

From : Fabia Claridge

I have written this as a story to protect the person's identity. I hope you can make use of it.

Fabia Claridge

HOW CAN THIS BE? The morning after! 21/9/11

I feel sick this morning and at 64 I'm definitely not pregnant. It's because I'm sick of my country's politicians, bitterly disappointed in the political manipulation of the legal system and I'm not even talking yet about trying to by-pass the High Court decision on asylum seekers.

It's because my friend, let's call him "Mohammed", was deported from Australia this morning. I believe he was deported to danger. I believe that he believes he has been deported to danger. An ethnic Hazara man, who has been living in Pakistan since he was a child, he has good reason to believe this. He has been on the run from the Taliban his whole life. When he heard the news that he was to be '*removed*' (how clean and surgical it sounds – like getting rid of wart, an unwanted growth) he broke down, his body wracked with sobs. I hugged him but it could not assuage the fear and despair that was overwhelming him. Why are we doing this? Such a rich country, the biggest house sizes, the biggest per capita carbon footprint, the greatest per capita household waste and we haven't got room in our heart or home for a few truly desperate human beings. How can it be that someone like "Mohammed" can be deported from Australia to danger in 2011, after all the ghastly experiences we have heard about over the past 10 years and in spite of the Refugee Convention stating that no one can be deported to danger, and the day after a Complementary Protection Bill was apparently passed through the Australian Parliament? The last 24 hours has been intense – moving heaven and earth to put out a fire only to find that when the fireman arrives he says '*I don't have a license to put out that kind of fire. I can only put out other sorts of fires*'. I'm left with the sick panic of unfolding disaster that I am powerless to prevent.

Earlier this year, that's 2011, "Mohammed's" young son was shot and injured in an attack by the Taliban while praying at his grandmother's grave. This is not just a statistic on the news. The father is standing in front of me holding a photo of his son in the news. In his other hand he is holding a passport photo of the same boy who is in the news. What do I have to do for someone to believe me? Do I have to fly to Pakistan to do a DNA test? The attack was specifically anti Hazara. Hazaras are an ethnic minority from Afghanistan who are singled out as a target by the Taliban partly because of their Shia religion but also for complex historical reasons. They are sometimes called the Jews of Afghanistan.

Then, just in the last few weeks "Mohammed's" cousin was among a number of Hazaras in his area, killed by the Taliban, who are active in Pakistan. A Taliban letter he gave me declares, "*Shias have no right to be here...have been declared infidels. Just as our fighters have waged successful jihad against the Shia-Hazaras in Afghanistan, our mission (in Pakistan) is the abolition of this impure sect and people, the Shias and the Shia- Hazaras, from every city, every village, every nook and corner of Pakistan....we will make Pakistan their graveyard - their houses will be destroyed by bombs and suicide bombers...*"

"Mohammed" has been in Australia more than once since 1999. His case has been through the

Independent Merits Review and the Federal Court but it seems to have foundered upon the fact that he had at one time used a Pakistani passport and a different name in an attempt to escape to safety. Yes, in Australia, we don't like people with false names who tell fibs about their identity but we fail to understand that such behaviour is brought about by desperate situations, the like of which most of us have never had to face and this behaviour does not necessarily need to discredit the person who has had to do it. Against considerable evidence to the contrary, the Tribunal chose to believe that "Mohammed" is Pakistani, even though he looks like a Hazara, identifies as Hazara and speaks Dari. This is what counts (against him) in that part of the world, not whether he has at times carried a (false) Pakistani passport in an effort to keep safe. The Tribunal also chose not to believe his story of persecution. "Mohammed" told them he feared for his life because a local pro Taliban man was trying to track him down and kill him. However this man did not succeed in killing him (as yet). The Tribunal asserted that the man could have easily come to "Mohammed's" shop and killed him but he did not. Therefore "Mohammed" was *not* in danger and was therefore not a refugee and therefore did not deserve Australia's protection. This seems like a variation on the arguments of the witch hunts. Is the only way to prove you are a 'real' refugee to die doing it?

The seriousness of "Mohammed's" situation seems trapped in a system that is unable and unwilling to respond to the real situation but is prepared to accept that justice *appears* to have been done (at great expense to the taxpayer) and leave it at that. Maybe you all already know this but I wonder whether I have understood it sufficiently and I wonder whether many lay Australians understand this process. Can I ask any ordinary lay persons this? Is this your understanding of the law:

1. You can not be held without charge?
2. You are innocent until proven guilty?

This is what I am learning about Refugee Law. Please correct me if I am wrong. It appears that there is no possibility of scrutiny of the the facts once they are 'established' or found to be true in the Tribunal unless there is a second Tribunal because the Federal Court finds there was an error of law (not fact) in the first Tribunal. In the Tribunal it seems that the onus of proof is reversed and is upon the refugee applicant to prove beyond all reasonable doubt that he/she has a well founded fear of persecution. This is the opposite of 'normal' law, where the onus of proof is upon The Crown. It seems to me that if any tiny doubt can be asserted by the Reviewer it will be latched onto as a reason to fail the case. I have noticed that the findings often involve assumptions on the part of the Reviewer such as in the case of "Mohammed" where the man did not manage to kill him. I have seen this 'jumping to conclusions' also in another case where the refugee applicant could not remember how many times he was being hit on the head, while his nose was broken and his relative was being arrested. The Reviewer said that as he could not remember this, his whole story was a lie. If an applicant takes the matter to the Federal Court only matters of legal process can be reviewed. If no mistake in legal process is found by the Federal Court nothing can be done to challenge the findings of the Reviewer. Further, if new evidence comes to light regarding a well founded fear of persecution it seems that there is no way to raise this in the legal system the way it is set up. Again, further, the applicant mostly has limited English and even when a translator is used certain nuances can be lost in translation. I am well aware of this as an English teacher of 40 years and as a person who can speak another language. I also understand that court translators do not have training in Australian law and can have limited scope and depth in their understanding of what they are explaining. I have also been told that some translators say certain things in order to keep their job. Further still, there is a cultural dimension to this process. The Tribunal apparently has 'in country' information. Is this information gained from chardonne sipping Australian embassy sources? From what sources is it gained? Do they and can they walk in the shoes of the persecuted person? How close is the information that is used to the lives of the '*slum dogs*' who are living their lives down in the *bustees*? How up to date is it? As someone who has studied Anthropology and has lived in several Third World countries for many years I am aware of different values that can be

held which impinge on matters relevant to refugee cases, such as relate to gratuitous truth telling versus expeditious 'fibbing', matters of flexible identity, name changing, 'lucky' birth date changes, and porous borders. Because of the exigencies of the situation people of good character engage in behaviours that Australians would find reprehensible. Perhaps, if under the same pressures, we would also engage in those behaviours to survive.

I ask all fair minded Australians if they consider the Refugee Review System a fair system? To me it seems *wrong* that "Mohammed" can be deported to real danger because, although we have signed up to protect him, the system does all it can to avoid this.

"Mohammed" was not allowed to attend his court hearing. Reasons of getting guards at short notice were said to be what prevented this. During the court hearing the government lawyer implied that "Mohammed" is a dangerous case and needs five armed guards to *'remove'* him. (No trouble getting *those* guards) This statement went unchallenged. I consider the remark a slur of the typical kind made by bullies in a situation where the *'accused'* /victim is unable to respond. I wonder whether the government lawyer has in fact ever met "Mohammed". "Mohammed" is a shortish man of slight build, stooped posture beyond his age and has weak eyesight with two pairs of glasses that he has to keep changing. He looks incredibly scared and vulnerable. His love and affection for his family is evident as well as his distress for them. In the fraught situation of his top security prison, he is very polite. Even though he is broken and sobbing, he doesn't forget the cups of tea for us. I can see from the demeanour of the guards that they hold him in respect and see that he is a kind man. He is also a skilled carpenter, a skill needed by Australia. We don't have to recruit him from the South Pacific or Britain. He's right here now.

I come home devastated. The next day, as I leave my house, there are road works on the way. I am greeted by a cheery gang of Irish road workers. I don't have any problem with them but it does seem that the White Australia Policy is still alive and well in 2011.

Two days later. Mohammed's email has bounced back. His friend has rung the home phone in Pakistan. He hasn't reached there yet, we are told. His friend thinks he has possibly been taken to prison *'for punishment'*.

Is this is the kind of action that makes our prime minister, indeed politicians of both parties, proud? Because this is what *'being tough on "boat people"'* boils down to and personally it makes me sick.