

# Noori's ordeal could have been less

THE LAWYER representing Australia's longest serving immigration detainee says his client's ordeal may have been shorter if Australia had appropriate forums to deal with the war crimes allegations the case turned on.

Vincent said the allegations that Noori was responsible for war crimes and crimes against humanity in Afghanistan in the late 1980's would have been dealt with better and more speedily through a proper war crimes tribunal and under a stronger test for assessing allegations of war crimes.

"Administrative procedures are not well suited to assessing evidence of war crimes and crimes against humanity," he said.

"Neither the government departments, the lawyers nor the decision makers have the training or background to deal with such complex matters properly."

Vincent said the case possibly "wouldn't have gone as far as it did" if the evidence had been heard by a court more experienced in war crimes and under a stronger standard for assessing the allegations.

**See Mark Vincent's full report on p26**



# Sweet release

Australia's longest serving asylum seeker, **Niqib Ahmed Noori**, was granted a protection visa last week. His lawyer, **Mark Vincent**, tells of the three-and-a-half-year battle to gain his freedom

In August of 2002, a barrister friend of mine, Jonathan Hyde, told me that a representative of the Jesuit Refugee Association had asked whether he would appear on behalf of an Afghan refugee, Mr Noori, for a half-day judicial review matter in the High Court.

That was three and a half years ago and in the interim we have incurred many hundreds of thousands of dollars in legal fees taking this matter from the High Court to the Federal Court, to the full Federal Court, the Federal Court again and the Administrative Appeals Tribunal (AAT) where our client received a decision in his favour on 15 October 2005 after a 15-day hearing. At 8.15pm on Tuesday 31 January 2006, after three long months of petitioning politicians, seeking media coverage and contemplating yet more litigation to release Mr Noori from detention, I watched Mr Noori walk through Villawood gates grasping his letter from the Minister granting him a protection visa. This is a very satisfying end to a marathon matter.

The matter began with a judicial review in the High Court which was based on the unfairness of a secret hearing that resulted in the rejection of Mr Noori's application for a protection visa. Counsel needed an instructing solicitor. We discussed the matter and agreed that in addition to the half day in the High Court we would probably need to do a day's preparation. We read the AAT decision to be reviewed and were shocked by the unfairness of the secret hearings that decision related. If ever there was a compelling pro bono matter where our legal skills could provide some really useful function we agreed this was it.

Mr Noori was a diplomat, holds a Master of International Law from the University of Moscow and speaks six languages. He had become a refugee from Afghanistan when the Taliban took control of Kabul in September 1997. He joined the Afghan Government in exile and served as Second Secretary in the Afghan Embassy in Syria. When the Afghan Government in exile informed him that his position in the Embassy

could not continue as they were running very short of money, Mr Noori thought Australia would be an ideal place to take his wife and three children to seek permanent asylum. Valid visas, money, a suit and a diplomatic passport didn't help.

On arrival at Sydney's Kingsford Smith Airport in September 1999, Mr Noori and his family were sent to the detention camp in the Sydney suburb of Villawood. In 2000 Mr Noori's wife and three children obtained protection visas and are now Australian citizens.

On my first visit to this detention centre in Sydney's suburbs I was shocked. To see families with their children in razor wire enclosures resembling prison camps made me ashamed to be an Australian. Villawood is a terrible place to live.

Evidence had been adduced by the Minister for Immigration in secret owing to fears of witnesses who claimed that a man whom they thought met the description of our client was responsible for war crimes and crimes against humanity in Afghanistan in the late 1980s. Our client knew little more than this about the case against him. The AAT had required the Minister for Immigration to provide particulars of the case against Mr Noori in the earlier hearing in the Tribunal including identifying the specific crimes our client participated in, the dates on which they are alleged to have taken place and where they were alleged to have taken place. This information was not provided. It was said that to do so would reveal the identity of the witnesses.

During the course of the first AAT hearing the transcript revealed that the decision maker felt very uncomfortable about the lack of knowledge Mr Noori had about the case against him. Mr Noori and his then lawyer were asked to leave the courtroom and after a further secret hearing all the parties were called back into Court. The decision maker told the parties that he was comfortable proceeding without our client being given further particulars of the case against him. Mr Noori had to answer a case about which he knew very little.

The judgment or reasons of the AAT revealed more facts about the matters alleged against Mr Noori than he was provided with at the hearing.

At first instance, in the Federal Court, Justice Emmett decided that our client had been provided with adequate particulars of the case he had to meet. Part of his reasoning was that Mr Noori should have deduced from the questions asked of him in cross examination what the case was that he was to meet.

Despite the cost of the matter and considerations about whether a small firm could afford to take this matter through to a Full Court appeal, the barristers (then including Dr Christopher Birch SC) and myself decided to appeal this decision. At the heart of this matter were the notions of procedural fairness and natural justice. We received a unanimous decision in the Full Court in Mr Noori's favour and directions were made to send the matter back to the AAT for a rehearing.

In January 2005 the matter was referred back to the Tribunal for rehearing. Again we sought full particulars of the case. Disclosure of the full case that our client would have to meet was contained in secret affidavits and transcripts. The Minister and her legal advisors ultimately decided to provide redacted copies of all evidence against our client. At that point we were for the first time aware of the limited extent of the case against our client and were able to prepare a proper case in answer.

The case in answer involved myself and a lawyer who worked with me, Sylvia Raptis, in many telephone conferences to various countries around the world including the United Kingdom, Belgium, Germany, Tajikistan, Afghanistan, Saudi Arabia, the United States of America and New Zealand, speaking with various refugees of the traumatic wars which have marked Afghanistan's history in the last thirty years.

One witness (Afghanistan's former Foreign Minister) needed to be proofed in New Zealand and a world leading expert on Afghanistan from the London School of Economics needed to be proofed in London. Many of Mr Noori's former workmates were professional diplomats some of whom are still serving in embassies around the world such as a former workmate who is now the Ambassador of Afghanistan in Tajikistan. Other people from Mr Noori's life in Afghanistan during the period we were trying to investigate had found asylum and jobs in other countries and had re-established their

lives. They were incredulous when we explained that Mr Noori had spent so long in detention and that anyone could believe that their intelligent and gentle friend or colleague could be accused of horrific crimes.

The late 1980s in Afghanistan marked the end of the Russian-backed regime and in the early 1990s the Mujaheddin took power. The most puzzling aspect of the Minister's case against Mr Noori was that he was alleged to have committed war crimes by inflicting torture and ill treatment on the opponents of the Communist regime, namely the Mujaheddin, and yet when the Mujaheddin government came to power our client maintained his job at the Ministry of Foreign Affairs in Afghanistan.

We were able to build up a very detailed picture of Mr Noori's life in Afghanistan, all of which was inconsistent with him being involved in any of the crimes alleged against him. After a fifteen day hearing in the Administrative Appeals Tribunal in September of 2005, the Tribunal found that there were no reasonable grounds for suspicion that Mr Noori could have been involved in war crimes. The AAT found that it was a case of mistaken identity.

## 'I think the Minister and her representatives became partisan rather than simply facilitating the decision maker's access to evidence'

Mr Noori, however, remained incarcerated, and apart from his three children and his wife, for a further four months until his release last week. The Minister is now satisfied that Mr Noori has met all of the criteria for a protection visa.

After the last three and a half years I can make some observations (other than my personal views about a policy of immigration detention). I think the Minister and her representatives became partisan rather than simply facilitating the decision maker's access to evidence. I don't think that a protagonist is the proper role for a government in such matters. Administrative procedures are not well suited to assessing evidence of war crimes. Neither the Government departments, the lawyers nor the decision makers have the training or background to

deal with such complex matters properly. Australia also needs to adopt a standard for assessing allegations of war crimes equivalent to that of a committal hearing for a war crimes trial such that a matter would head from committal to hearing if the evidence is compelling.

Mr Noori knew his children for the last six years only through Sunday visits, where they passed through metal detectors and multiple security doors with security wrist bands to see their father behind security fences. Now aged 47, it is doubtful that the damage to Mr Noori's career and health will ever be properly remedied. Our legal system ultimately allowed us to protect Mr Noori's rights and return him to his family.

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