



THE JOINT COUNCIL
for THE WELFARE
OF IMMIGRANTS

Briefing:

The Afghanistan Crisis and Refugee Rights

Zoe Gardner
Policy & Advocacy Manager

August 2021

Background

Following the withdrawal of Western forces from Afghanistan, the Taliban have taken control of the country. Afghanistan has long been one of the largest [countries of origin](#) for asylum-seekers in the UK. However, refugees have faced [significant obstacles](#) to obtaining adequate protection. Until just days ago, the UK Government has long classified Kabul as a safe destination for asylum-seekers to return, including those from the LGBTQI+ community, who have been urged to protect themselves by remaining “discreet” about their identity.

Case law dating back to 2007 [establishes](#) the principle that returning asylum-seekers to Taliban-controlled areas would breach our obligations under the Refugee Convention. Taliban forces now have control over the whole country, including Kabul.

The Nationality and Borders Bill that is currently before Parliament proposes a [two-tier approach to refugee protection](#) that would discriminate between people seeking protection based on their mode of arrival in the UK. However, as the scenes at Kabul Airport in recent days have shown, regulated means of travel are simply not open to people who need to escape immediately from a crisis.

Recommendation: JCWI urges the Government to confirm that Afghan nationals who seek protection in the UK will be assessed based on their need for protection, and not penalised for their method of flight.

Ahmed’s story:

Ahmed fled Afghanistan after being tortured by the Taliban as a child. Traumatized, and with no remaining family in Afghanistan, he escaped to join his brother, who has refugee status in the UK. But Ahmed’s asylum application was initially rejected, with the Government arguing that he should internally relocate to Kabul. This decision was handed down in July 2021, as Taliban forces were approaching the capital.

Recommendations

Abandon the two-tier refugee protection system

With new inadmissibility [provisions](#) in place since early 2021, the government has introduced a two-tier system into the UK’s asylum system. Under this system, the very limited number of people who are granted a place on a resettlement scheme are recognised as refugees. Those who have no choice but to flee for their lives and travel irregularly have their applications placed on hold for six months or more, while the Home Secretary pursues their removal to another country. This distinction is also at the heart of the proposals set out in the 2021 Nationality and Borders Bill.

It is beyond dispute that Afghan nationals who arrive to the UK are fleeing a large-scale crisis, and cannot be safely returned to Afghanistan. Introducing an additional delay into the processing of their claims is counter-productive. All Afghan asylum cases must be heard without delay and processed at speed to provide the urgent protection required.

Recommendation: The provisions in the Nationality and Borders Bill that would introduce a two-tier system of refugee protection based on mode of travel should be withdrawn. The inadmissibility rules introduced in January 2021 should also be suspended as a matter of urgency.

Immediately protect all Afghans already in the UK

In the year to March 2021, over [3,000 Afghan nationals](#) had asylum claims pending in the UK, over two thirds of whom have been waiting longer than six months. These people can and must be immediately granted refugee protection and entitlement to access family reunification procedures. This would also help to address the [unprecedented backlog](#) of people awaiting a decision on their claim in our asylum system.

Recommendation: Immediately grant all outstanding asylum applications by Afghan nationals

There is currently no prospect of safely returning any individual to Afghanistan. This situation is unlikely to change imminently. Under the current circumstances, there is no cogent argument for delaying decisions on asylum applications from Afghan nationals.

The Government must introduce expedited procedures for dealing with new or fresh asylum claims by Afghan nationals over the coming period, in order that they can be assessed for stable status without delay.

Recommendation: Introduce expedited procedures to facilitate new or fresh claims by Afghan nationals to be granted immediate protection status

While such procedures are being established, no Afghans must be evicted from asylum accommodation or denied asylum support.

Recommendation: Halt all evictions of Afghan nationals from asylum accommodation

Finally, given the impossibility of effecting safe returns at the current time, Afghan nationals being held in immigration detention must be immediately released.

Recommendation: Release any Afghan national currently being detained in an Immigration Removal Centre

Hassan's Story

Hassan fled Afghanistan as a child after receiving threats from the Taliban. After a long and difficult journey to the UK to seek asylum, his claim was rejected and he was placed in detention. While in detention in the UK he came out as gay and sought to make a fresh claim for protection on these grounds. He was not believed by the Government, and an emergency injunction was needed to prevent his removal. It took Hassan another 7 years of appeals to finally prove that he is a refugee and must not be returned to face persecution. During this time his mental health has deteriorated dramatically, with the fear of return to danger in a country to which he has no remaining links hanging over him.

Widen access to safe routes for refugees

It is within the gift of the UK Government to take a world-leading position on this issue, and provide genuinely safe routes for refugees to escape danger under the Taliban. Between 2014 and 2020, the UK offered protection through [resettlement to 22,157 people](#): this is an average of well below 4,000 per year, including its emergency scheme for vulnerable Syrian people. **In light of the current disaster, JCWI urges parliamentarians to insist on a much greater commitment to resettlement.**

Family reunification can provide a significant and safe route for refugees. It is vital that [obstacles to accessing this route](#) be removed for Afghan refugees at the current time, in order to ensure their loved ones can reach safety as quickly as possible. The Government should act to:

- Introduce an expedited family reunification process for Afghan nationals
- Remove the requirement to apply at embassies, which has become impossible since the Taliban takeover
- Expand eligibility criteria to include, for example, the parents and siblings of refugees.

The Afghan Locally Employed Staff Relocation Schemes, which has [only recently been accelerated](#), still do not adequately protect all relevant people whose lives may be at risk due to their cooperation with British forces in Afghanistan. [Since 2013, just 3,300](#) Afghan staff have benefited from the scheme. However, many [thousands more](#) Afghan nationals have been employed by the UK throughout its deployment in Afghanistan, and will therefore be at risk. The criteria of the scheme must be expanded to include, for example, drivers and security staff who have worked with UK forces, to ensure that no one who has been put in harm's way due to assisting us is left behind.

Recommendation: Widen access to family reunification routes for Afghan nationals, simplify procedural requirements and expedite applications

Recommendation: Expand Afghan Locally Employed Staff Relocation Schemes to include all at-risk professions

Recommendation: Play a leading role in international resettlement efforts, and commit to matching Canada's offer of 20,000 places this year

Conclusion

The chaos and tragedy currently unfolding in Afghanistan show that it is simply not possible for refugees to form an orderly queue and wait for the possibility of resettlement. Many will be forced to flee via irregular means. A compassionate response to this crisis means ensuring both that resettlement options are generous and ambitious *and* that people who do flee irregularly can access stable protection to rebuild their lives, as well as guaranteeing the safety of Afghan nationals already in the UK and their loved ones.

For more information please contact:

Zoe Gardner

Policy Advisor, JCWI

zoe.gardner@jcw.org.uk - 0207 553 7463

Mary Atkinson

Campaigns Officer, JCWI

mary.atkinson@jcw.org.uk - 0207 553 7463



THE JOINT COUNCIL
for THE WELFARE
OF IMMIGRANTS

JCWI is an independent charity campaigning for justice and fairness in immigration, nationality and asylum policy since 1967.