

(Automatic translation)

Ruling of the Dutch Council of State 202301071/1/V2 - ECLI:NL:RVS:2024:4647 - 20 November 2024

Asylum application for an Afghan foreign national - Article 15 of Directive 2011/95/EU (Qualification Directive) - Article 4 of the Charter of Fundamental Rights of the European Union (EU Charter) - Risk of inhuman treatment

(foreign national against the Minister for Asylum and Migration)

Afghans do not run a real risk of inhumane treatment if they return to Afghanistan simply because they have stayed in the West. The Administrative Jurisdiction Division of the Council of State (Division) concludes that mere residence in the West is insufficient to run a real risk of serious harm. The information from public sources shows a diffuse picture of the Taliban's attitude towards returnees from the West, but it does not follow that the high threshold for a group risk is met.

Case following the rejection of an application for a temporary asylum residence permit. The foreign national has Afghan nationality. He claims to have left Afghanistan in 2011. He has been living in the Netherlands since 2015. He has previously submitted asylum applications, which have been rejected. He based his current, sixth, asylum application on the fact that the Taliban have now taken over power and that he fears the consequences upon return because he worked for a construction company that had ties to American companies.

This judgment concerns the question of whether Afghan foreign nationals who return to Afghanistan from a Western country after the Taliban takeover run a real risk of serious harm within the meaning of Article 29(1)(b) of the Dutch Aliens Act 2000, Article 15 of the Qualification Directive and Article 4 of the EU Charter because of their residence in a Western country.

The Division considers that the foreign national does not run a real risk of serious harm if he returns to Afghanistan because of the Westernisation and apostasy that has been attributed to him. The foreign national stated in the notice of appeal that he is still a professing Muslim, but interprets Islam more liberally, and that he stated at the hearing before the Division that he is not Westernized. However, the Division is of the opinion that the foreign national is right to argue that the court has ignored the fact that he could be a target of the Taliban because of his work for the construction company. After all, the minister found that work credible, as well as the circumstance that the construction company had ties with the Americans. The situation in Afghanistan has changed since the Taliban have taken over power throughout the country. In addition, the foreign national has argued that because of his long stay in the West, it will be noticeable if he returns to his village and that this may draw attention to him.

The foreign national wins the appeal. The Minister must take a new decision on the asylum application with due regard for this decision.

The Division also ruled on 20 November 2024 in two other similar cases (judgment 202401462/1, ECLI:NL:RVS:2024:4648 and judgment 202401559/1, ECLI:NL:RVS:2024:4649).