas reçu de papier en Italie ni Suisse. Quand il est arrivé en France, ils lui ont dit de retourner en Suisse. Quand il est arrivé en Belgique, il a été dans un centre fermé à Zaventem.

2) Avez-vous déjà été arrêté et/ou incarcéré par la police ou par des milices ?

Première arrestation : Quand il a quitté l'école, il a été forcé de rejoindre l'armée. Ils sont venus l'arrêter chez lui en mars 2012. Il a été enfermé pendant 6 mois.

En cellule, n'y a rien à faire ils peuvent juste aller aux toilettes à 6h et à 18h. Une fois, on lui a demandé de préparer le thé et il l'a renversé. Il a été frappé à cause de cela. Il y a les grands responsables et les personnes qui travaillent pour eux et quand on demande aux militaires de les frapper, les militaires les frappaient avec des bâtons.

Il dit ne pas avoir de cicatrice sur son corps.

Deuxième arrestation : Il a été une deuxième fois dans une prison de l'armée parce qu'il avait un congé d'un mois, mais il est resté plus longtemps que prévu. C'était au mois de septembre ou d'octobre 2012. Ce sont trois personnes de l'armée qui sont venues le chercher parce qu'il est resté 5 jours de plus en congé pour aider son papa. Il a été incarcéré 3 mois. Pour l'arrêter, ils ont pointé une arme sur le cou du papa pour le menacer. (Le papa est handicapé, il a perdu un œil et un doigt pendant la guerre.) Ils étaient 17 personnes dans la cellule, il ne se rappelle pas de leurs prénoms (il dit avoir du mal à retenir les prénoms de manière générale).

Il est sorti, car on lui a demandé de rejoindre le groupe pour devenir militaire. Son rôle dans l'armée était la cuisine ou la surveillance et parfois il dépassait les horaires de travail. Il n'a jamais été rémunéré pour son travail. Les heures supplémentaires étaient une sorte de punition pour avoir prolongé son congé.

Il a fait 9 mois de service militaire au total. Après 6 mois de service, ils sont divisés dans différentes bases militaires et ils restent là toute leur vie. Les personnes qui faisaient le service étaient toutes pareilles et se respectaient entre elles, mais il y avait des chefs qui avaient des privilèges. Les chefs pouvaient voir leur famille quand ils voulaient.

En Érythrée soit, ils vont à l'école soit ils font leur service militaire. Lui a quitté l'école pour aider son père et les militaires sont venus le chercher.

Il n'est pas d'accord avec la politique du pays, le président est un dictateur. Personne ne peut pas être d'accord avec lui.

Journée type : Le matin ils prennent le petit déjeuner puis ils vont faire un peu de recherche de bombes avec des appareils, ensuite ils mangent le midi et l'après-midi ils vont chercher du bois et le soir c'est la surveillance. Pendant la nuit, il y a un roulement. Certains surveillent pendant trois heures puis quelqu'un prend le relais et ils vont se reposer pendant trois heures puis ils retournent faire de la surveillance et ainsi de suite.

3) Avez-vous déjà été condamné par un tribunal ?

Non

4) Êtes-vous actif dans une association/organisation/parti politique ?

Non. Sa famille non plus. Il n'a jamais participé à une manifestation.

5/6) Que craignez-vous en cas de retour dans votre pays d'origine ? /Pourquoi pensez-vous que ceci (ce risque) peut vous arriver ?

Maintenant qu'il a quitté l'Érythrée, il est considéré comme un traître. Les traîtres sont enfermés toute leur vie. « Vous n'imaginez pas ce qu'ils vivent en prison ». Les prisons ne sont pas en bon état. Il s'agit de sous-sols où les prisonniers vivent dans des conditions très difficiles.

Il connaît quelqu'un qui s'est fait arrêter lorsqu'il a essayé de quitter l'Érythrée. Cette personne a été mise en prison et sa famille ne sait pas ce qu'il va advenir de lui. S'il rentre il sera mis en prison et c'est pire qu'une prison parce qu'il n'y a pas de lumière du jour, ect. Le traitement est très dur - il n'y a ni nourriture, ni eau, ni de matelas ; rien.

Petite parenthèse par rapport à la suisse

Il est arrivé en Suisse en mai 2016, il a suivi des cours d'allemand là-bas. On a pris ses empreintes en Suisse et on lui a refusé le statut de réfugié.

Il a eu plusieurs fois des contrôles de papiers, mais il leur montrait et c'était réglé. Il n'est pas allé en suisse de son plein gré. Mais il a fait sa demande là-bas. Il a fait une interview de 6h avec 5 (ou 7 personnes.). La Suisse a refusé sa demande et lui a demandé de partir. Elle ne lui a donné AUCUNE raison et aucun motif de refus.

Sur la feuille de refus il est juste noté que c'est refusé à « telle date » et lui demande de quitter le pays pour « telle date ». (Il a une photo de la feuille, mais c'est en Allemand). Il 'n'a jamais reçu de transcription de cette interview qu'il a faite en 2017.

Après son refus il est allé demander des papiers en France et en Belgique (en 2022, après avoir passé la première interview seulement), mais ils l'ont renvoyé en Suisse et dit de faire un recours. Il a essayé de contacter des avocats pour voir comment « contrer » la décision (donc, faire un recours) de la Suisse, mais les avocats lui ont dit qu'ils ne pouvaient rien faire.

Son Dublin serait fini le 9 novembre.

Quelques informations complémentaires sur l'Érythrée

Amnesty expose en quoi le service national que doivent réaliser les érythréens s'apparente à du travail forcé : « *L'organisation révèle que le service national demeure illimité – il dure parfois plusieurs décennies – alors que des représentants de l'État ont assuré qu'il ne dépasserait pas 18 mois. Les appelés sont aussi bien des garçons et des filles, dont certains ont tout juste 16 ans, que des personnes âgées* »¹. Aucun moyen légal ne permet de quitter ce service obligatoire. Les personnes arrêtées qui doivent s'y soumettre, le font souvent pour le reste de leur vie.

Le rapport « [Just Deserters : Why indefinite national service in Erythrea has created a generation of refugees](#) » expose ce que Monsieur Y. nous a expliqué à propos de sa deuxième arrestation. En cas de tentative de fuite ou de désertion du service national organisé, les milicesrattrapent les personnes en cause et les punissent pas emprisonnement ou sévicespsychologiques et physiques sur ces personnes elles-mêmes et/ou sur leurs familles.

Malgré le droit international permettant à chacun de gagner sa vie, le défraiement proposé contre la participation au service national ne permet, jamais et à personne, de subvenir à ses besoins.

La dictature imposée au pays ne permet aucune manifestation ou organisation politique contraire. Les libertés individuelles sont restreintes – personne n'ose parler sous peine d'être arrêtée, ou pire encore ...

¹ <https://www.amnesty.be/infos/actualites/article/erythre-conscription-illimitee-motif-valable-droit-asile>

Case

Amara Ghafoori

v.

The Minister of Home Affairs of the Grand Duchy of Taurasia

Written pleading of the Applicant

International Migration and Refugee Law Moot Court Competition

2024

5999 Words

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List of Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
COI	Country of Origin Information
CRC	Convention on the Rights of the Child
CSC	Supreme Court of Canada
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
GC	1951 Geneva Convention Relating to the Status of Refugees
HC	High Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Istanbul Convention	Convention of the Council of Europe on preventing and combating violence against women and domestic violence
RvV	Raad voor Vreemdelingenbetwistingen (Council for Alien Law Litigation of Belgium)
UKSC	UK Supreme Court
VwGH	Verwaltungsgerichtshof (Supreme Administrative Court of Austria)

Statement of Relevant Facts

Amara Ghafoori is an Afghan woman of Pashtun origin and Sunni Muslim. She was born on March 7, 2000, in Kabul, where she lived with her parents and her brother Arash Ghafoori, aged 18. Her father worked for the former government as a civil engineer, and her mother was a primary school teacher until the Taliban's takeover in August 2021.¹ She grew up surrounded by educated people, her parents always encouraging her to study and be open to new cultures. She obtained a bachelor's degree in law at Kabul University, graduating in 2021.

On July 12, 2021, she fled to the Grand Duchy of Taurasia to study a two-year master's degree in "Diversity, Multiculturalism and Law" at the University of Agarthia. She was awarded a scholarship by the Ministry of Higher Education of the former Afghan government. She held a student visa, which expired on September 30, 2023.

Since the Taliban's takeover in August 2021, the situation in Afghanistan changed considerably. The applicant fears to return to her country as she does not agree with the way the Taliban rule and restrict women's freedoms and access to fundamental rights. She also fears persecution due to her parents' opposition to the Taliban regime and the family's links with the former government. For this reason, her younger brother Arash Ghafoori fled Afghanistan on October 10, 2022, by illegal means, and joined the applicant in Taurasia, where he applied for asylum on July 22, 2023.

The applicant is now assimilated as a "Westernized" woman, particularly criticized by the Taliban, due to her stay in Taurasia. An alarming exchange with her parents further intensified

¹ EUAA, *Afghanistan Country Focus*, December 2023, available at: www.cgra.be/sites/default/files/rapporten/euaa_coi_report_afghanistan_country_focus_20231205.pdf, p. 17.

her concerns about the situation in her country of origin, leading the applicant to lodge an application for asylum on April 5, 2023.

Country of Origin Assessment

Under the Taliban regime, based on a strict interpretation of Sharia law – divine law of Islam, found in the Quran and Sunnah²—, Afghan society is rooted in an unequal division of roles between men and women. Women depend heavily on men and face restrictions on various levels.³

Unless accompanied by a male relative, women are not allowed to travel more than 72 km⁴ and may be denied access to health care and education.⁵ Access to the job market is restricted, with no admission to senior positions.⁶ This prevents women from achieving financial independence, pushing single women into poverty⁷ and prompting them to consider marriage.⁸

² K. ROBINSON, “Understanding sharia : The Intersection of Islam and the Law, available at: <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law>.

³ UNHCR, *Statement on the concept of persecution on cumulative grounds in light of the current situation for women and girls in Afghanistan: Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the cases of AH and FN v. Bundesamt für Fremdenwesen und Asyl (C-608/22 and C-609/22)*, 25 May 2023, available at: www.refworld.org/docid/646f0e6a4.html, p. 10 and AAN, *Decrees, orders and instructions of His Excellency, Amir al-mu'minin*, 22 May 2023, Official Gazette, available at: www.afghanistan-analysts.org/en/wp-content/uploads/sites/2/2023/07/Decrees-order-of-Taleban-amir-English.pdf.

⁴ EUAA, *Afghanistan Country Focus*, *op cit.*, p. 75 and RFE/RL, *Afghan Women Banned From Making Trips Unless Escorted*, 26 December 2021, available at: www.refworld.org/docid/646f0e6a4.htmlhttps://www.rferl.org/a/taliban-woman-banned-travel-chaperone/31626822.html.

⁵ UN Human Rights Council, *Situation of women and girls in Afghanistan*, 20 June 2023, available at: www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur, pp. 87–88.

⁶ EUAA, *Afghanistan Country Focus*, *op. cit.*, pp. 77–78.

⁷ EUAA, *Afghanistan Country Focus*, *ibidem*, pp. 77–78.

⁸ CARE, “The Impact of the Food Crisis on Women and Girls in Afghanistan”, 29 December 2022, available at: <https://reliefweb.int/report/afghanistan/impact-food-crisis-women-and>

The Taliban consider the application for international protection in a Western country by an Afghan national as an act of political opposition⁹ especially when education is the primary motivation. They perceive educated women as violators of societal norms, considering them traitors or miscreants¹⁰. Such violations subject them to abuse, including public flogging, beating, and verbal abuse¹¹. Additionally, activists participating in demonstrations for women's rights in Afghanistan have faced detention or disappearance¹².

[girls-afghanistan-november-2022](#), pp. 8 - 11, in EUAA, *Afghanistan Country Focus*, *ibidem*, p. 49.

⁹ EASO, *COI Query response on Afghanistan: Situation and treatment of Afghan nationals perceived as "Westernised"*, September 2020, available at: www.ecoi.net/en/file/local/2036956/2020_09_Q19_EASO_COI_Query_Response_AFG_Westernisation.pdf, p. 12, para. 1.3.

¹⁰ EUAA, *Afghanistan Country Focus*, *op cit*, p. 97 ; L. SADID, "The Taliban : men who are afraid of educated women", *Latitudes*, 20 January 2023, available at : <https://medialatitudes.be/the-taliban-men-who-are-afraid-of-educated-women/>.

¹¹ EUAA, *Afghanistan Country Focus*, *ibidem*, p. 85 ; UNAMA, *Corporal Punishment and the Death Penalty in Afghanistan*, 3 May 2023, available at <https://unama.unmissions.org/corporal-punishment-and-death-penalty-afghanistan>, p. 13 ; USDOS, *2022 Country Reports on Human Rights Practices: Afghanistan*, 20 March 2023, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/afghanistan/>; TOLONews, "Islamic Emirate Leader Orders Full Implementation of Sharia Law", 14 November 2022, available at: <https://tolonews.com/afghanistan-180747> and AFP, "Afghan supreme leader orders full implementation of sharia law", 14 November 2022, available at <https://www.theguardian.com/world/2022/nov/14/afghanistan-supreme-leader-orders-full-implementation-of-sharia-law-taliban>.

¹² EUAA, *Afghanistan Country Focus*, *op cit*, p. 72; UN Security Council, *The situation in Afghanistan and its implications for international peace and security*, 15 June 2022,

available at: <https://digitallibrary.un.org/record/3956568>, para. 34 ; Human Rights Watch, "Afghanistan : Women Protesters Detail Taliban Abuse", 20 October 2022, available at: <https://www.hrw.org/news/2022/10/20/afghanistan-women-protesters-detail-taliban-abuse> and Human Rights Watch, "Women's Rights Activists Under Attack in Afghanistan", 30 November 2023, available at : <https://www.hrw.org/news/2023/11/30/womens-rights-activists-under-attack-afghanistan>.

Under Sharia law, certain behaviors, such as murder, rape, kidnapping, and armed robbery can lead to a death penalty, including public execution by stoning or shooting.¹³ Arrests and killings often occur arbitrarily and without formal conviction.¹⁴ Certain individuals, such as those associated with the former government, including drivers, bodyguards, and relatives are at a higher risk of being targeted for extrajudicial executions.¹⁵ UNAMA documented 160 such executions between August 15, 2021, and June 15, 2022.¹⁶

Sharia law classifies adulterous or extramarital relations (*zina*) as moral crimes,¹⁷ punishable by stoning or flogging. At least five people were stoned to death for adultery in February 2022¹⁸ and seven extrajudicial executions were recorded for alleged extramarital relations in June 2022.¹⁹

¹³ EASO, *Country of Origin Information Report – Afghanistan: Criminal Law, Customary Justice and informal dispute resolution*, July 2020, available at: <https://euaa.europa.eu/publications/coi-report-afghanistan-criminal-law-customary-justice-and-informal-dispute-resolution>, p. 21.

¹⁴ UNAMA, *Human Rights in Afghanistan: 15 August 2021-15 June 2022*, July 2022, available at: <https://afghanistan.un.org/en/191313-human-rights-afghanistan-15-august-2021-%E2%80%93-15-june-2022>, p. 14.

¹⁵ UNAMA, *Human Rights in Afghanistan: 15 August 2021-15 June 2022*, *ibidem*, p. 14.

¹⁶ EUAA, *Afghanistan Targeting of Individuals*, *op. cit.*, p. 57; UNAMA, *Human Rights in Afghanistan*, *ibidem*, pp. 13 – 14.

¹⁷ UNAMA, *Human Rights in Afghanistan*, *ibidem*, p. 40.

¹⁸ EUAA, *Afghanistan Targeting of Individuals*, *op. cit.*, p. 35; UN Security Council, *The situation in Afghanistan and its implications for international peace and security*, *op. cit.*, para. 35.

¹⁹ UN Security Council, *The situation in Afghanistan and its implications for international peace and security*, *ibidem*, para. 34.

Summary of Legal Questions Identified and Pleading

The Immigration Service issued its decision, refusing refugee status and exceptional leave to remain, and ordering the applicant to leave the country. It justified its decision by stating that the applicant had no valid reason to fear persecution on religious grounds, since she continued to practice her religion even in Taurasia, and that the stigma she would suffer because of her Westernization was not sufficiently serious. The authority also considered that the applicant had not expressed any explicit political opposition likely to expose her to abuse by the Taliban, and that the danger she faced due to her family's link with the former government and the sudden disappearance of her parents remained unclear. The Immigration Service claims that the crisis in Afghanistan does not present a sufficient degree of seriousness to consider every Afghan national as a refugee.

1. Refugee Status under Article 1(A) of the 1951 Geneva Convention²⁰

In the first part of the argument, the applicant asserts that she is entitled to refugee status. The criteria outlined in Article 1(A) of the Geneva Convention (hereafter GC) will be examined in order to demonstrate that the applicant fulfills all these criteria.

Taurasian authorities should have adopted an interpretation of the persecution grounds that is sensitive to gender considerations, as prescribed in Article 60 of the Istanbul Convention²¹. Indeed, the applicant has a well-founded fear of persecution based on the following grounds:

²⁰ Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, *U.N.T.S.*, vol. 189, p. 137, art 1(A) and the Protocol relating to the Status of Refugees done at New York on 31 January 1967, *Treaty Series*, vol. 606, p. 267.

²¹ Convention of the Council of Europe on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, *C.E.T.S.*, no. 210, art. 60.

religion, political opinion, and membership of a social group. The terms "risk" and "fear" will be used interchangeably throughout the document.

The first part of the plea illustrates that the applicant would experience cumulative discrimination amounting to persecution and based on these three grounds upon return. Indeed, she would be considered by the Taliban as a Westernized Afghan woman who does not strictly adhere to the religious practices imposed by the Taliban and is considered as having a political opinion due to her participation in two manifestations in Taurasia, asking for the respect of women's fundamental rights.

Regarding the assertion by the Immigration Service that the applicant lacks valid reasons to fear persecution on religious grounds, it will be demonstrated that her religious freedom would indeed be impeded upon her return to Afghanistan. To support this, Articles 2 and 18 of the ICCPR will be analyzed.

Subsequently, concerning the lack of clarity regarding the danger faced by the applicant due to her family's connections to the former government and the alleged absence of an explicit political opposition expression, the applicant's account will be examined. The credibility of her narrative considering relevant international jurisprudence will be assessed, emphasizing the significance of granting the benefit of the doubt in the field of refugee status determination.

2. Exceptional Leave to Remain Under Article 3 of the CAT²² and Article 7 of the ICCPR²³

²² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, *U.N.T.S.*, vol. 1465, p. 85, art. 3.

²³ International Covenant on Civil and Political Rights, adopted in New York on 19 December 1966, *U.N.T.S.*, vol. 999, p. 171, art. 7.

In the second part of the pleading, the applicant argues that she would face a real risk of serious harm if returned to Afghanistan, as a single Westernized woman. These grounds will be examined in the light of COI in Afghanistan. The applicant will demonstrate that she is entitled to exceptional leave to remain as she fears to be exposed to inhuman and degrading treatments on the basis of Article 3 of the CAT and Article 7 of the ICCPR and should also be protected from *refoulement* considering Article 61 of the Istanbul Convention.

3. Special Leave To Remain Under Articles 17 And 23 Of The ICCPR²⁴

The applicant invokes a special leave to remain on exceptional grounds as she wishes to stay in Taurasia for family reasons. Her younger brother, who is an asylum seeker in Taurasia, is dependent on her and is particularly vulnerable since he has lived traumatic experiences during his travel to Taurasia²⁵.

²⁴ International Covenant on Civil and Political Rights, *op. cit.*, art. 17 and 23.

²⁵ See p. 13 of the case.

Pleadings

The applicant's request should be granted both regarding her claims to obtain refugee status (1) and her claims for exceptional leave of residence (2). Additionally, she should receive refugee status based on her right to family unity (3).

1. On the Refugee Status

The applicant must benefit from the international protection guaranteed by GC, wherein Article 1(A)(2) defines a refugee as any person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."²⁶

The elements of this definition will be applied to the applicant's case. The concept of "fear of persecution" will be examined, providing a comprehensive assessment of the specific dangers faced by the applicant as a refugee "*sur place*" (1.1). We will then undertake a detailed analysis of the notion of persecution, particularly based on cumulative grounds (1.2). We will conclude with the notion of proof, aiming to demonstrate the credibility of the applicant's statements (1.3).

When citing CJEU or ECtHR sources, it's important to note that although not binding on Taurasia, the jurisprudence of these courts serves as a valuable reference inspiring our arguments.

²⁶ Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, *U.N.T.S.*, vol. 189, p. 137, art. 1(A).

*1.1. The Applicant Has a **Well-Founded** Fear of Persecution*

It is necessary to objectively establish whether there is indeed a well-founded fear²⁷ of being exposed to the persecution in the event of return to Afghanistan. The examination will focus on three elements: the moment at which the fear is measured (a), the place where it could occur, defining the particularity of a refugee “*sur place*” (b) and the required level of risk (c).

a) Moment of the Risk

The general measures introduced by the Taliban regime aimed at restructuring Afghan society and marginalizing women from the public sphere mean that every Afghan woman is at risk of serious persecution in the event of non-compliance with the rules imposed.²⁸ Therefore, women are the object of group persecution, due to the accumulation of discriminatory measures imposed on them. Thus, the Taliban’s takeover in August 2021 poses a growing threat to the applicant, due to the simple fact that she is a woman. This threat intensifies further as she has lived in Taurasia for two years, embracing Western culture and becoming more open-minded.

Past persecution is a serious indicator of future persecution²⁹, unless there is a good reason to believe that such persecution will no longer take place. When the Taliban were in power, the applicant’s mother could not work and had to stay at home. She could not go out alone and had to be completely veiled. Despite their fall in 2001, the applicant always felt their presence and

²⁷ Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, *U.N.T.S.*, vol. 189, p. 137, art. 1(A).

²⁸ UNHCR, *Statement on the concept of persecution on cumulative grounds in light of the current situation for women and girls in Afghanistan*, *op. cit.*, p. 10, para. 5.1.13.

²⁹ UNHCR, *Guidelines on international protection no. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 23 July 2003, available at: www.unhcr.org/media/guidelines-international-protection-no-4-internal-flight-or-relocation-alternative-within, p. 6, para. 24.

pressure and never stopped hearing about them at school or on the news.³⁰ The applicant grew up in the city of Kabul, where terrorist attacks and bombings were carried out by the Taliban, then acting as a rebel movement. The return of the Taliban signifies a revival of their regime, suggesting a recurrence of past persecutions.

b) Location of the Risk

It is important to distinguish the location of the event generating the risk from the location of its materialization. Two notions must be examined: the notion of refugee “*sur place*” and the notion of alternative internal protection.

i. The Concept of Refugee “Sur Place”

A refugee is considered “*sur place*” when they leave their country for reasons unrelated to any persecution suffered in their country of origin, and even before an actual risk emerged³¹. This is the case of the applicant, who left Afghanistan a month before the Taliban’s takeover, to pursue her studies in Taurasia. Major changes in her home country occurred while she was already abroad, making her return to Afghanistan unsafe and prompting her to seek international protection.³²

³⁰ See p. 11 of the case.

³¹ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, February 2019, available at <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfc47.pdf>, para. 95.

³² J.C. HATHAWAY and M. FOSTER, *The Law of Refugee Status*, Cambridge, CUP, 2014, p. 75.

The request for protection is not solely based on an objective change in the country of origin but can also be influenced by a subjective element³³ related to the individual³⁴. The applicant herself acknowledges a shift in her perspectives and values since her departure, influenced by Western culture. Her increased awareness of women's issues in Afghanistan is evident through her participation in demonstrations in Taurasia, and her choice not to always wear the hijab, which contradicts traditional Afghan values. The fact that she bears partial responsibility for the risk of persecution³⁵ by expressing her opinions solely in Taurasia, without continuous expression in Afghanistan, due to freedom restrictions preventing such expression there, does not inherently affect the risk analysis.³⁶

Hence, the applicant's fear of persecution also stems from changes in habits or activities since leaving her home country, alongside the objective changes in her country of origin.

ii. The Concept of Internal Protection Alternative

Regarding the materialization of the risk, the question is whether there exists, within the country of origin, an area which is not targeted by this risk of persecution. International protection is an

³³ CSC, *Canada (Attorney General) v. Ward*, no. 21937/1993, 30 June 1993, available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1023/index.do>, p. 723.

³⁴ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *op. cit.*, para. 96.

³⁵ J.C. HATHAWAY and M. FOSTER, *The Law of Refugee Status*, *op. cit.*, p. 39 ; *Ngongo, Ndjadi Denis v. M.C.I.* (F.C.T.D., no. IMM-6717-98), Tremblay-Lamer, October 25, 1999.

³⁶ UNHCR, *Statement on the interpretation of Article 5(3) of the EU Qualification Directive regarding subsequent applications for international protection based on sur place religious conversion*, 3 February 2023, available at: www.refworld.org/docid/63dd3b214.html, p. 7, para. 4.2.6.

alternative protection, in the absence of national protection.³⁷ This alternative must be taken into consideration only if provided, *quod non in casu*, the applicant can safely travel and settle in this region, and it is reasonable for them to settle there.³⁸

There is no internal alternative possible for the applicant as the risk of persecution precisely emanates from the national authorities. It is impossible for the applicant, a single woman, to move to another region of Afghanistan due to the restrictions imposed by the Taliban on the freedom of movement of women. And even if she, somehow, managed to travel to another region, she would not have been able to live there safely as she would always be targeted by the Taliban, who control the 37 provinces of the country.³⁹ Furthermore, since the applicant will be prohibited from working, it will be difficult for her to be financially independent and meet her most basic needs. In short, it would not be reasonable for the applicant to settle anywhere in Afghanistan as a single woman. There is no internal flight alternative in Afghanistan.

c) Level of Risk

The level of fear reaches a sufficiently high degree when there is a reasonable probability that the events feared will occur in the future.⁴⁰

³⁷ J.C. HATHAWAY, *The Michigan Guidelines on the International protection alternative*, Ann Arbor, Michigan Publishing, 2019, available at: <https://repository.law.umich.edu/books/108/>, p. 2, para. 1.

³⁸ UNHCR, *Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection*, *op. cit.*, p. 26, para. 91.

³⁹ EASO, *Country of Origin information Report: Afghanistan security situation*, *op. cit.*, p. 36.

⁴⁰ J.C. HATHAWAY, "Refugees and Asylum", in B. Opeskin, R. Perruchoud, and J. Redpath-Cross (eds.), *Foundations of International Migration Law*, Cambridge, CUP, 2012, p. 184, para.

Considering the objective situation in Afghanistan and the applicant's profile as a single, Westernized woman, particularly at risk, the applicant has a well-founded fear of being persecuted if she returns to her country of origin. This risk exists even more because of her family ties and their explicit opposition to the Taliban regime.

*1.2. The Applicant Fears **Persecution** on Cumulative Grounds*

Persecution can be defined as an act seriously infringing upon an individual's fundamental rights when they are unable to obtain any protection from the authorities of their country of origin.⁴¹ It must be linked to one of the five grounds enumerated by GC and may take various forms, including physical or psychological violence, deprivation of liberty, or discrimination.

Persecution can result from a single act or a set of measures, even if each measure taken individually does not necessarily constitute an act of persecution. In this case, it is the overall context which provides that these measures constitute persecution based on cumulative grounds.⁴²

The applicant's risk of persecution stems from her multiple distinctive characteristics, forming a high-risk profile in Afghanistan. Amara Ghafoori is an Afghan woman who has lived and studied in the West, descended from emancipated parents aligned with the previous government. For this reason, the applicant faces a risk of persecution based on her membership of the social group of women (a), her political opinions (b), and her religion (c).

7.2.2, available at: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1052&context=book_chapters.

⁴¹ J.C. HATHAWAY, "Refugees and Asylum", *ibidem*, p. 185, para. 7.2.4.

⁴² UNHCR, *Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection*, *op. cit.*, p. 21, paras. 53 and 55.

a) *On Her Membership of a Social Group*

A social group is based on an innate or immutable characteristic⁴³ shared by the members of that group (e.g., *gender*⁴⁴). The applicant can therefore be considered as belonging to the social group of women as they share the common characteristic of sex. Subsequently, gender-based discrimination arises. The applicant's Westernized identity further exposes her to persecution upon return to Afghanistan. As a woman having spent time in a Western country and adopting its values, she may be perceived as deviating from the traditional Afghan or Muslim profile, based on her activities, behavior, appearance, or expressed opinions.⁴⁵ The status of "Westernized" individual generally implies that a person is perceived as having transgressed religious or social norms and/or as holding a political opinion critical of the Taliban regime (*infra*, c).

In its decision, the Immigration Service claims that the crisis in Afghanistan does not present a sufficient degree of seriousness to consider every Afghan national as a refugee. However, the applicant's individual situation cannot be examined without considering the situation of women

⁴³ UNHCR, *Guidelines on international protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2022, paras. 12–15, and CSC, *Canada (Attorney General) v. Ward*, 30 June 1993, available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1023/index.do>.

⁴⁴ Conclusions of AG J. RICHARD DE LA TOUR in Joined Cases C-608/22 and 609/22, 9 November 2023, available at: <https://curia.europa.eu/juris/document/document.jsf?pageIndex=0&docid=279507&doclang=EN&text=&cid=134754>, para. 58.

⁴⁵ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 101; EUAA, *Country Guidance : Afghanistan*, January 2023, available at: <https://euaa.europa.eu/country-guidance-afghanistan-2023>, p. 77, para. 3.13; VwGH, *F.N. v. Federal Office for Immigration and Asylum (BFA)*, Case C-609/22, 22 September 2022, available at: <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=268121&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=7746503>, para. 3.

in Afghanistan and their lack of access to the most basic and fundamental rights. The Taliban regime imposes various restrictions on women, such as exclusion from social and professional life, and even access to health care and education.⁴⁶ The applicant mentioned that her mother was barred from teaching at school, citing a violation of Islamic values.⁴⁷ This highlights evident gender discrimination and inequality in Afghan society, where women often face marginalization and complete dependence on men.

These stringent measures affect all Afghan women uniformly, prompting consideration of potential systematic persecution or even a presumption of refugee status in favor of Afghan women as a social group of its own.⁴⁸ In the case of Afghan women, the mere existence of discriminatory measures, aimed at depriving them of their fundamental and socio-economic rights, is sufficient to constitute an act of persecution.⁴⁹ It is common practice for certain national asylum authorities—notably in Denmark, Finland and Sweden—to adopt an “individualized but simplified approach”⁵⁰ when processing asylum applications from Afghan women, given their situation under the Taliban regime.

Furthermore, we recall the obligation of States parties to the CEDAW to adopt the necessary measures to eliminate all forms of discrimination against women and ensure equal access to

⁴⁶ EUAA, *Afghanistan Country Focus*, *ibidem*, pp. 75 – 79.

⁴⁷ “My mother cannot work any longer as a school teacher, because female school teachers were fired, with the Taliban arguing that this is necessary to protect Islamic values, which is completely wrong”, p. 14 of the case.

⁴⁸ UNHCR, *Statement on the concept of persecution on cumulative grounds in light of the current situation for women and girls in Afghanistan*, *op. cit.*, p. 10, para 5.1.11.

⁴⁹ N. FEITH TAN and M. INELI-CIGER, *Group-based Protection of Afghan Women and Girls Under the 1951 Refugee Convention*, ICLQ, 2023, p. 803.

⁵⁰ N. FEITH TAN and M. INELI-CIGER, *Group-based Protection of Afghan Women and Girls Under the 1951 Refugee Convention*, *Ibidem*, p. 810.

education, employment, and health care.⁵¹ As such restrictions are imposed by the Taliban—as the governing authority—the State’s failure to grant any protection to the applicant is evident⁵². It is Taurasia’s responsibility, as the processing authority for the asylum application, to shield the applicant from gender-based discrimination, Westernization, and non-compliance with the Taliban’s norms. Article 60 of the Istanbul Convention underscores the need for States to consider existing gender inequalities in the country of origin and apply a gender-sensitive interpretation of persecution grounds.⁵³

Returning to Afghanistan would leave the applicant without the support of male relatives, exposing her to the challenges faced by single women, as the only effective protection mechanisms for Afghan women are family and tribal ties.⁵⁴ The applicant is unmarried, out of contact with her parents, and her brother’s situation is uncertain. Even though her neighborhood in Kabul has a strong community bond, it is impossible to imagine her being taken under the wing of the men there since she cannot return to Kabul. As she lacks relatives elsewhere in Afghanistan, it would be inconceivable to send the applicant, as a single woman, to Afghanistan.⁵⁵

⁵¹ Convention on the Elimination of All Forms of Discrimination against Women, adopted in New York on 18 December 1979, *U.N.T.S.*, vol. 1249, p. 13, art. 2 and 3.

⁵² J.C. HATHAWAY and M. FOSTER, *The Law of Refugee Status*, *op. cit.*, p. 291.

⁵³ Convention on the Elimination of All Forms of Discrimination against Women, adopted in New York on 18 December 1979, *U.N.T.S.*, vol. 1249, p. 13, art. 60.

⁵⁴ RvV, case no. 13.157, 26 June 2008, available at <https://www.rvv-ccc.be/sites/default/files/arr/A13157.AN.pdf>, para. 2.1.9.

⁵⁵ UNHCR, *Statement on the concept of persecution on cumulative grounds in light of the current situation for women and girls in Afghanistan*, *op. cit.*, p. 10.

b) On Political Grounds

Political opinion may be expressed by a person fearing persecution, or it may be attributed to them by their persecutor.⁵⁶ This is the case when it is reasonable to believe that the author of these actions holds strong convictions likely to be perceived as carrying a political message.⁵⁷ While the applicant may not have explicitly expressed an opinion about the Afghan authorities, various elements could be interpreted by the Taliban as a form of critical opposition to their regime.

The applicant received an emancipatory education, emphasizing open-mindedness and was surrounded by intellectuals. Raised with a priority on education, she left Afghanistan on July 21, 2021, and has since resided in Taurasia, renowned for its reputable and progressive education system. Leaving Afghanistan and moving to the West to study may be perceived as an act of political opposition⁵⁸ implying a criticism of the Taliban.⁵⁹ This is a typical example of a political opinion likely to be imputed to the applicant by the Taliban,⁶⁰ especially since she studied in English, perceived as the language of infidels.⁶¹

⁵⁶ UNHCR, *Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection*, *op. cit.*, p. 24, para. 82, and CSC, *Canada (Attorney General) v. Ward*, 30 June 1993, available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1023/index.do>), p. 694.

⁵⁷ UNHCR, *Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection*, *op. cit.*, p. 24, para. 82.

⁵⁸ EASO, *COI report Afghanistan, Anti-Government Elements (AGEs)*, *op. cit.*, p. 12, para. 1.3.

⁵⁹ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 92.

⁶⁰ EUAA, *Afghanistan Country Focus*, *ibidem*, pp. 91 – 93.

⁶¹ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 78.

The applicant participated in events in Agarthā, such as the protest against the occurrences in Afghanistan and the silent vigil for women's rights. Taurasia has a strong commitment to gender equality, deeply rooted in its culture, which likely influenced the applicant's involvement. This is a factor in her Westernization, as she has immersed herself in the country's culture, and claims to have become accustomed to the fact that women have more freedom.⁶² This is an act that is perceived as a form of resistance reprehensible in Afghanistan.⁶³

Aside from the applicant's engagement in politically oriented activities, it is crucial to acknowledge the risks associated with her parents' political involvement in Afghanistan.

Afghan women face significant limitations in political involvement, reflecting gender role disparities in society. Consequently, the applicant is assimilated to the political activity of the male figures in her family.⁶⁴ The applicant is likely to be attributed the actions of her parents—in particular her father—, constituting a danger to her. Indeed, her parents have always openly opposed religious conservatism and extremism.⁶⁵ They also align with the previous government, as her father worked for the Ministry of Public Works and her mother as a schoolteacher. Notably, the Ministry of Higher Education under the previous government also granted her a scholarship for her studies in Taurasia.

⁶² See p. 15 of the case.

⁶³ UN News, "Taliban response to protests increasingly violent, warns OHCHR", 10 September 2021, available at: <https://news.un.org/en/story/2021/09/1099552>.

⁶⁴ UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, available at: www.unhcr.org/media/guidelines-international-protection-no-1-gender-related-persecution-within-context-article-1a, p. 8, para. 33.

⁶⁵ See p. 12 of the case.

It is common for people with connections to the previous government to be targeted by the Taliban.⁶⁶ This was the case of the applicant's neighbor, a former police officer who suddenly disappeared,⁶⁷ and a similar scenario could happen to her parents. This possibility is not insignificant, as the applicant personally witnessed a Taliban attack at her parents' house during a phone call with her parents on April 3, 2023, which abruptly ended.

c) On Religious Grounds

The ICCPR protects freedom of conscience and religion (Articles 2 and 18), encompassing the right not to practice or manifest beliefs publicly, in a manner that such conduct would not expose its author to persecution on this basis.

In its decision, the Immigration Service considers that, as a Sunni Muslim, Amara Ghafoori should have no difficulty in adapting to new restrictions.⁶⁸ It considers that the affirmation of a religious belief would automatically mean unconditional adherence to all the practices imposed by the Afghan authorities, in the name of Islam. However, although the applicant identifies with Sunni Islam and claims to practice her religion, this does not mean that she adheres to the interpretation of Islam imposed by the Taliban. Nor does it mean that she runs no risk of religious persecution. Indeed, she explicitly opposes the wearing of the *niqab* or *burka*,⁶⁹ the

⁶⁶ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 56.

⁶⁷ See p. 12 of the case.

⁶⁸ See p. 20 of the case.

⁶⁹ See p. 15 of the case.

garment imposed on Afghan women in public spaces. Refusal to wear it constitutes a transgression of religious, moral and/or societal norms, and is punishable by sanctions.⁷⁰

Living outside Afghanistan allows her freedom in the practice of her religion, given Taurasia's secular environment. Since her departure, the applicant confirmed that she had changed,⁷¹ evident in her choice not to wear the hijab consistently, posting photos without it on social media, and not fasting for the entire month of Ramadan.⁷² These changes reflect the increasing influence of Western culture on her, leading her away from the conservative norms prevalent in Afghanistan.⁷³

As these practices are imposed under the threat of sanctions in Afghanistan, it is difficult to assert that they are truly the result of a personal choice. When she is free to practice her religion without constraints—as is the case in Taurasia—she shows less attachment to religious obligations.

⁷⁰ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 72.

⁷¹ See p. 14 of the case.

⁷² See p. 15 of the case.

⁷³ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 21, and N. FEITH TAN and M. INELICIGER, *Group-based Protection of Afghan Women and Girls Under the 1951 Refugee Convention*, *op. cit.*, p. 809.

*1.3. The Applicant Has a **Coherent Narrative Supporting Her Fear of Persecution***

The burden of proof is generally shared between the asylum seeker, who must present a coherent and contradiction-free narrative, and the asylum authority, responsible for verifying the narrative in the context of the general situation in the country of origin.⁷⁴

The applicant's narrative aligns with the file's factual elements and is not contradicted by widely known facts in Afghanistan. Additionally, the Taurasian immigration service did not contest the coherence of the applicant's narrative in relation to other relevant information.⁷⁵ The credibility of the story is further supported by statements made by the applicant's brother during his hearing before the same authority. However, it appears from the decision rendered by the authority that certain elements put forward by the applicant were questioned, and that the statements made by her brother were not taken into consideration to support the validity of the invoked fears.

The applicant declared that she was in danger due to her father's affiliation with the former government. This argument was rejected by the Immigration Service, on the ground that this part of the story was vague and not supported by any concrete evidence.⁷⁶ While the applicant lacks specific details about prior attacks on her parents, the mere fact that they did not wish to inform their children—undoubtedly for the sake of their protection—does not undermine the credibility of her narrative. Indeed, no evidence contradicts the possibility of her parents being

⁷⁴ UNHCR, *Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection*, *op. cit.*, p. 43, para 195.

⁷⁵ See p. 19 of the case.

⁷⁶ See p. 20 of the case.

kidnapped by the Taliban; instead, factual elements indicate that this hypothesis is highly probable.

Firstly, the applicant's 18-year-old brother, who arrived in Taurasia more recently, declared having fled Afghanistan for the same reasons.⁷⁷ Initially sent to his aunt for protection, his parents later instructed him to leave Afghanistan. He arrived at his sister's place on July 21, 2023, after a long and perilous journey that left him traumatized.⁷⁸ It is highly improbable that parents would compromise their son's safety by sending him abroad illegally unless they genuinely believed it was the only way to ensure his actual safety.

Secondly, the applicant mentioned a phone call with her parents on April 3, 2023, during which she heard men banging on the door and shouting. Since then, there has been no communication with her parents. It is highly likely that her parents were kidnapped by the Taliban, akin to the mysterious disappearance of their police officer neighbor. Considering the applicant's statements, corroborated by her brother, and the objective situation in the country, this hypothesis appears entirely plausible. In such case, the authority must at the very least grant the applicant the benefit of the doubt,⁷⁹ widely used in the context of refugee law, given the lower standard of proof required in this context.⁸⁰

⁷⁷ See p. 26 of the case.

⁷⁸ See p. 25 of the case.

⁷⁹ UNHCR, *Handbook on procedures and criteria for determining Refugee Status and Guidelines on International Protection*, op. cit., p. 44, para. 203.

⁸⁰ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, available at: www.refworld.org/docid/3ae6b3338.html, para. 12 ; HC of South Africa, *Armand v. Refugee Appeal Board*, case no. 19483/2015, 28 February 2017, available at: www.refworld.org/cases,ZAF_HC,58b7dd714.html, para. 63.

Likewise, the authority considered that the argument according to which the applicant risked being persecuted because of her Westernization was not sufficiently credible. It appears from objective information on the country of origin that Westernized women constitute a particularly risky profile.⁸¹ The applicant, although she is still Muslim, has strongly adopted Western habits and mentalities perceived by the Taliban as incompatible with Afghan culture.

2. On the Exceptional Leave to Remain

If the applicant is deemed ineligible for refugee status, the authority must at the very least grant her exceptional permission to stay in Taurasia for a renewable period of two years.⁸² Indeed, there are serious grounds to believe that if returned to Afghanistan, she would be exposed to a real risk of serious harm,⁸³ such as the death penalty or execution (2.1) and/or torture or inhuman or degrading treatment or punishment (2.2).

*2.1. The Applicant Risks Being Exposed to the **Death Penalty or Execution***

Individuals associated with the previous government are considered as a profile at risk of facing extrajudicial killings by the Taliban, as they are perceived as political opponents. Contrary to what was asserted by the authority, not only individuals in central positions are targeted but also any person even indirectly linked to the previous government,⁸⁴ as is the case for the applicant's father. The applicant will be perceived by the Taliban as a political opponent, not

⁸¹ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 97.

⁸² See p. 6 of the case.

⁸³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, *U.N.T.S.*, vol. 1465, p. 85, art. 3 and International Covenant on Civil and Political Rights, art. 7.

⁸⁴ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 56.

only due to her connections with the previous government but also because of her open opposition to the current government during protests in Taurasia.

Certain behaviors are considered as moral crimes and punishable by the death penalty under Sharia law.⁸⁵ While the applicant did not explicitly disclose engaging in any of the condemned acts, it is conceivable that actions like having extramarital affairs could commonly occur. Indeed, living in Taurasia, a Western and secular country, adds to the likelihood of such actions, which are not criminalized but rather normalized, as they fall within the realm of personal right to bodily autonomy.

*2.2. The Applicant Risks Being Exposed to **Torture***

The applicant will inevitably be exposed to inhumane treatment upon her return to Afghanistan, as it is arduous for a single woman to lead a life in accordance with human dignity. Indeed, she has no male relatives in Afghanistan, making it difficult for her to move freely in public, access health care, or secure employment that would allow her to meet her needs independently.⁸⁶ In addition, the applicant as an educated woman has taken part in protests, which now increases the risk of retaliatory measures if she returns to Afghanistan.

Having lived in the West, the applicant has adopted habits perceived as incompatible with Afghan societal norms. Therefore, it is uncertain that upon returning to Afghanistan, the applicant will be able to consistently comply with strict dress codes and any other restrictive

⁸⁵ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 26; EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 29 and UNAMA, *Corporal Punishment and the Death Penalty in Afghanistan*, *op. cit.*, p. 5.

⁸⁶ Human Rights High Commissioner, *Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan*, 9 September 2022, available at: www.ohchr.org/en/documents/country-reports/ahrc516-situation-human-rights-afghanistan-report-special-rapporteur, para. 24.

measures to which she has not been exposed since her arrival in Taurasia. And by not conforming to the norms of behavior attributed to her in society, she is at risk of facing mistreatment.⁸⁷ Therefore, it is acknowledged that the dress code imposed on women in public places under the threat of corporal punishment constitutes in itself a violation of Article 7 of the ICCPR.⁸⁸

Given the risks the applicant faces of experiencing inhuman or degrading treatment in Afghanistan, she cannot be deported to this country.⁸⁹

It is important to emphasize that insofar as the applicant is a woman at risk of severe violations of her rights, particularly related to gender and gender-based violence, Article 61 of the Istanbul Convention also protects her from such expulsion.

In the event of refusal of refugee status and exceptional leave to remain, the Taurasian immigration service will issue an order to leave the territory to the applicant. The execution of this order would be incompatible with the principle of *non-refoulement*⁹⁰, which prohibits States from returning a person to a country where they risk suffering inhuman and degrading treatment,⁹¹ covered by Article 3 of the CAT, Article 7 of the ICCPR and Article 61 of the

⁸⁷ EUAA, *Afghanistan Country Focus*, *op. cit.*, pp. 27 – 28 and 101/

⁸⁸ UNHCR, *CCPR General Comment No. 28 : Article 3 (The Equality of Rights Between Men and Women)*, 29 March 2000, available at: www.refworld.org/docid/45139c9b4.html, p. 3, para. 13.

⁸⁹ ECtHR, *N. v. Sweden*, no. 23505/09, 20 July 2010, available at: <https://hudoc.echr.coe.int/eng?i=001-99992> and UNHCR, *Kaba v. Canada*, no. 1465/2006, 21 May 2010, available at: www.refworld.org/cases,HRC,4c189a362.html, p. 14, para. 6.4.

⁹⁰ UNHCR, *Note on Non-Refoulement*, 23 August 1977, EC/SCP/2, available at <https://www.refworld.org/docid/3ae68ccd10.html>.

⁹¹ J.C. HATHAWAY, “Refugees and Asylum”, *op. cit.*, p. 193, para. 7.3.2.

Istanbul Convention. In this regard, it is worth mentioning a recent judgment of the Supreme Court of the UK of November 15, 2023, that reminds that the principle of *non-refoulement* is core in international law and has become a principle of *ius cogens*. It judged that it was “unlawful [...] for the Secretary of State to remove asylum seekers to countries where there are substantial grounds to believe that they would be at real risk of ill-treatment by reason of refoulement.” This encompasses the potential prejudice directly inflicted on the applicant if returned to Afghanistan.

Based on the risks of persecution faced by the applicant as a “Westernized” Afghan woman, given the objective situation in Afghanistan under the Taliban regime, we conclude that anyone fitting this profile is at risk of fundamental rights violations under international law.⁹² Thus, by allowing the execution of the deportation order, Taurasia would compromise the applicant’s safety and become responsible for the serious harm she would suffer from the Taliban upon return.

⁹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *op. cit.*, art. 3 and International Covenant on Civil and Political Rights, *op. cit.*, art. 7.

3. On The Special Leave to Remain For Family Reasons

The applicant requests that she be allowed to remain in Taurasia to care for her brother, Arash Ghafoori, as an essential aspect of her right to family life⁹³ and family unity.⁹⁴ The term family is given a broad interpretation⁹⁵ and therefore exists between siblings.⁹⁶

While the Immigration Act does not specifically address the interdependency of siblings, highlighting the unique situation of the applicant and her brother is crucial, especially considering the vulnerability of the latter. The applicant's crucial role in her brother's welfare is evident; their separation would significantly impact his health and emotional stability.

⁹³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted by General Assembly Resolution on 18 December 1990, *A/RES/45/158*, art. 44 ; Convention on the Rights of the Child adopted by General Assembly on 20 November 1989, *U.N.T.S.*, vol. 1577, p. 3 ; International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966, *U.N.T.S.*, vol. 933, p. 3, art. 10 (1) ; International Covenant on Civil and Political Rights, *op. cit.*, art. 17 and 23 ; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, available at: www.refworld.org/docid/5a9029f04.html, pp. 4 – 5.

⁹⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *ibidem*, art. 44 ; Convention on the Rights of the Child, *ibidem*, p. 3 ; International Covenant on Economic, Social and Cultural Rights, *ibidem*, art. 10 (1) ; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, *ibidem*, pp. 4 – 5 ; UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at: <http://www.refworld.org/docid/40a8a7394.html>.

⁹⁵ HRC, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, available at: www.refworld.org/docid/453883f922.html, para. 5.

⁹⁶ ECtHR, *Moustaquim v. Belgium*, no. 12313/86, 18 February 1991, available at: www.refworld.org/docid/3ae6b7018.html, para. 36.

He underwent a traumatic ordeal fleeing Afghanistan for Taurasia⁹⁷ due to fear of the Taliban, facing physical abuse, malnutrition, and perilous border crossings⁹⁸. Upon arriving in Taurasia on July 21, 2023, he appeared distressed⁹⁹—skinny, bruised, and scarred¹⁰⁰. His emotional state is alarming, as he describes being haunted by nightmares and constantly gripped by fear. His delicate state highlights the crucial importance of upholding the familial connection between the applicant and her brother, as he needs a stable and supportive environment, which only her sister can provide. Indeed, strong familial support plays a significant role in psychological recovery¹⁰¹.

Additionally, the brother, aged 18 only (born on April 5, 2005) lacks acquaintances in Taurasia and relies entirely on his sister¹⁰². She is the only source of both financial and emotional support for him as he stays at her place¹⁰³ and would be without any assistance if he could not continue to live with her. The well-being of the brother and his ability to rebuild his life is clearly dependent on the continued presence of the applicant with him.

⁹⁷ See p. 13 of the case.

⁹⁸ See pp. 13 and 25 of the case.

⁹⁹ I. BRONSTEIN and P. MONTGOMERY, "Psychological distress in refugee children : a systematic review", *Clin. Child. Fam. Psychol. Rev.*, 14 (1), 2011, available at <https://link.springer.com/article/10.1007/s10567-010-0081-0>, pp. 44 - 56.

¹⁰⁰ See p. 14 of the case.

¹⁰¹ C. R. FIGLEY and K. R. FIGLEY, "Stemming the Tide of Trauma Systemically : The Role of Family Therapy", *Australian and New Zealand Journal of Family Therapy*, no. 30, September 2003, available at : <https://onlinelibrary.wiley.com/doi/epdf/10.1375/anft.30.3.173>, pp. 173 – 182.

¹⁰² See p. 13 of the case.

¹⁰³ See p. 12 of the case.

Even though her brother was already 18 when he applied for asylum, he should be granted international protection as his vulnerability persists beyond the threshold of legal adulthood¹⁰⁴. The dependency on his sister makes irrelevant the fact that he turned 18 only a few months before his asylum request.

Allowing the applicant to remain in Taurasia would not only protect her from the violation of her right to family life¹⁰⁵ but it would also preserve the health situation of his brother, particularly vulnerable as he is only 18.

Her brother introduced a request for asylum on July 22, 2023. As he arrived illegally in Taurasia, without the required entry documents and visa, his application could then be declared inadmissible, and he could be relocated to the Republic of Kashmana under the asylum partnership arrangement between Taurasia and Kashmana.¹⁰⁶ This increases the risk of separation between the siblings since she has no right of residence in Kashmana. Deportation constitutes an interference in the right to family unit.¹⁰⁷ The only way for her brother and her to live together is to stay in Taurasia.

¹⁰⁴ Council of Europe, *Realising the Right to family reunification of refugees in Europe*, June 2017, available at : <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>, p. 7.

¹⁰⁵ International Covenant on Civil and Political Rights, *op. cit.*, art. 17 and 23; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, *op. cit.*, pp. 3 – 15.

¹⁰⁶ See p. 5 of the case.

¹⁰⁷ Cambridge University Press, *Summary Conclusions: Family Unity (9.2)*, June 2003, available at: <https://www.refworld.org/docid/470a33bed.html>, para. 5.

Moreover, it would be untenable to deport the applicant's brother due to the violation of human rights occurring in the country.¹⁰⁸ The reception conditions are alarming, with limited resources, frequent food shortages, and power outages. Arbitrary detentions and acts of torture in penitentiary facilities have also been reported. This has led the UNHCR to express concerns about Kashmana's ability to protect the rights of persons arriving from Taurasia.¹⁰⁹ Kashmana is unable to provide any protection to vulnerable asylum seekers.

¹⁰⁸ See p. 5 of the case.

¹⁰⁹ *Idem.*

Conclusions

The Immigration Service committed a manifest error in refusing to grant refugee status to the applicant as she fully meets the criteria of the Convention.¹¹⁰ The applicant has a well-founded fear of being persecuted through multiple forms of discrimination based on grounds outlined in the Convention: religion (not adhering to all religious norms), political opinion (being open-minded), and social group (“Westernized” woman). We demonstrate the credibility of the applicant’s testimony, which has not been questioned by the immigration service.¹¹¹

Refugee status should be granted to the applicant, who has already suffered enough from the disappearance of her parents,¹¹² from sheltering her traumatized brother¹¹³ and from the profound fear of being forcibly sent back to her country where she would be at risk of serious persecution.¹¹⁴

If refugee status is denied to the applicant, she must at least have an exceptional right to remain in the country on subsidiary grounds.¹¹⁵ The COI proves that the applicant has a reasonable fear to be submitted to inhuman and degrading treatment if returned to Afghanistan.¹¹⁶

¹¹⁰ Convention relating to the Status of Refugees adopted on 28 July 1951, *U.N.T.S.*, art. 1(A).

¹¹¹ See p. 19 of the case.

¹¹² See p. 12 of the case.

¹¹³ See p. 13 of the case.

¹¹⁴ See p. 14 of the case.

¹¹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, *U.N.T.S.*, vol. 1465, p. 85, art. 3 and International Covenant on Civil and Political Rights, art. 7.

¹¹⁶ EASO, *Country of Origin Information Report – Afghanistan*, *op. cit.*, pp. 10 – 30.

Ultimately, following an evaluation of the *non-refoulement* principle, especially concerning women at risk of gender-based violence, it is impossible to contemplate sending the applicant back to Afghanistan. The principle of *non-refoulement* necessitates a safe country, a condition that Afghanistan fails to meet. Furthermore, considering the right to family life, it is essential for the applicant to remain in Taurasia to care for her younger brother, who relies entirely on her.

Finally, we wish to invoke the test that emerges from some Australian case law “what if I’m wrong”¹¹⁷. This prompts the judge to consider the potential repercussions if their decision, such as denying refugee status, is incorrect. In our specific circumstance, it is the applicant's life that hangs in the balance. Hence, we implore the Court not to gamble with any risks and to approach our application with the utmost seriousness.

¹¹⁷ J.-Y. CARLIER and S. SAROLEA, *Droit des étrangers*, 1st edition, Brussels, Larcier, 2016, p. 448, §490.

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Annexes

- 1) J.-Y. CARLIER and S. SAROLEA, *Droit des étrangers*, 1st edition, Brussels, Larcier, 2016, p. 448, §490, footnote 117**

« 490 - Niveau : bénéfice du doute - Ni la Convention de Genève ni la directive qualification ne fixent un niveau de preuve. Cela se comprend. Toutefois, reprenant une formulation habituelle de la Cour européenne des droits de l'homme, la directive qualification parle de « motifs sérieux et avérés » de croire à un risque réel d'atteinte grave pour bénéficier de la protection subsidiaire (art. 2, f, Dir. qualification). Le niveau ne paraît pas aussi élevé s'agissant de la reconnaissance de la qualité de réfugié. Transposant la nouvelle version de la directive qualification (refonte) en son article 4, § 5, relatif à la demande d'asile qui n'est pas étayée par des preuves documentaires, le législateur belge a confirmé que, si les cinq conditions précitées sont remplies, le requérant « sera jugé crédible » comme l'indique la directive, mais a aussi ajouté que « le bénéfice du doute lui sera accordé », ce que la directive n'indique pas expressément (art. 48/6 LE). La jurisprudence belge, comme d'autres, faisant référence au guide du H.C.R., accepte l'idée du bénéfice du doute. Certaines jurisprudences australiennes parlent d'un test similaire résumé en une question que se poserait le juge: « What if I am wrong? ». »

Translation to English:

“490 - Level: benefit of the doubt - Neither the Geneva Convention nor the Qualification Directive sets a level of proof. This is understandable. However, taking up the usual wording of the European Court of Human Rights, the Qualification Directive speaks of "serious and proven grounds" for believing in a real risk of serious harm in order to benefit from subsidiary protection (art. 2, f, Qualification Directive). The standard does not appear to be as high for recognition of refugee status. Transposing the new version of the Qualification Directive

(recast) in its article 4, § 5, relating to an asylum application that is not supported by documentary evidence, the Belgian legislator confirmed that, if the five aforementioned conditions are met, the applicant "will be deemed credible" as indicated in the Directive, but also added that "the benefit of the doubt will be given", which the Directive does not expressly state (art. 48/6 LE). Belgian case law, like others, referring to the H.C.R. guide, accepts the idea of the benefit of the doubt. Some Australian cases refer to a similar test summarised in a question the judge would ask himself: "What if I am wrong?"

2) RvV, case no. 13.157, 26 June 2008, available at <https://www.rvv-cce.be/sites/default/files/arr/A13157.AN.pdf>, footnote 54

“Verzoekster werd in Afghanistan systematisch bedreigd met een gedwongen huwelijk. De ernst van deze bedreiging blijkt duidelijk uit het feit dat verzoekster reeds eerder fysiek en verbaal aangevallen werd. De feiten en de gevreesde behandeling kunnen gekwalificeerd worden als vervolging in de zin van het vluchtelingenverdrag. Verzoekster kan, gelet op de onmacht van de Afghaanse overheid om recht te verschaffen en de discriminerende wetgeving ten opzichte van vrouwen, geen succesvol beroep doen op de bescherming van haar nationale autoriteiten. Gezien in Afghanistan familie- en stamverbanden het enige functionerende beschermingsmechanisme vormen voor het individu, is evenmin een realistisch intern vluchtalternatief voorhanden in een andere streek van het land. Verzoekster is een ongehuwde vrouw die na het overlijden van haar vader de bescherming van een mannelijk familielid ontbeert. Verzoekster weigert een gedwongen huwelijk, waarmee ze de mores van de op streng patriarchale leest geschoeide Afghaanse maatschappij overtreedt. In die maatschappij vallen alleenstaande vrouwen vrijwel zeker ten prooi aan armoede en willekeur. Verzoekster maakt bijgevolg aannemelijk haar land ontvlucht te zijn uit een gegronde vrees voor vervolging wegens haar lidmaatschap van een sociale groep, zijnde die van de alleenstaande Afghaanse vrouw.

2.1.10. In acht genomen wat voorafgaat, wordt in hoofde van de verzoekende partij een vrees voor vervolging in de zin van artikel 1, A(2), van het Verdrag van Genève van 28 juli 1951, vastgesteld.”

Translation to English:

“The applicant was systematically threatened in Afghanistan with a forced marriage. The seriousness of this threat was evident from the fact that the applicant had already previously been physically and verbally assaulted. The facts and the treatment feared qualify as persecution within the meaning of the Refugee Convention. The applicant, given the inability of the Afghan authorities to provide justice and the discriminatory legislation against women, the applicant cannot successfully appeal to the protection of its national authorities. Given that in Afghanistan family and tribal relationships are the only functioning protection mechanism for the individual, no realistic internal flight alternative available in any other region of the country. The applicant is an unmarried woman who, following the death of her father, lacks the protection of a male relative. The applicant refuses a forced marriage, thus she is violating the mores of the strictly patriarchal-based Afghan society violates. In that society, single women almost certainly fall prey to poverty and arbitrariness. Consequently, the applicant plausibly claims to have fled her country out of a well-founded fear of persecution on account of her membership of a social group, being that of the single Afghan woman.

2.1.10. In observance of the foregoing, in the applicant party’s view, a fear of persecution within the meaning of Article 1(A)(2) of the Geneva Convention of 28 July 1951, established.”

3) UNHCR, *Kaba v. Canada*, no. 1465/2006, 21 May 2010, available at: www.refworld.org/cases,HRC,4c189a362.html, p. 14, para. 6.4, footnote 89

“6.4 Le Comité a rappelé que les Etats parties ont l’obligation de ne pas extraditer, expulser ou refouler une personne vers un pays où elle court un risque réel d’être tuée ou soumise à une peine ou un traitement cruel, inhumain ou dégradant. Le Comité devait donc déterminer s’il y a eu des motifs sérieux de croire que, en tant que conséquence nécessaire et prévisible du renvoi de l’auteur et de sa fille en Guinée, il existait un risque réel de les exposer à un traitement interdit par l’article 7 du Pacte. Dans le cas d’espèce, le Comité a relevé que les allégations de l’auteur avaient déjà fait l’objet d’examen approfondis par les autorités canadiennes dans le cadre de la revendication du statut de réfugié, de l’ERAR, de la demande CH et la demande de sursis à l’exécution de la mesure de renvoi devant la Cour fédérale. Ayant examiné ces allégations et ces éléments de preuve et entendu l’auteur de vive voix, les autorités canadiennes avaient conclu qu’elle n’était pas crédible et qu’elle ne risquait pas d’être persécutée ou de subir des traitements prohibés advenant son retour en Guinée. Le Comité a estimé que Mme. Kaba n’avait pas suffisamment montré en quoi ces décisions étaient incompatibles avec la norme susmentionnée. Elle n’avait pas non plus suffisamment prouvé qu’elle serait exposée à un risque réel et imminent de violation de l’article 7 si elle était renvoyée vers la Guinée. Le Comité a considéré donc que la plainte de l’auteur était irrecevable en vertu de l’article 2 du Protocole facultatif faute d’être suffisamment étayée aux fins de la recevabilité.”

Translation to English:

"6.4 The Committee recalled that States parties have an obligation not to extradite, expel or return a person to a country where there is a real risk that he or she would be killed or subjected to cruel, inhuman or degrading treatment or punishment. The Committee therefore had to determine whether there were substantial grounds for believing that, as a necessary and foreseeable consequence of returning the author and his daughter to Guinea, there was a real risk that they would be subjected to treatment prohibited by article 7 of the Covenant. In the present case, the Committee noted that the author's allegations had already been thoroughly

examined by the Canadian authorities in the context of the refugee claim, the PRRA, the H&C application and the application to the Federal Court for a stay of removal. Having examined these allegations and evidence and heard the author orally, the Canadian authorities had concluded that she was not credible and that she would not be at risk of persecution or prohibited treatment if returned to Guinea. The Committee considered that Ms. Kaba had not sufficiently demonstrated how these decisions were incompatible with the above-mentioned standard. Nor had she sufficiently demonstrated that she would be exposed to a real and imminent risk of a violation of article 7 if returned to Guinea. The Committee therefore considered that the author's complaint was inadmissible under article 2 of the Optional Protocol for lack of sufficient substantiation for purposes of admissibility.”

Case

Amara Ghafoori

v.

The Minister of Home Affairs of the Grand Duchy of Taurasia

Written pleading of the Respondent

International Migration and Refugee Law Moot Court Competition

2024

5988 Words

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List of Abbreviations

ACLED	Armed Conflict Location & Event Data Project
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
EUAA	European Union Agency for Asylum (formerly, EASO - European Asylum Support Office)
ICCPR	International Covenant on Civil and Political Rights
IED	Improvised Explosive Device
ISKP	Islamic State Khorasan Province
MPVPV	Ministry for the Propagation of Virtue and Prevention of Vice
NRF	National Resistance Front
RvV	Raad voor Vreemdelingenbetwistingen
UNAMA	United Nations Assistance Mission in Afghanistan
UNHCR	United Nations High Commissioner for Refugees
VwGH	Supreme Administrative Court of Austria

Statement of Relevant Facts

Amara Ghafoori, the applicant, is from Afghan, of Pashto origin and Sunni Muslim, born on March 7, 2000, in Kabul.

Her father is a civil engineer in the Ministry of Public Works (road construction department). Her mother serves as a primary school teacher. Her brother, Arash Ghafoori, left Kabul after the Taliban's takeover to reside with his aunt in Charan, Paktika province, as there are fewer security issues in this region. In 2022, he fled to Taurasia.

Amara Ghafoori started school at age 4 and achieved a law degree at Kabul University in 2021. She arrived in Taurasia in July 2021 to pursue a two-year master's degree in "Diversity, Multiculturalism, and Law" at Agarthia University. Taurasia has granted her a long-term student visa from July 2021 to September 2023 for her master's program, successfully completed in June 2023. A scholarship from the former Ministry of Higher Education supported her studies.

On April 5, 2023, foreseeing the expiration of her student visa and resident permit, the applicant sought asylum. Seeking employment, she applied for a work permit residence and authenticated her university Bachelor's diploma at the Consulate of Afghanistan in Berlin in June 2023.

In support of her asylum request, she enumerated different grounds as a refugee "sur place":

- Fear of persecution as a woman who could face discrimination;
- Fear of religious persecution due to her "Westernization";

- Her father, a civil engineer working with the former government, might be at risk of persecution;
- Fear of being identified as a political opponent due to her parents' affiliation and her grant from the former government.

She participated in anti-Taliban protests in September 2021 and attended an event for women's rights in March 2023 in Agartha.

Her asylum application was rejected on September 29, 2023.

Country of Origin Assessment

Afghanistan is, for the first time since 1978, largely at peace. The country is under unified authority. The Taliban have territorial control in all Afghanistan.¹ Their capture of Kabul on August 15, 2021,² marks the end of their military offensive against the former government,³ significantly diminishing the levels of armed violence and civilian harm compared to the previous years of conflict.⁴

Though occasional attacks persist, attributed to both ISKP and the NRF, these incidents are less frequent and severe than those directed by the Taliban against the former government⁵.

¹ K. CLARK and S. RAHIMI, “Afghanistan’s conflict in 2021 (2): Republic collapse and Taleban victory in the long-view of history”, *Afghanistan Analysts Network*, 30 December 2021, updated 11 May 2023, available at www.afghanistan-analysts.org/en/reports/war-and-peace/afghanistans-conflict-in-2021-2-republic-collapse-and-taleban-victory-in-the-long-view-of-history/.

² EUAA, *Country Guidance: Afghanistan*, January 2023, available at https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_Country_Guidance_Afghanistan_EN.pdf, p. 10 ; A. Gul, “Taliban Mark August 15 ‘Victory Day’ against US”, 14 August 2023, available at www.voanews.com/a/taliban-to-mark-august-15-victory-day-against-us-/7224433.html.

³ UN Secretary General, *The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General*, 28 January 2022, available at <https://digitallibrary.un.org/record/3956568>, p. 4.

⁴ UNAMA, *Human Rights in Afghanistan: 15 August 2021–15 June 2022*, July 2022, available at https://unama.unmissions.org/sites/default/files/unama_human_rights_in_afghanistan_report_-_june_2022_english.pdf, p. 3.

⁵ K. CLARK and S. RAHIMI, “Afghanistan’s conflict in 2021 (2)”, *op. cit.*

In 2023, there was a decline in activities by armed groups opposing the Taliban.⁶ The number of events recorded by ACLED in September 2023, compared to the same period in 2022, demonstrated a 34.8% decrease.⁷ UCDP data for the corresponding periods indicated a 48.2% decrease.⁸ The UN also reported a continued reduction of armed conflict levels in 2023, with fewer armed clashes, IED explosions and assassinations than in 2022.⁹

Their impact on Afghans civilians is limited as ISKP primarily target Taliban fighters, officials and religious leaders in its efforts to undermine the Taliban rule.¹⁰

⁶ Afghan Witness, “Two years of Taliban rule: documenting human rights abuses using open source”, 15 August 2023, available at https://1428cf7b-1a53-46a9-bbdc-15c96c60e192.usrfiles.com/ugd/e138d3_a6bf73de27564c08bb8836ce8e17832c.pdf, p. 4.

⁷ EUAA analysis based on publicly available ACLED data. ACLED, Curated Data Files, Afghanistan, data covering 1 January 2022 to 30 September 2023, as of 17 October 2023, available at <https://acleddata.com/curated-data-files/>.

⁸ “EUAA analysis based on UCDP data. UCDP, data covering 16 August 2021 to 22 October 2022 provided by courtesy of UCDP in an email, 24 October 2022; UCDP, data covering 1 July 2022 to 30 September 2023 provided by courtesy of UCDP in an email, 9 October 2023” in EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 29.

⁹ UN Security Council, *The situation in Afghanistan and its implications for international peace and security*, 18 September 2023, available at www.ecoi.net/en/file/local/2097813/N2325802.pdf, para. 3.

¹⁰ Institute for the Study of War, “Afghanistan Warning Update: IS-KP in Afghanistan is Expanding Faster than Anticipated”, 27 October 2021, available at www.iswresearch.org/2021/10/afghanistan-warning-update-is-kp-in.html.

In May 2022, the Taliban MPVPV adopted a decree instructing a new dress code for women.¹¹ The burqa was not prescribed as mandatory.¹² Indeed, the Taliban Minister of Interior declared that “women are not forced but advised to wear the hijab.”¹³ The impact of the Taliban’s new regulation differed across the country,¹⁴ with women appearing in public spaces with their face uncovered¹⁵ still common in Kabul.¹⁶ There is no report of public punishments for women not wearing a hijab.¹⁷

¹¹ S. HASAN, “Issue Update: Religious Freedom and Women’s Rights in Afghanistan”, *United States Commission on Internal Religious Freedom*, August 2023, available at www.uscirf.gov/sites/default/files/2023%20Religious%20Freedom%20and%20Womens%20Rights%20in%20Afghanistan%20Issue%20Update_Final.pdf, p. 4 ; EUAA, *Afghanistan – Targeting of individuals*, August 2022, available at https://euaa.europa.eu/sites/default/files/publications/2022-09/2022_05_COI_Report_Afghanistan_Targeting_of_Individuals_EN.pdf, p. 121.

¹² X., “Taliban say burqa not compulsory for women, hijab is as they take over Afghanistan”, *Al Arabiya*, 17 August 2021, available at <https://english.alarabiya.net/News/world/2021/08/17/Taliban-say-burqa-not-compulsory-for-women-hijab-is-as-they-take-over-Afghanistan>.

¹³ TOLOnews, “Haqqani: We Are Not Forcing Women to Wear Hijab”, 18 May 2022, available at <https://tolonews.com/afghanistan-178068>.

¹⁴ K. CLARK and S. RAHIMI, “We need to breathe too: women across Afghanistan navigate the Taleban’s hijab ruling”, *Afghanistan Analysts Network*, 1 June 2022, available at www.afghanistan-analysts.org/en/reports/rights-freedom/we-need-to-breathe-too-women-across-afghanistan-navigate-the-talebans-hijab-ruling%ef%bf%bc/.

¹⁵ A. IBRAHIM, “In Afghanistan, Taliban diktat sparks debate about women’s attire”, *Al Jazeera*, 26 January 2022, available at www.aljazeera.com/news/2022/1/26/holdafghan-women-denounce-talibans-burqa-campaign.

¹⁶ A. QUILTY, “Where the Taliban rule”, *Rolling Stone Magazine*, 28 November 2021, available at www.rollingstone.com/politics/politics-features/afghanistan-taliban-rule-american-exit-photos-1258020/.

¹⁷ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 87 ; EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, pp. 119 – 123 and K. Clark and S. Rahimi, “Afghanistan’s conflict in 2021 (2)”, *op. cit.*

Shifting the focus to women's freedom of movement, reports indicate variation on provincial level,¹⁸ with women freely moving in public spaces¹⁹ without a Mahram.²⁰

¹⁸ EUAA, *Afghanistan – Targeting of individuals*, *ibidem*, p. 112.

¹⁹ EUAA, *Country Guidance : Afghanistan*, *op. cit.*, pp. 86 – 87 and A. NORTH, "Is This the Future of Taliban Rule?", *New Lines Magazine*, 13 December 2021, available at <https://newlinesmag.com/reportage/is-this-the-future-of-taliban-rule/>.

²⁰ A Mahram is defined as "A male guardian who is a relative" in EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 163.

Summary of Legal Questions Identified and Pleading

This document aims to demonstrate the unfounded nature of the appeal against the Immigration Service's decision to deny refugee status and exceptional leave of residence.

1. Refusal of Refugee Status

1.1. Opportunistic Nature of the Request and the Perceived Lack of Credibility

Amara Ghafoori applied for refugee status on April 5, 2023. This timing suggests opportunistic behavior as it coincides with the imminent expiration of her student visa and residence permit in September 2023. The Taliban's takeover in Afghanistan dates to August 2021, which is significantly earlier than the timing of the application and therefore does not justify it.

Amara Ghafoori mentioned the alleged disappearance of her parents to justify the delay in her application. Given that her statements lack consistency and evidence, which casts doubt on her credibility, we cannot take this disappearance into consideration. The additional information provided for the appeal does not seem to clarify the situation.

1.2. Analysis of the Fear of Persecution Invoked by Amara Ghafoori

1.2.1. Membership of a Social Group (Women)

Amara Ghafoori explains her fear of persecution because of her gender. However, women who are victims of discrimination are those who do not conform to social and cultural norms, which is not the applicant's case as she still practices the religious customs of the Taliban and actively participated in her community in Afghanistan.

Amara Ghafoori does not demonstrate personally facing persecution because of her gender or any form of gender-based violence.

1.2.2. Identification as a Political Opponent to the Afghan Authorities

One of the main fears invoked is her alleged “Westernization.” However, Amara Ghafoori maintains close ties to her Pashtun origin and continues to fulfill her religious obligations despite living in a non-Muslim environment in Taurasia.

Her participation in two political events in Taurasia is not enough to demonstrate a fear of persecution by the Taliban as they cannot have knowledge of this participation. As she had no specific role in these actions, criticisms can be expressed regarding these involvements. It is surprising that Amara Ghafoori decided to engage in this manner only a short time before seeking refugee status in Taurasia. The applicant’s good faith is being questioned as the applicant’s political commitment lacks persuasiveness.

Amara Ghafoori’s father worked as an engineer for the former Afghan government and for this reason he would be perceived as a political opponent. However, the Taliban seem lenient towards former government employees unless they played a significant political role, *quod non in casu*. Even if her father was perceived as a political opponent, which is not proven, this does not prove a risk of persecution towards her on an individual basis. She is no longer a minor; she is sufficiently autonomous for not being persecuted on the only basis of her father being an opponent.

1.2.3. Religious Affiliation

The applicant continues to practice the Muslim religion. While she expresses her opposition to wearing the niqab, it is not a strong enough opposition to face persecution by the Taliban.

Analyses conducted in Afghanistan also demonstrate that many women freely walk the streets of Kabul with their faces uncovered.

1.3. Potential Connection to the Previous Government

The applicant's enrollment in the master's program at the University of Agarthā was possible due to the scholarship and visa she received from the Afghan authorities. Consequently, she fears that the Taliban may accuse her of having ties with the previous authorities who granted her the opportunity to study abroad. However, it is evident that obtaining a scholarship, passport, or visa does not demonstrate any political affiliation.

2. Refusal of Exceptional Leave of Residence

No evidence supports a credible risk of serious harm to the applicant upon her return to Afghanistan under Article 3 CAT and Articles 6 and 7 ICCPR.

3. Family unity

The right to family unity is not substantiated as the applicant's brother is neither a minor nor financially dependent on the applicant.

Pleadings

The applicant's request should be denied both regarding her claims to obtain refugee status (1) and her claims for exceptional leave of residence (2). Her request to remain based on family reasons should also be denied (3).

1. Refusal of Refugee Status

The applicant asserts eligibility for international protection under Article 1(A) of the Convention Relating to the Status of Refugees (hereafter Refugee Convention).²¹ Before evaluating her fulfillment of refugee status conditions (1.2), it's crucial to highlight the opportunistic and lacking credibility of the claim (1.1).

1.1. *Opportunistic Behavior and Lack of Credibility*

Amara Ghafoori filed for refugee “*sur place*” status shortly before her student visa and residence permit expired.

It raises questions as to why the applicant waited until April 2023, close to the expiration of her visa, to introduce her asylum request, considering the Taliban's takeover on August 15, 2021. The delayed application is indicative of the opportunistic nature of her application.

²¹ Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, *U.N.T.S.*, vol. 189, p. 137.

After graduating, she applied for a work residence permit, indicating her intention to stay in Taurasia, but as she was unable to meet the conditions,²² she turned to refugee status, revealing a pragmatic motive. If her request were solely motivated by a well-founded fear of persecution from the Taliban, she would have applied exclusively for refugee status.

The applicant invokes an alleged disappearance of her parents on April 3, 2023, to justify the considerable delay in submitting her application. However, she lacks²³ concrete evidence on the disappearance,²⁴ and her vague statements cast doubt on the credibility of the claim. It is a general legal principle that the burden of proof lies on the person submitting a claim.²⁵ While she implies the call was alarming, she does not remember any important details.²⁶ Furthermore, it appears peculiar that the applicant, despite her strong attachment to her parents,²⁷ did not attempt to find out what happened to them by contacting a relative, such as her aunt, whom she is still in contact with.²⁸ The timing aligns more with her visa expiration than genuine fear of persecution from the Taliban, already in power for two years.

²² See pp. 4 and 10 of the case.

²³ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, available at <https://www.refworld.org/docid/3ae6b3338.html>, paras. 7 and 18 ; J. HATHAWAY, “The Michigan guidelines on well-founded fear”, *Colloquium on Challenges in International Refugee Law*, 2004, p. 3.

²⁴ See p. 12 of the case.

²⁵ UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, *op. cit.*, paras. 5–6 ; J. HATHAWAY, “The Michigan guidelines on well-founded fear”, *op. cit.*, p. 3.

²⁶ See p. 12 of the case.

²⁷ See p. 10 of the case.

²⁸ See p. 13 of the case.

The benefit of the doubt will only be given when the applicant's general credibility has been established.²⁹ In this case, both the lack of urgency in seeking protection from the Taurasian authorities and the justifications she attempts to provide are clearly inconsistent with the behavior of an individual who, driven by a well-founded fear of persecution, would seek international protection as quickly as possible.³⁰ These attitudes seriously cast doubt on the credibility of her statements and, consequently, the validity of her fear.

It can be asserted that the applicant deliberately placed herself in a situation of danger,³¹ leading to potential persecution, solely with the aim of obtaining refugee status. This, again, underscores the calculating nature of her request.³² The applicant claims that she fears to be identified as a political opponent by the Taliban due to her participation in two demonstrations. However, it seems peculiar that she only expressed concern about the condition of women in Afghanistan once she arrived in Taurasia despite the situation allegedly being critical for many years. The applicant never participated in a demonstration or any other event in her country of origin where it would have made more sense to defend women's rights as women activists regularly organize events and demonstrations in Afghanistan advocating for the protection of

²⁹ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, February 2019, available at www.unhcr.org/sites/default/files/legacy-pdf/5ddfc47.pdf, p. 44 ; UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, *op. cit.*, §12.

³⁰ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *ibidem*, p. 43.

³¹ UNHCR, *Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee*, 1 September 2015, available at www.refworld.org/docid/43141f5d4.html, p. 45.

³² UNHCR, *Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee*, *ibidem*, p. 45.

women's rights.³³ Her absence from activism in her home country raises questions about the authenticity of her commitment to women's rights.

During her two-year stay in Taurasia, she took part in only two demonstrations, which is not consistent for someone who claims to be interested in politics, with the second demonstration occurring just a month before she applied for asylum. It is surprising that she waited two years before attending another demonstration, as the first one was in 2021. The absence of other involvement to defend Afghan women's rights casts doubt on her real political interest, particularly given the two-year gap since her first demonstration. The timing of the second demonstration was obviously premeditated as she knew she was going to apply for asylum.

The applicant's alleged fear of persecution stems from actions deliberately taken to create a conflict with Afghan authorities, suggesting a calculated effort to obtain refugee status which raises concern about her sincerity.

1.2. Refugee "Sur Place"

The applicant's claim for "*sur place*"³⁴ refugee status is based on events that occurred in Afghanistan after her arrival in Taurasia, particularly the Taliban's takeover in August 2021,

³³ EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, p. 116 ; S. FETRAT, "Bread, Work, Freedom—Afghan Women's Two Years of Resistance, 16 August 2023", available at www.hrw.org/news/2023/08/16/bread-work-freedom-afghan-womens-two-years-resistance ; RFI, "My heart and body shake: Afghan women defy Taliban", 15 February 2022, available at www.rfi.fr/en/my-heart-and-body-shake-afghan-women-defy-taliban-1.

³⁴ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *op. cit.*, §§83 and 94 – 96.

as well as her behavior since she arrived in Taurasia, such as her participation in two demonstrations for women's rights and the modification of her religious practices.

It must be assessed whether there is a reasonable possibility that upon her return, the applicant would face persecution based on the grounds of the Refugee Convention (1.2.1).³⁵ Additionally, it is necessary to examine whether the applicant's religious beliefs or alleged political activities have been reported to authorities in Afghanistan³⁶ (1.2.2) and how she interacts with them since the Taliban's takeover (1.2.3).

a) Well-Founded Fear of Persecution

A refugee is defined in Article 1A(2) of the Refugee Convention as a person who: "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."

The applicant fears to be persecuted if she goes back to her country of origin. To be recognized as a refugee, the applicant must show a fear of persecution for one of the five enumerated grounds. The applicant claims that the reasons for her fear of persecution stem from her affiliation with a particular social group (i), her political opinions (ii) and her religion (iii).

³⁵ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *ibidem*, §§ 66 - 86.

³⁶ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *ibidem*, §§ 95 - 96.

The applicant must provide credible evidence supporting her well-founded fear of persecution based on personal reasons³⁷. However, the applicant is unable to answer the immigration service agent in Taurasia who asks her if she believes she could be individually persecuted upon return to Afghanistan³⁸ and she does not demonstrate that she has received direct threats from the Taliban.

While past persecutions in the country of origin are a serious indication of a well-founded fear of persecution,³⁹ Amara Ghafoori never experienced persecution in Afghanistan. She also fails to demonstrate any persecution experienced by her parents or her brother since the Taliban came into power. The alleged abduction of her parents, which oddly took place before the expiration of her visa, two years after the Taliban's takeover, lacks credibility.

i. Affiliation With a Particular Social Group

Women alone do not constitute an eligible social group for protection under the Refugee Convention.⁴⁰ The diversity within Afghan women makes it difficult to categorize women

³⁷ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *ibidem*, §§37 – 50 ; Supreme Court (Canada), *Chan v. Canada (Minister of Employment and Immigration)*, 19 October 1995, 3 SCR 593, §74.

³⁸ See p. 15 of the case.

³⁹ UNHCR, *Advisory Opinion on the Interpretation of the Refugee Definition*, 23 December 2004, available at www.refworld.org/docid/4551c0374.html, §12 ; Immigration Equality, “Asylum Manual”, *s.d.*, available at <https://immigrationequality.org/asylum/asylum-manual/asylum-law-basics-2/asylum-law-basics-elements-of-asylum-law/>, §3.1.3 ; High Court, South Africa, 4 April 2007, *Mayongo*, no. 16491/06, available at www.refworld.org/cases,ZAF_HC,46c5b8af2.html.

⁴⁰ Opinion of AG Richard de la Tour in Case C-621/21, 20 April 2023, available on <https://curia.europa.eu/juris/document/document.jsf?text=&docid=272702&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1>, para. 48 ; VwGH, *F.N. v. Federal Office for Immigration and Asylum (BFA)*, Case C-609/22, 22 September 2022, available at

uniformly as a single social group. They represent a diverse population with varied experiences.⁴¹ The risks of persecution faced by women vary greatly based on several factors such as family context, regional origin, socio-economic status, and ethnic affiliation.⁴² It is important to consider the individual situation of each woman when assessing if they have a risk of facing persecution.

The applicant herself states that she belongs to the more privileged women in Afghanistan⁴³ and she does not come from a traditional or highly conservative family. She was able to attend school and pursued a law degree at university. She has joyful memories of her childhood and even had the opportunity to travel to other countries with her family.⁴⁴ Her privileged situation makes her less susceptible to being persecuted. She is less at risk of gender-based violence such as forced marriage or domestic violence.⁴⁵

<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=268121&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=7746503>, §12.

⁴¹ J. FLURI, “Reflections on Gender and Development in Afghanistan 2001–2021”, *s.d.*, available at www.colorado.edu/geography/2021/09/09/jennifer-fluri-reflections-gender-and-development-afghanistan-2001-2021.

⁴² EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 87 ; UNHCR, *Women’s rights are Human Rights*, 2014, available at <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>, p. 1.

⁴³ See p. 11 of the case ; United States Board of Immigration Appeals, *Matter of Acosta*, A-24159781, 1 March 1985, available at www.refworld.org/cases,USA_BIA,3ae6b6b910.html, §10.

⁴⁴ See p. 11 of the case.

⁴⁵ Convention of the Council of Europe on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, *C.E.T.S.*, no. 210, art. 33 - 40.

Furthermore, women in danger in Afghanistan are those who do not adhere to customs and are marginalized in their community.⁴⁶ This is not the case with the applicant as she respects the country's religion and actively participates in her community.⁴⁷ In fact, she states that she has maintained her cultural and religious values from Afghanistan throughout her stay in Taurasia by still applying the rules taught by her parents and continuing to pray every day.⁴⁸ The applicant also declares that she maintains a very strong connection, through social media, with her community of origin.⁴⁹

It is not possible to grant refugee status to individuals solely on the basis that they are a woman. Even if it is recognized that some profiles of Afghan women are more vulnerable than others as they may be more at risk of gender-based violence, *quod non in casu*, it does not waive the requirement that an asylum application must be founded on circumstances specific to the individual.⁵⁰ The applicant does not demonstrate that, in her personal situation, she is at risk of persecution because of her gender. She does not demonstrate facing any form of gender-based violence.

⁴⁶ Immigration and Refugee Board of Canada, *Afghanistan : Treatment of the Hindu community by the Taliban*, 7 July 2000, AFG34777.E, available at www.refworld.org/docid/3ae6ad462c.html.

⁴⁷ See p. 10 of the case.

⁴⁸ See p. 15 of the case.

⁴⁹ See p. 10 of the case.

⁵⁰ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *op. cit.*, §§45 and 52.

ii. Identification as a Political Opponent

The applicant fears being identified a political opponent⁵¹ by the Taliban upon returning to Afghanistan due to her perceived “Westernized lifestyle.”⁵² However, it cannot be presumed that all Afghans returning from a Western country are considered “Westernized.”⁵³ The focus should be on the individual aspects of the applicant’s life during her two-year stay in Taurasia.

It is difficult to conclude that this short stay led to “Westernization.” While she has adapted to her new environment, she has not fully assimilated the culture of her host country, her way of living during her stay in Taurasia did not fundamentally alter her values and cultural identity.⁵⁴

She still identifies as part of the Pashtun ethnicity and asserts that her beliefs and religion have not changed since her arrival in Taurasia. Even though she acknowledges having eased her religious practices during Ramadan such as fasting,⁵⁵ she remains a Sunni Muslim in her self-

⁵¹ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *ibidem*, §82.

⁵² EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, p. 105 ; ECOI, *Country Policy and Information Note. Afghanistan : Afghans perceived as “Westernised”*, January 2018, available at http://azil.rs/azil_novi/wp-content/uploads/2018/07/Afghans-perceived-as-Westernised.2018.Home-Office.pdf, pp. 16 – 20; Asylos, *Afghanistan : Situation of young male “Westernised” returnees to Kabul*, August 2017, available at www.asylos.eu/Handlers/Download.ashx?IDMF=687d4df7-bf78-4000-8acc-3f2c07c750ef.

⁵³ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 77 ; EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, p. 55 and Danish Immigration Service, *Country of Origin Information, Afghanistan – Taliban’s impact on the population*, June 2023, available at https://us.dk/media/10514/afghanistan_fmm_rapport_200622.pdf, p. 38.

⁵⁴ See p. 15 of the case ; VwGH, *F.N. v. Federal Office for Immigration and Asylum (BFA)*, Case C-609/22, 22 September 2022, available at <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=268121&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=7746503>, §12.

⁵⁵ See p. 15 of the case.

identification.⁵⁶ She still adheres to the religious requirements of the Taliban regime. She explains that she prayed every day and followed the rules taught by her parents.⁵⁷ Despite the challenges of fulfilling religious obligations in a non-religious environment, given discrimination towards Muslims in Taurasia,⁵⁸ the applicant continued to wear the veil at university. She also wore the veil during the interview, stating that it is an integral part of her identity.⁵⁹ This demonstrates her determination to preserve her religious culture, in line with the Taliban's rules and traditions.

The applicant stated that she wanted to maintain strong ties, while being in Taurasia, with her original community by continuing to post pictures on social media platforms for her friends and family, who remained in Afghanistan.⁶⁰ This demonstrates her commitment to her cultural roots.

The mere fact that the applicant attended Agarthia University in Taurasia does not demonstrate that she has adopted habits or behaviors that are now an integral part of her cultural identity to the extent that it cannot be expected for her to renounce them.

When the Minister of Higher Education grants scholarships to students to study abroad, it is usually to provide them with a better education in a specialized program and ensure a

⁵⁶ See pp. 9 and 15 of the case.

⁵⁷ See p. 15 of the case.

⁵⁸ See p. 15 of the case.

⁵⁹ See p. 15 of the case.

⁶⁰ See p. 9 of the case.

professional future for these students in their home country.⁶¹ When the applicant came to pursue her studies in Taurasia, she had professional goals that involved a return to her home country as she applied for a student visa for a specified period. This clearly demonstrates a certain commitment to her home country.

It is necessary for the applicant to have effectively internalized Western values and norms.⁶² The applicant does not concretely demonstrate that she exhibits personal traits or behaviors that are extremely difficult, if not practically impossible, to conceal or modify, leading to a potential imputation of “Westernization” by the Taliban. The applicant does not show concretely to what extent her lifestyle would be so “Westernized” that she would be unable to comply with the laws, rules, and traditions in force in Afghanistan. She has not convincingly established her inability to readjust and rebuild her life in her home country. For all these reasons, it cannot be concluded that she is at risk of being perceived as “Westernized” and thus at risk of persecution by the Taliban.

While stigmatization or rejection may occur upon her return, this alone does not establish a risk of persecution as it does not meet the threshold for persecution⁶³.

⁶¹ Asylos, *Afghanistan: COI Repository*, 31 December 2022, available at www.asylos.eu/Handlers/Download.ashx?IDMF=e3400d01-e5c8-474b-9473-5ea1ae009109 ; H. BARR, “How the International Community can Protect Afghan Women and Girls”, *Human Rights Watch*, 2 September 2021, available at www.hrw.org/news/2021/09/02/how-international-community-can-protect-afghan-women-and-girls ; X., “Afghans with correct legal documents may travel abroad – Taliban spokesman”, *Reuters*, 1 March 2022, available at www.reuters.com/world/asia-pacific/afghans-with-correct-legal-documents-may-travel-abroad-taliban-spokesman-2022-03-01/.

⁶² EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 73.

⁶³ RvV, case no. 278 654, 12 October 2022, available at https://www.rvv-cc.ee/sites/default/files/arr/a278654.an_.pdf, pp. 26–27 ; UNHCR, *Guidelines on international protection n°12 : Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the*

While it is true that the Taliban may not always view people who have left Afghanistan favorably, they still exhibit an ambiguous attitude towards returnees. For instance, they seem to understand those who left Afghanistan for economic reasons, akin to an old tradition where Pashtun men worked abroad for a certain period.⁶⁴ Given that the applicant left Afghanistan with the goal of pursuing education and is now seeking employment, it can be considered that she left Afghanistan for economic reasons, considering Taurasia's status as one of the world's largest economies.⁶⁵ Therefore, she does not have to fear that upon her return to Afghanistan, the Taliban would reproach her for leaving.

In addition, the Taliban are tolerant in their handling of returnees:⁶⁶ only high-profile individuals may face problems if they return to Afghanistan. Indeed, even when individuals face targeting upon their return to Afghanistan, it is not based solely on the fact that these individuals have left the country. Instead, it is connected to the fact that they were leaving due to their affiliations with the former government or specific reasons related to their ethnic background, *quod non in casu*. If an individual belongs to one of these categories, the risk they face is irrespective of the fact that they have left the country as the Taliban would target them

Status of Refugees and the regional refugee definitions, 2 December 2016, available at <https://www.refworld.org/pd/583595ff4.pdf>, §3.

⁶⁴ EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, pp. 50–51.

⁶⁵ See p. 3 of the case.

⁶⁶ EUAA, *Afghanistan: Country Focus*, 5 December 2023, available at https://euaa.europa.eu/sites/default/files/publications/2023-12/2023_12_COI_Report_Afghanistan_Country_Focus_EN.pdf, p. 79.

anyway.⁶⁷ Consequently, it is important to highlight that Amara Ghafoori's decision to leave Afghanistan was not dictated by threats of persecution or specific dangers related to any political opinions, but rather driven by her choice to pursue a two-year master's program at the University of Agartha.

Actively participating in the creation of a political party in opposition to a repressive regime or openly identifying as a sympathizer are actions that justify applying for and obtaining refugee status in view of the risk of persecution linked to this political involvement.⁶⁸

However, Amara Ghafoori's account does not reveal explicit expression of political opinions or membership to a political organization, whether in Afghanistan or Taurasia. Showing an interest in politics or participating in two protests is insufficient evidence for her to be identified as opposing the Taliban regime. The applicant herself admits to not being an active political opponent.⁶⁹ Moreover, it appears that she participated in these events solely with the intention for them to be considered in her asylum application. Even if participating in these demonstrations was not an opportunistic behavior, it is not demonstrated that women participating in demonstrations to defend their rights are systematically subjected to arrests.⁷⁰

⁶⁷ EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, pp. 55 ; Danish Immigration Service, *Country of Origin Information, Afghanistan – Taliban's impact on the population*, *op. cit.*, p. 38.

⁶⁸ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, February 2019, available at www.unhcr.org/sites/default/files/legacy-pdf/5ddfdcd47.pdf, §84 ; J. FERNANDEZ and C. LALY CHEVALIER, *Droit d'asile*, Paris, Pedone, 2015, p. 169.

⁶⁹ See p. 15 of the case.

⁷⁰ EUAA, *Afghanistan: Country Focus*, *op. cit.*, p. 90 ; S. FETRAT, "Bread, Work, Freedom", *op. cit.*; K. GANNON, "Taliban fires into the air to disperse a protest in Kabul, arrests

The applicant participated in these protests as a simple demonstrator and was not a member of the associations organizing the protests. Therefore, there is no evidence to suggest that the Taliban could personally and effectively attribute a political opinion to her and persecute her on that basis. And even if her opinions were a reality (*quod non*), there is no evidence that they were known to the Taliban.

The applicant also justifies a risk of persecution based on her parents' political involvement, supposedly opposed to the Taliban, claiming that, due to their political beliefs, they were attacked at their home. The applicant fails to demonstrate that these incidents occurred and to establish a link between their ideas and the attack, remaining vague when recounting it to the immigration service.

The applicant declares that her father, having worked for the former government,⁷¹ is perceived as a political opponent. However, the Taliban have issued a general amnesty for individuals who served the former government,⁷² letting them keep their roles within the new *de facto* administration.⁷³ The applicant does not provide any evidence to confirm that he is no longer working for the government and is hesitant when asked if her parents are still working.⁷⁴

journalists”, *Los Angeles Times*, 7 September 2021, available at www.latimes.com/world-nation/story/2021-09-07/taliban-disperses-protesters-arrests-journalists.

⁷¹ See p. 12 of the case.

⁷² GUL, A., “Taliban Tout Islamic Rule, Claim 'General Amnesty' Reunited Afghans”, 25 October 2023, available at <https://www.voanews.com/a/taliban-tout-islamic-rule-claim-general-amnesty-reunited-afghans/7326400.html> ; UNHCR, *Situation of human rights in Afghanistan*, 4 March 2022, available at <https://reliefweb.int/report/afghanistan/situation-human-rights-afghanistan-report-united-nations-high-commissioner-human>, §25.

⁷³ EUAA, *Afghanistan: Country Focus*, *op. cit.*, p. 56 ; EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, pp. 56.

⁷⁴ See p. 12 of the case.

Even if her father was no longer working, *quod non*, his role as an engineer lacks significant political responsibility for him to be at risk of persecution. Indeed, working in a ministry is not enough to be targeted by the Taliban. Individuals facing the highest risk of persecution include those in central roles within former military, police, and investigative units, as well as former judges, local politicians, and community leaders.⁷⁵

The applicant does not sufficiently establish that her parents are considered political opponents to the Taliban. Even if that was the case, *quod non*, it would be a risk faced by her parents and not by the applicant on an individual basis.⁷⁶

iii. Religion

Religion as a criterion for the recognition of refugee status is undermined when examining the definition in Article 1A (2) of the Refugee Convention, which stipulates persecution “for reasons of.” The persecution must be motivated by the asylum seeker’s religion rather than the religious norms enforced by the authorities.⁷⁷

⁷⁵ UNAMA, *A barrier to securing peace: Human rights violations against former government officials and former armed force members in Afghanistan*, 22 August 2023, available at https://unama.unmissions.org/sites/default/files/a_barrier_to_securing_peace_aug_2023_english.pdf, pp. 5 – 6; EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, p. 79.

⁷⁶ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, §§45 and 52 ; UNHCR, *Advisory Opinion on the Interpretation of the Refugee Definition*, *op. cit.*, §9.

⁷⁷ N. FEITH TAN and M. INELI-CIGER, “Group-based protection of Afghan women and girls under the 1951 Refugee Convention”, *ICLQ*, Vol. 72, no. 3, 2023, p. 807.

The applicant fails to show affiliation with a religious group specifically targeted by the Taliban. She is part of the Pashtun ethnicity and practices Islam,⁷⁸ which is the dominant religion in Afghanistan.⁷⁹ Additionally, she is Sunni Muslim⁸⁰, and the Taliban have confirmed that their governance is based on Sunni Hanafi Jurisprudence.⁸¹ The applicant is part of the majority religious group. Thus, aligning with the Taliban's governance, the applicant does not face persecution on religious grounds.

Despite differing with some Taliban religious norms, particularly regarding the wearing of niqab and burqa, the applicant does not concretely demonstrate a risk of religious persecution, as she shares the same religion as the Taliban. The continued practice of her religion despite the discrimination⁸² that the residents of Taurasia may exhibit against Muslims clearly demonstrates its importance to her. Otherwise, she would have simply ceased practicing it to conform to the expectations of the Taurasian citizens.

Even if opposing certain religious norms was sufficient to qualify for refugee status, *quod non*, the applicant is only opposed to wearing the niqab and burqa,⁸³ which is not a strong enough opposition to the Taliban norms, especially when women continue to move around in some

⁷⁸ See p. 9 of the case.

⁷⁹ US, "The World Factbook – Afghanistan", CIA, October 2021, available at <https://www.cia.gov/the-world-factbook/countries/afghanistan/#people-and-society>.

⁸⁰ See case p. 9.

⁸¹ ADILI, A. Y., "Intra-Afghan Talks (1)", *Afghanistan Analysts Network*, 3 January 2021, available at <https://www.afghanistan-analysts.org/en/reports/war-and-peace/intra-afghan-talks-1-rules-of-procedure-agreed-but-still-no-agenda-as-talks-resume/>.

⁸² See p. 4 of the case.

⁸³ See p. 15 of the case.

cities, such as Kabul, without their faces being completely covered⁸⁴ as the interpretation of norms differs from region to region.⁸⁵

b) Awareness of the Authorities in the Country of Origin

The applicant's declaration of participating in two demonstrations and adopting a more lenient approach towards her religion by not wearing the hijab daily is not sufficient for her to be persecuted by the Taliban. Even if it was the case, which is not, there is no evidence to suggest that the authorities in the country of origin will know about the applicant's participation in demonstrations and her clothing habits in Taurasia.

Concerning her removal of the hijab, the applicant has posted several photos of herself on social media without it. However, the extent to which the Taliban monitor the online activities of Afghans is unknown⁸⁶ and she can easily remove those pictures. Taliban have arrested Afghans due to their social media activities. However, it was only because they were directly critical to the Taliban.⁸⁷ It is only messages posted on social media containing direct attacks against the Taliban that pose a risk of retaliation.⁸⁸ This is not the case with the applicant. The mere fact that the applicant was not wearing the hijab in some of her photos does not constitute a direct

⁸⁴ A. Latifi, Interview 8–9 June 2023, and email communication, 9 October 2023, in EUAA, *Afghanistan : Country Focus*, op. cit., p. 73; EUAA, *Country Guidance: Afghanistan*, op. cit., p. 87.

⁸⁵ EUAA, *Afghanistan – Targeting of individuals*, op. cit., pp. 119–123 ; K. Clark and S. Rahimi, “We need to breathe too”, op. cit.

⁸⁶ Danish Immigration Service, *Country of Origin Information, Afghanistan – Taliban's impact on the population*, op. cit., pp. 23–24; RvV, case no. 278 654, 12 October 2022, available at https://www.rvv-ccf.be/sites/default/files/arr/a278654.an_.pdf p. 26.

⁸⁷ EUAA, *Afghanistan – Targeting of individuals*, op. cit., pp. 36–38.

⁸⁸ Danish Immigration Service, *Country of Origin Information, Afghanistan*, op. cit., p. 15.

opposition to the Taliban that would lead to her persecution.⁸⁹ While strongly recommending it, the Minister of Interior reminds that women are not obliged to wear the hijab⁹⁰ and there is no report of public punishments for women not wearing a hijab.⁹¹

Concerning the demonstrations, the Taliban have minimal background information on returning individuals. They only do background research on former government agents and officials.⁹² The applicant's participation in two peaceful demonstrations, as a student studying abroad and not associated with the former government, is likely to be of minimal concern to the Taliban. Moreover, there is no clear indication to the Afghan authorities that she participated in these demonstrations. There is no picture of her or any other evidence that could be brought to the attention of the Taliban.⁹³

The applicant does not demonstrate that the Afghan authorities have formally identified her as a strong and committed political opponent, making her a specific target for the Taliban.⁹⁴

⁸⁹ See p. 9 of the case; UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *op. cit.*, §§80 – 86.

⁹⁰ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 87; EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, pp. 120–123.

⁹¹ EUAA, *Country Guidance: Afghanistan*, *ibidem*, p. 87 ; EUAA, *Afghanistan – Targeting of individuals*, *ibidem*, pp. 119–123.

⁹² Special Inspector General for Afghanistan Reconstruction, Quarterly Report to the United States Congress, 30 April 2022, available at <https://www.sigar.mil/pdf/quarterlyreports/2022-04-30qr.pdf>, p. 73, in EUAA, *Afghanistan – Targeting of individuals*, *op. cit.*, p. 64.

⁹³ See p. 20 of the case ; Supreme Court (Canada), *Chan v. Canada (Minister of Employment and Immigration)*, 19 October 1995, 3 SCR 593, §§13 and 103.

⁹⁴ X., “Taliban Killed Group’s Political Opponent Under ISIS Membership, Says Afghan Politician”, *Afghanistan International*, 4 April 2023, available at www.afintl.com/en/202304047344 ; Human Rights Watch, “No Forgiveness for People like you”, 30 November 2021, available at www.hrw.org/report/2021/11/30/no-forgiveness-

c) *Contact with Afghan Authorities*

The student visa issued by Taurasia is subject to economic conditions⁹⁵ the applicant could not have met without the scholarship and passport received from the Afghan government. For this reason, the applicant fears that the Taliban will establish a connection between her and the former government. However, obtaining this scholarship and passport does not automatically indicate a political affiliation with the former government. The awarding of a scholarship is based on academic performance rather than political considerations, and the selection process is impartial. The applicant's acceptance of the scholarship merely reflects her interest in quality education abroad, rather than any political involvement with the former government.⁹⁶

Having received a valid passport is advantageous, as it is a valid document enabling her to travel and return within the country safely.⁹⁷ She arrived with her passport on July 12, 2021, and assuming a passport's validity is four years (like the passport of her brother who provides the validity dates to the Immigration Service⁹⁸), it remains valid until July 11, 2024.

[people-you/executions-and-enforced-disappearances-afghanistan](https://www.hrw.org/news/2021/04/01/afghanistan-taliban-target-journalists-women-media) ; Human Rights Watch, "Afghanistan: Taliban Target Journalists, Women in Media", 1 April 2021, available at www.hrw.org/news/2021/04/01/afghanistan-taliban-target-journalists-women-media.

⁹⁵ See p. 4 of the case.

⁹⁶ Asylos, *Afghanistan : COI Repository*, *op. cit.*; H. BARR, "How the International Community can Protect Afghan Women and Girls", *op. cit.*; X., "Afghans with correct legal documents may travel abroad – Taliban spokesman", *op. cit.*

⁹⁷ EUAA, *Afghanistan: Country Focus*, *op. cit.*, p. 97 ; X., "Afghans with correct legal documents may travel abroad – Taliban spokesman", *ibidem*.

⁹⁸ See p. 10 of the case.

Although the applicant claims to fear persecution from Afghan authorities, her actions, such as contacting the consular section at the Embassy of the Islamic Republic of Afghanistan in Berlin to authenticate her diploma in June 2023,⁹⁹ when the Taliban were already in power and after the alleged abduction of her parents, suggest a willingness to engage with the authorities. This effort to establish contact, especially considering that there is no consulate representing Afghanistan in Taurasia, indicates a certain level of trust or, at the very least, an absence of fear of the Afghan authorities. The smooth authentication process from the authorities further questions the validity of her fears as she is receiving support from the Islamic Republic of Afghanistan for her studies. The authorities willingly accepted her request with full awareness, indicating a favorable consideration towards the applicant and suggesting that the Taliban do not view her as a political opponent or traitor. Her fear of persecution by the Afghan government appears unfounded, the Taliban will not target her upon her return.

1.3. Internal Protection Alternative

The international principle of internal protection¹⁰⁰ allows for the rejection of asylum requests if individuals can find safety in another part of their home country.¹⁰¹ The applicant's claim that danger was present across the entire country¹⁰² is contradicted by her saying that her parents sent her brother to live with her aunt in Charan, Paktika, for better security as there

⁹⁹ See p. 16 of the case.

¹⁰⁰ UNHCR, *Concluding Observations, Norway*, 25 April 2006, CCPR/C/NOR/CO/5, available at www.refworld.org/docid/453777a611.html, §11.

¹⁰¹ C.W. WOUTERS, *International legal standards for the protection from refoulement: A legal analysis of the prohibitions on refoulement contained in the Refugee Convention, the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture*, Antwerpen, Intersentia, 2009, available at <https://hdl.handle.net/1887/13756>, p. 398.

¹⁰² See p. 16 of the case.

were fewer attacks.¹⁰³ This contradiction raises doubts about the credibility of the applicant's account. Moreover, the applicant's brother did not experience persecution from the Taliban while in living with his aunt,¹⁰⁴ the traumas he experienced are due to his journey to Taurasia.

A report released in 2023¹⁰⁵ confirms the absence of a real risk of personal harm due to indiscriminate violence in the province of Paktika. Even considering that the applicant may not be able to return to Kabul, relocation with her aunt in this province would be safe and legally accessible as the Taliban presence is minimal at Kabul airport¹⁰⁶ and the decreased violence has made travel safer.¹⁰⁷

Considering the improved safety in Paktika, the applicant could lead a relatively normal life¹⁰⁸ in Paktika, even in the absence of her parents, whose disappearance is not proven, as she would

¹⁰³ See p. 13 of the case.

¹⁰⁴ See p. 25 of the case.

¹⁰⁵ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, pp. 34 and 125.

¹⁰⁶ EUAA, *Afghanistan: Country Focus*, *op. cit.*, p. 99 ; Norway, Landinfo, *Afghanistan : Departures and returns after Taliban's takeover of power*, 29 September 2022, available at <https://landinfo.no/wp-content/uploads/2023/03/Query-response-Afghanistan-Departure-and-return-after-the-Talibans-takeover-of-power-29092022.pdf>, p. 5.

¹⁰⁷ See p. 13 of the case; EUAA, *Country Guidance: Afghanistan*, *op. cit.*, p. 125 ; Federal Court (Canada), *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 10 November 1993, available at www.refworld.org/cases,CAN_FC,3deb87324.html.

¹⁰⁸ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, pp. 34 and 125 ; UNHCR, *Guidelines on international protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 23 July 2003, available at www.unhcr.org/media/guidelines-international-protection-no-4-internal-flight-or-relocation-alternative-within.

still have a supportive community,¹⁰⁹ including her aunt, friends, and neighbors,¹¹⁰ upon whom she can rely.¹¹¹

To conclude, the applicant does not substantiate her claim that she has a well-founded fear of persecution on any of the enumerated ground by the Taliban upon her return to Afghanistan.

2. Refusal of Exceptional Leave of Residence

There is no element capable of establishing, based on the same events, that there would be serious grounds to believe that, if the applicant returns to Afghanistan, she will face a real risk of serious harm as referred to in Article 3 CAT and Articles 6 and 7 ICCPR.

Based on the prohibition of *refoulement*, States are not allowed¹¹² to return an individual to their country of origin¹¹³ if there is a risk that this person will face significant harm or serious human rights violations.¹¹⁴

¹⁰⁹ See pp. 9 and 11 of the case.

¹¹⁰ See p. 9 of the case.

¹¹¹ RvV, case no. 13.157, 26 June 2008, available at <https://www.rvv-cce.be/sites/default/files/arr/A13157.AN.pdf>, §2.1.9.

¹¹² ECtHR, 28 February 2008, *Saadi v Italy*, no. 37201/06, paras. 125–127, available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-85276%22%5D%7D>.

¹¹³ Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951, *U.N.T.S.*, vol. 189, p. 137, art. 33.

¹¹⁴ UNHCR, Note on Non-Refoulement, 23 August 1977, EC/SCP/2, available at www.refworld.org/docid/3ae68ccd10.html ; S. GAKIS, *Le statut juridique du demandeur d'asile en droit international européen*, Paris, 2023, §432.

It is crucial to determine whether the applicant personally faces the risk of such treatment upon return to her country of origin.¹¹⁵ The mere existence of widespread human rights abuses does not automatically establish that an individual, in their specific circumstances, would be in danger of torture or cruel, inhuman, or degrading treatment or punishment.¹¹⁶

In this specific context, no part of Afghanistan currently poses a concrete and widespread risk of serious harm,¹¹⁷ with Kabul and Paktika experiencing relatively few attacks.¹¹⁸

There is no evidence indicating a real risk of serious harm, such as death penalty, execution, torture, or inhuman treatment¹¹⁹ upon the applicant's return to Afghanistan.

The applicant has not established belonging to a specific group systematically targeted by Taliban authorities, and any imposed restrictions on women, particularly access to healthcare, do not reach the threshold for torture or cruel, inhuman, or degrading treatment¹²⁰ as it varies

¹¹⁵ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *op. cit.*, p. 43.

¹¹⁶ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, *ibidem*, p. 43.

¹¹⁷ EUAA, *Country Guidance: Afghanistan*, *op. cit.*, pp. 124 – 125.

¹¹⁸ EUAA, *Country Guidance: Afghanistan*, *ibidem*, p. 125.

¹¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, *U.N.T.S.*, vol. 1465, p. 85, art. 3 and International Covenant on Civil and Political Rights, adopted in New York on 19 December 1966, *U.N.T.S.*, vol. 999, p. 171, art. 6 and 7.

¹²⁰ EUAA, *Country Guidance : Afghanistan*, *op. cit.*, pp. 86 – 90.

across the country.¹²¹ The Istanbul Convention outlines various forms of gender-based violence.¹²² However, the applicant does not provide evidence of facing these specific forms of gender-based violence¹²³.

Extreme penalties are for those directly linked to the former government,¹²⁴ which does not apply to the applicant or her parents.¹²⁵ Therefore, there is no risk for any of them to be sentenced to death.¹²⁶

The applicant has not demonstrated a personal risk of prohibited treatment based on her individual circumstances. The exceptional leave to remain is refused and she is ordered to leave Taurasia.

3. Request to Remain for Reasons of Family Unity

Regarding family ties with her brother, the latter is not authorized to stay, so the right to live with him as a family is not well-founded either. Moreover, the right to family unity¹²⁷ is not

¹²¹ EUAA, *Country Guidance : Afghanistan, ibidem*, pp. 86 – 90.

¹²² Convention of the Council of Europe on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, *C.E.T.S.*, no. 210, art. 33-40.

¹²³ Convention of the Council of Europe on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011, *C.E.T.S.*, no. 210, art. 61.

¹²⁴ EUAA, *Country Guidance: Afghanistan, op. cit.*, pp. 106 –108.

¹²⁵ EUAA, *Country Guidance: Afghanistan, ibidem*, pp. 106 –108.

¹²⁶ EASO, *Country of Origin Information Report – Afghanistan: Criminal Law, Customary Justice and informal dispute resolution*, July 2020, available at www.cgra.be/sites/default/files/rapporten/easo_coi_report_afghanistan_criminal_law_customary_justice_dispute_resolutions_20200721.pdf, pp. 14 – 17.

¹²⁷ The Immigration Act of Taurasia (see clarification p. 3).

substantiated as her brother is not a child under 18, nor a parent who is dependent on the applicant for support. Indeed, the applicant has no financial capacity to support her brother as she is only a student with no income. The integration prospects into Taurasian society are not met either as the applicant's brother arrived in July 2023 in Taurasia which gave him no time to integrate Taurasian values.

Moreover, nothing proves that her brother would effectively be sent to Kashmana which would lead to separation or that the separation would have drastic consequences on his emotional stability as he provides no evidence of health issues.¹²⁸

It is crucial to emphasize that the examination of each case is individual,¹²⁹ with no direct correlation between the sister's and brother's applications.

¹²⁸ See p. 25 of the case.

¹²⁹ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, op. cit., §§37 – 50 ; Supreme Court (Canada), *Chan v. Canada (Minister of Employment and Immigration)*, 19 October 1995, 3 SCR 593, §74.

Conclusion

Amara Ghafoori fails to meet the conditions to be recognized as a refugee, which necessitates demonstrating a well-founded fear of persecution in her home country.¹³⁰ Her statements lacked substantive evidence and clarity during the immigration service interview. Notably, her recent participation in a demonstration, just before filing her asylum application, raises concerns about the sincerity of her claims.

The persecution grounds cited by the applicant lack justification, as she acknowledges living peacefully when she was in Afghanistan. Her upbringing in an emancipated community and access to education distinguish her situation from Afghan women who might be at risk of gender-based violence, and she fails to establish membership to a specific social group.

The alleged fear of the Taliban based on “Westernization” contradicts her continued adherence to cultural and religious practices she learned in Afghanistan. The political involvement of her parents remains unproven, and even if true, the risk would concern her parents and not her personally.

An analysis of the current Afghan situation reveals significantly reduced tensions, especially in Kabul, where many women oppose the Taliban regime with no reported punishment for not respecting the dress code.¹³¹

¹³⁰ UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees*, op. cit., pp. 19–20 ; J. FERNANDEZ and C. LALY CHEVALIER, *Droit d’asile*, op. cit., p. 170.

¹³¹ EUAA, *Country Guidance : Afghanistan*, op. cit., p. 88.

Internal flight alternative¹³² is available as the applicant can find safety with her aunt in Charan, Paktika province.

As the applicant is not recognized as a refugee, she does not have the right to family unity. Moreover, it is not proven that her brother is dependent on her and the examination of each case is individual.

Considering these factors, the Grand Duchy of Taurasia justifies rejecting Amara Ghafoori's refugee status and exceptional leave of residence.

¹³² UNHCR, *Guidelines on international protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, *op. cit.* ; Federal Court (Canada), *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 10 November 1993, available at www.refworld.org/cases,CAN_FC,3deb87324.html.

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Annexes

1. (63) RvV, case no. 278 654, 12 October 2022, pp. 26–27

“(…). Afghanen die uit Europa terugkeren naar Afghanistan kunnen door de taliban of de maatschappij met argwaan worden bekeken en kunnen worden geconfronteerd met stigmatisering of uitstoting. Stigmatisering of uitstoting kunnen echter slechts in uitzonderlijke gevallen worden beschouwd als vervolging. Wat betreft de negatieve perceptie ten aanzien van terugkeerders uit het Westen blijkt nergens in de aanwezige informatie dat dit gegeven op zich aanleiding zou geven tot daden van vervolging. Dit dient samen met andere individuele elementen beoordeeld te worden. (...)”

Translation into English:

“(...) Afghans returning from Europe to Afghanistan may be viewed with suspicion by the Taliban or society and could face stigma or ostracization. However, stigma or ostracization can only be considered as persecution in exceptional cases. Regarding the negative perception of returnees from the West, nowhere in the available information does it suggest that this factor alone would lead to acts of persecution. This needs to be assessed in conjunction with other individual elements. (...)”

2. (69) J. Fernandez and C. Laly Chevalier, *Droit d’asile*, Paris, Pedone, 2015, p. 169

“(...) Le motif politique recouvre de son côté principalement l’activité militante d’un étranger. A ainsi été reconnu réfugié un Sri lankais, ayant pris une part active à la création d’un parti d’opposition et utilisé son imprimerie à des fins politiques (CNDA, 10 déc. 2013, n° 130211489). (...) ”

Translation into English:

“(…). The political motive, on the other hand, mainly encompasses the activist involvement of a foreigner. For instance, a Sri Lankan was granted refugee status, having actively participated in the creation of an opposition party and used his printing press for political purposes (CNDA, Dec. 10, 2013, No. 130211489). (…)”

3. (86) RvV, case no. 278 654, 12 October 2022, p. 26

“(…). De taliban zijn ook aanwezig op sociale netwerken, maar het is onduidelijk in welke mate ze de online activiteiten van Afghanen opvolgen. Een bron oordeelde dat de berichten die men op sociale media platforms schrijft en deelt waarschijnlijk geen gevolgen zullen hebben, tenzij deze berichten aanleiding geven tot de dood of arrestatie van een persoon. Evenwel hebben internationale media bericht dat de taliban reeds Afghanen hebben gearresteerd en gedood vanwege hun activiteiten op de sociale media (Denmark, DIS, Afghanistan, Taliban’s impact on the population, June 2022, pp. 23–24, in EUAA, Afghanistan targeting of individuals). Het betroffen echter kritische berichten ten aanzien van de taliban. (…)”

Translation into English:

“(…). The Taliban are also present on social networks, but it is unclear to what extent they monitor the online activities of Afghans. One source judged that the messages written and shared on social media platforms are unlikely to have consequences unless these messages lead to the death or arrest of a person. However, international media have reported that the Taliban have already arrested and killed Afghans due to their activities on social media (Denmark, DIS,

Afghanistan, Taliban's impact on the population, June 2022, pp. 23–24, in EUAA, Afghanistan targeting of individuals). However, these incidents involved critical messages regarding the Taliban. (...)”

4. (130) J., Fernandez and C. Laly Chevalier, *Droit d’asile*, Paris, Pedone, 2015, p. 170

“(…) En tout état de cause, l'étranger doit démontrer être exposé dans son pays à un réel risque de persécutions. En effet, si la notion de “crainte” à laquelle se réfère la convention de Genève semble faire référence à une notion subjective, au ressenti de l'étranger et à son sentiment d'insécurité dans son pays, le texte précise que cette crainte doit être éprouvée “avec raison”. Elle doit ainsi être justifiée au regard du contexte prévalant dans le pays d'origine du demandeur et la protection ne sera accordée que s'il existe pour lui un risque objectif de persécution en cas de retour dans son pays. (...)”

Translation into English:

“(…). In any case, the foreigner must demonstrate being exposed in their country to a real risk of persecution. Indeed, while the notion of ‘fear’ referred to in the Geneva Convention seems to refer to a subjective concept, to the foreigner's feelings of insecurity in their country, the text specifies that this fear must be ‘well-founded’. It must thus be justified in light of the prevailing context in the applicant's country of origin, and protection will only be granted if there exists an objective risk of persecution upon their return to their country. (...)”

5. (111) RvV, case no. 13.157, 26 June 2008, available at <https://www.rvv-cce.be/sites/default/files/arr/A13157.AN.pdf>.

“Verzoekster werd in Afghanistan systematisch bedreigd met een gedwongen huwelijk. De ernst van deze bedreiging blijkt duidelijk uit het feit dat verzoekster reeds eerder fysiek en verbaal aangevallen werd. De feiten en de gevreesde behandeling kunnen gekwalificeerd worden als vervolging in de zin van het vluchtelingenverdrag. Verzoekster kan, gelet op de onmacht van de Afghaanse overheid om recht te verschaffen en de discriminerende wetgeving ten opzichte van vrouwen, geen succesvol beroep doen op de bescherming van haar nationale autoriteiten. Gezien in Afghanistan familie- en stamverbanden het enige functionerende beschermingsmechanisme vormen voor het individu, is evenmin een realistisch intern vluchtalternatief voorhanden in een andere streek van het land. Verzoekster is een ongehuwde vrouw die na het overlijden van haar vader de bescherming van een mannelijk familielid ontbeert. Verzoekster weigert een gedwongen huwelijk, waarmee ze de mores van de op streng patriarchale leest geschoeide Afghaanse maatschappij overtreedt. In die maatschappij vallen alleenstaande vrouwen vrijwel zeker ten prooi aan armoede en willekeur. Verzoekster maakt bijgevolg aannemelijk haar land ontvlucht te zijn uit een gegronde vrees voor vervolging wegens haar lidmaatschap van een sociale groep, zijnde die van de alleenstaande Afghaanse vrouw.”

Translation into English:

“The applicant was systematically threatened with a forced marriage in Afghanistan. The seriousness of this threat is clearly evident from the fact that the applicant has previously been physically and verbally attacked. The facts and the anticipated treatment can be qualified as persecution within the meaning of the Refugee Convention. Considering the inability of the Afghan authorities to provide justice and the discriminatory legislation against women, the applicant cannot successfully seek protection from her national authorities. Given that in

Afghanistan, family and tribal connections are the only functioning mechanism for individual protection, there is also no realistic internal flight alternative available in another part of the country. The applicant is an unmarried woman who lacks the protection of a male family member after the death of her father. She refuses a forced marriage, thereby violating the norms of the strictly patriarchal Afghan society. In that society, single women almost certainly fall prey to poverty and arbitrariness. Consequently, the applicant credibly demonstrates fleeing her country out of a well-founded fear of persecution due to her membership in a social group, namely that of the single Afghan woman.”

6. (114) S. Gakis, *Le statut juridique du demandeur d’asile en droit international européen*, Paris, 2023, para. 432

“Le droit individuel au non-refoulement identifié sur la base de la complémentarité garantit dans tous les cas le non-éloignement de la personne vers des territoires à risque avant un contrôle individuel et est invocable indépendamment de toute présomption de sûretés. (...)”

Translation into English:

“The individual right to non-refoulement identified on the basis of complementarity ensures, in all cases, the non-removal of the person to risky territories before an individual assessment, and can be invoked independently of any presumption of safety. (...)”

Plaidoirie orale : 2^e partie de la partie requérante

On the Exceptional Leave to Remain

In this crucial second point, we will demonstrate that the authority must, at the very least, grant the applicant exceptional permission to stay in Taurasia for a renewable period of two years.¹ This should be applied if there are serious grounds to believe that if returned to Afghanistan, the applicant would be exposed to a real risk of serious harm², such as the death penalty or execution (2.1), and/or torture or inhuman or degrading treatment or punishment (2.2).

Firstly, regarding the Risk of Being Exposed to the Death Penalty or Execution, individuals associated with the previous government are considered as a profile at risk of facing extrajudicial killings by the Taliban, as they are perceived as political opponents. Contrary to what was asserted by the authority, not only individuals in central positions are targeted but also any person even indirectly linked to the previous government, as is the case for the applicant's father. This isn't mere speculation; it's a documented reality affirmed by the 2023 EUAA report. The applicant open opposition to the current government during protests in Taurasia intensifies this peril.³

Secondly, regarding the Risks of Being Exposed to Torture, the applicant will inevitably be exposed to inhumane treatment upon her return to Afghanistan, as it is arduous for a single woman to lead a life in accordance with human dignity. Indeed, she has no male relatives in Afghanistan, making it difficult for her to move freely in public, access health care, or secure employment that would allow her to meet her needs independently.⁴

Furthermore, having lived in the West, the applicant has adopted habits perceived as incompatible with Afghan societal norms. Therefore, it is uncertain that upon returning to Afghanistan, the applicant will be able to consistently comply with strict dress codes and any other restrictive measures to which she has not been exposed since her arrival in Taurasia. And by not conforming to the norms of behavior attributed to her in society, she is at risk of facing mistreatment. Therefore, it is acknowledged that the

¹ "Persons who cannot return out of fear for their life, torture, or cruel, inhuman or degrading treatment or punishment under other international conventions, are granted exceptional leave to remain for renewable periods of two years", p. 6 of the case.

² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, U.N.T.S., vol. 1465, p. 85, art. 3 and International Covenant on Civil and Political Rights, art. 7.

³³ EUAA, *Afghanistan Country Focus*, *op. cit.*, p. 56.

⁴ Human Rights High Commissioner, Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, 9 September 2022, available at: www.ohchr.org/en/documents/country-reports/ahrc516-situation-human-rights-afghanistan-report-special-rapporteur, para. 24.

dress code imposed on women in public places under the threat of corporal punishment constitutes in itself a violation of Article 7 of the ICCPR.⁵

It is also important to emphasize that insofar as the applicant is a woman at risk of severe violations of her rights, particularly related to gender and gender-based violence, Article 61 of the Istanbul Convention also protects her from such expulsion.

Moreover, the Committee on the Elimination of Discrimination against Women (CEDAW), confirms the importance of the non-refoulement principle in international law. It ruled that it is illegal to deport asylum seekers to countries where they risk significant ill-treatment due to refoulement. This decision also underscores the obligation for states to conduct a personalized assessment of persecution risks, especially regarding gender-based violence, before returning individuals seeking international protection to their home countries.

The Separation from Her Brother Who Is an Asylum Seeker in Taurasia

Now that we have demonstrated that the applicant is entitled to exceptional leave to remain, we will move on to the next point and show you that the applicant must be allowed to remain in Taurasia to care for her brother, Arash Ghafoori, as an essential aspect of her right to family life⁶ and family unity⁷. According to established case law, the term 'family' is given a broad interpretation⁸ and therefore extends to siblings⁹

⁵ UNHCR, CCPR General Comment No. 28 : Article 3 (The Equality of Rights Between Men and Women), 29 March 2000, available at: www.refworld.org/docid/45139c9b4.html, p. 3, para. 13.

⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted by General Assembly Resolution on 18 December 1990, *A/RES/45/158*, art. 44 ; Convention on the Rights of the Child adopted by General Assembly on 20 November 1989, *U.N.T.S.*, vol. 1577, p. 3 ; International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966, *U.N.T.S.*, vol. 933, p. 3, art. 10 (1) ; International Covenant on Civil and Political Rights, adopted in New York on 19 December 1966, *U.N.T.S.*, vol. 999, p. 171, art. 17 and 23 ; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, available at: www.refworld.org/docid/5a9029f04.html, pp. 4 – 5.

⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted by General Assembly Resolution on 18 December 1990, *A/RES/45/158*, art. 44 ; Convention on the Rights of the Child adopted by General Assembly on 20 November 1989, *U.N.T.S.*, vol. 1577, p. 3 ; International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966, *U.N.T.S.*, vol. 933, p. 3, art. 10 (1) ; UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, *ibidem*, pp. 4 – 5 ; UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at: <http://www.refworld.org/docid/40a8a7394.html>.

⁸ HRC, CCPR General Comment No. 16: Article 17 (Right to Privacy), *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, available at: www.refworld.org/docid/453883f922.html, para. 5.

⁹ ECtHR, *Moustaquim v. Belgium*, no. 12313/86, 18 February 1991, available at: www.refworld.org/docid/3ae6b7018.html, para. 36.

Her brother has endured traumatic experiences fleeing Afghanistan and relies entirely on her for his emotional and financial well-being. The Council of Europe also asserts that despite the asylum seeker reaching adulthood at the time of seeking asylum, his vulnerability persists¹⁰. So, it is crucial for him to stay with his sister to rebuild his life. However, there is a risk of him being relocated to Kashmana, where he lacks family support, and where human rights are not respected, with reports of arbitrary arrests and torture. Allowing the applicant to remain with her brother in Taurasia would be the only way to ensure her brother's well-being and preserve their family unity.

Conclusion

To conclude, we have demonstrated in this plea that the Immigration Service made a manifest error in refusing to grant refugee status to the applicant, as she fully meets the criteria of the Convention. Indeed, the applicant's legitimate apprehension of persecution on grounds of religion, political opinion, and social group, as stipulated in the Convention, is irrefutable.

We demonstrate the credibility of the applicant's testimony, which has not been questioned by the immigration service.

Secondly, we have demonstrated that if refugee status is denied to the applicant, she must at least have an exceptional right to remain in the country on subsidiary grounds. The COI proves that the applicant has a reasonable fear to be submitted to inhuman and degrading treatment if returned to Afghanistan. Considering the non-refoulement principle, especially pertinent to women vulnerable to gender-based violence, repatriating the applicant to Afghanistan, devoid of safe conditions, is unconscionable.

Lastly, we have shown that based on the right to family life, it is indisputable that the applicant must remain in Taurasia to provide essential care for her dependent younger brother.

And we would like to finish by invoking "We would like to invoke the test that emerges from some Australian case law "what if I'm wrong". The judge asks himself what the consequences are if he is wrong in his decision which, for example, would deny refugee status? In our case it is the applicant's life that is at stake. We therefore ask you not to take any risks and to take our application very seriously.

¹⁰ Council of Europe, *Realising the Right to family reunification of refugees in Europe*, June 2017, available at : <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>, p. 7.

We therefore implore the authority to recognize the urgency and righteousness of our plea. To deny the applicant's right to remain in Taurasia is to condemn her to a fate no human should endure a fate compounded by the irreparable rupture of familial ties. Let justice, compliance, and adherence to international law guide your decision.
