ICIBI Inspection: Afghanistan Resettlement Schemes

Evidence of Deighton Pierce Glynn Solicitors

Deighton Pierce Glynn ('DPG')

DPG are a solicitors firm specialising in judicial review and civil liberties work, the vast majority of which is funded by legal aid. We do not provide immigration advice, but do a lot of work in related areas: asylum support; immigration detention; access to healthcare and others. See www.dpglaw.co.uk.

Our Experience in Relation to Afghan Resettlement Schemes

We interpret this to refer to both the ARAP scheme and the later ACRS scheme. We have been working on cases in these areas since September 2021, primarily in relation to ARAP but more recently in relation to the ACRS scheme (Pathway 3), after receiving referrals from lawyers with connections in Afghanistan and the NGOs working in this area.

We have litigated over 10 claims for persons refused by the Home Office under ARAP following Ministry of Defence decisions that they were eligible under the scheme. Reasons were not provided on the basis that this would involve national security considerations. These cases all followed the same pattern:

- Home Office refusals to withdraw the decisions under challenge;
- Commencement of judicial review proceedings;
- Home Office concession of the litigation and agreement to make a new decision - in most cases only after a considerable period of time and the commencement of a 'Closed Material Procedure' for national security reasons under the Justice and Security Act 2013;
- Revised decision.

In several cases (5) the new decision granted entry clearance to the UK. But in several others the refusals were repeated, requiring a new set of proceedings. The same process was therefore followed again. In one (1) of those cases the Home Office agreed to grant entry clearance in its third decision. In most of the others (3) the Home Office withdrew their decision and agreed to make a new decision, again after several months of litigation. In the remaining case the Home Office maintained their refusal and the case went to trial. In September 2021 the High Court ruled that the ARAP refusal in that case was unlawfully irrational (R (ALO) v SSHD [2022] EWHC 2380 (Admin)). The Home Office is now due to make a third decision in that case, along with the remaining 3 cases, imminently.

We also acted for a former senior Afghan judge supported by the UK government in challenging first the delay in deciding his ARAP application; then in deciding his application for his dependant adult children; then in challenging the Home Office's refusal of his adult children under the Additional Family Members policy. That claim was also successful (see R (BAL & others) v SSHD [2022] EWHC 2757 (Admin)).

Observations

Delayed Decision Making: you will be aware of the backlog of cases resulting in severe delays to decision making in this area. Even in cases which have been decided and are before the court, decision making has been unacceptably slow e.g. in the national security cases above 5 individuals are still awaiting decisions on ARAP applications made in mid-2021. Repeated extensions of time have been required. This undermines the central protective purpose of the ARAP scheme.

Inadequate Policy: some sponsoring departments under ARAP do not have policies in place governing their approach to reviewing decisions under ARAP, resulting in a danger of arbitrary decision making.

Inconsistency: as noted above, different departments appear to have different approaches to ARAP decisions. Similarly, the bifurcated approach between ARAP eligibility (MOD) and entry clearance (HO) also leads to further inconsistency as in the national security cases noted above. It is difficult for applicants to understand why if one arm of the UK government says they are eligible another department says they are not.

Lack of adequate prioritisation: the decision makers do not appear to have an effective system of prioritising applications according to urgency and risk (as in the Judge case above). We have seen decisions speeded up but this appears to be driven by litigation.

Unresponsive: probably due to resourcing problems, decision makers do not respond to enquiries, for example in order to respond to security risks.

Reliance on inadequate information for decisions: as was shown by the Court's judgment in *ALO*, it appears that applications have been decided based on information received from third parties (e.g. coalition partners and other actors in Afghanistan) without carrying out further checks to ensure the reliability of that information.

No responsibility for subsistence and support: a consequence of causing people to remain in situ and at risk while their applications are considered is that responsibility for support and protection is left in the applicants' hands during the lengthy decision making period. Asylum support has effectively been offshored. This is particularly difficult for persons forced to remain in hiding.

Ongoing risk: it goes without saying that leaving people in situ during a lengthy decision making process also exposes them to serious, unnecessary and potentially fatal risk.

Responsibility for immediate evacuation: save in rare cases, applicants are required to get themselves to Pakistan before onward travel to the UK is possible. This may be logistically and financially very difficult for a lot of people and expose them to additional risk. It is not clear that all steps that could be taken to mitigate this have been taken.

Inflexibility in biometric requirements: in tandem with the above, the insistence that applicants complete biometrics in Pakistan imposes a further burden on families, as evidenced by the case of R (KA & Others) v SSHD & ors [2022] EWHC 2473 (Admin).

Inadequate accommodation in the UK: we have started to see cases for persons relocated to the UK who have been housed in hotels for unacceptably long periods and then moved to another hotel in another part of the UK on a further temporary basis, contrary to the aims of "Operation Warm Welcome". The arrangements for finding long-term accommodation and transitioning to long-term support are inadequate.

Deighton Pierce Glynn
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