

IN THE GRAND COURT OF THE CAYMAN ISLANDS

663 ✓  
CAUSE NO: OF 2003

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE  
IMMIGRATION APPEALS TRIBUNAL DATED THE 6<sup>TH</sup> OCTOBER 2003

AND IN THE MATTER OF SECTION 17(2) OF THE IMMIGRATION LAW (2003  
REVISION)

AND IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES 1955  
(REVISED EDITION)

BETWEEN THE CHIEF IMMIGRATION OFFICER APPELLANT  
AND (1) ALI SHAH YOUSSEFI  
(2) MOHAMED REZA HOUSSEINI  
(3) NIK NAZAR NAZARI RESPONDENTS

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NOTICE OF ORIGINATING MOTION

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TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on the 13<sup>th</sup> day of November 2003 at 9:30 in the fore/after noon or as soon thereafter as counsel can be heard, by counsel on behalf of the Appellant, the Chief Immigration Officer for an order that the decision of the Immigration Appeals Tribunal dated the 6<sup>th</sup> October 2003 be set aside

**AND FURTHER TAKE NOTICE** that the grounds of this appeal are:

1. The Tribunal erred in law in rejecting the findings of fact made by the Grand Court on the 5<sup>th</sup> June 2001 in Cause No 316 of 2001 with regard to the manner in which the Respondents arrived in the Cayman Islands as the findings were *res judicata* on those issues;
2. The Tribunal misdirected itself on the test to be applied to the interpretation of Article 1.C(5) of the 1951 Convention in that they held as follows: “ .... *there are still circumstances prevalent in Afghanistan which could give the Appellants a well-founded fear of persecution if they returned .....* ”
3. The Tribunal further misdirected itself on the test to be applied to the interpretation of Article 1.C(5) of the 1951 Convention in that they held as follows: “ *...It seems clear that until there is some form of peace in Afghanistan that there will be persecution of the Hazara .....* and that such groups will not be able to avail themselves of the protection of the state ”.
4. The Tribunal erred in law in finding that “ *..if an application for refugee status could have been entertained at the time of their arrival by the Chief Immigration Officer .....* he would have had to find that they had a well-founded fear of persecution.” Since no such application could have been made as a matter of law the Chief Immigration Officer had no power to make any such finding.
5. The Tribunal erred in law by failing to take into account adequately or at all the evidence adduced by the Applicant at the hearing of the said appeal as to the applicability of the cessation provisions of the 1951 Geneva Convention;
6. The Tribunal erred in law by failing to take into account, adequately or at all, the principle inherent in the 1951 Convention and/or misdirected itself on the same that if an applicant for refugee status is able to avail himself of the protection in

some part of his own country then he is not a refugee within the meaning of the 1951 Convention;

7. The Tribunal erred in law by failing to give proper and adequate reasons for arriving at the decision and failed properly to deal with the arguments and evidence adduced by the Chief Immigration Officer such failure being a breach of the rules of natural justice;
8. That in all the circumstances of the case the decision of the Tribunal was irrational and/or unreasonable as a matter of law.
9. The Plaintiff reserves the right to amend these Grounds of Appeal pursuant to Grand Court Rules Order 55, rule 6(1) upon receipt by him of the note of the proceedings made by the Chair of the Immigration Appeals Tribunal upon application pursuant to the said Order 55, rule 7(4).

Dated the 14<sup>th</sup> Day of October 2003.

Filed the        day of October 2003



Government Legal Department  
Attorneys for the Appellant

TO:            The Clerk of the Court

AND TO:      Walkers, PO Box 265 GT Grand Cayman (Attn: Mr. L. Aiolfi)(Attorneys for the Defendants)

AND TO:      The Immigration Appeals Tribunal

This Notice of Originating Motion was issued by the Government Legal Department, attorneys for the Appellant whose address for service is 4<sup>th</sup> Floor, Tower Building, PO Box 907 GT, Grand Cayman Cayman Islands (Ref: SHJ).