

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

1. According to Afghan law, would an individual lose his Afghan citizenship by taking up UK citizenship?

RESPONSE

1. According to Afghan law, would an individual lose his Afghan citizenship by taking up UK citizenship?

Sources consulted disagree over the question of which legislation is currently governing citizenship in Afghanistan and whether dual citizenship is allowed in Afghanistan.

According to Article 4 of the *Constitution of the Islamic Republic of Afghanistan*, “No individual shall be deprived of citizenship. The citizenship and asylum related matters shall be regulated by law” (*Constitution of the Islamic Republic of Afghanistan* (Ratified 26 January 2004), unofficial translation on the Embassy of Afghanistan, Washington DC website <http://www.embassyofafghanistan.org/constitution.html> – Accessed 1 December 2008 – Attachment 1).

According to Mohammad Aziz Rahjo, an Associate Protection Officer at UNHCR Kabul and reported by the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) in November 2007, “the 2000 Citizenship Law of the Taliban is valid.” Rahjo notes that a “new citizenship law is currently being drafted, which will contain the possibility of dual citizenship” (Austrian Centre for Country of Origin and Asylum Research and Documentation 2007, *Country Report Afghanistan – 11th Country of Origin Information Seminar Vienna, 21-22 June 2007*, November, p.54 – Attachment 2). According to Article Seven of the *Law on Citizenship of the Islamic Emirate of Afghanistan*, “Anyone

who, according to the orders of this law, is citizens of the IEA [Islamic Emirate of Afghanistan] can not hold a double citizenship position” (*Law on Citizenship of the Islamic Emirate of Afghanistan* (24 June 2000), UNHCR Refworld website <http://www.unhcr.org/refworld/pdfid/404c988d4.pdf> – Accessed 1 December 2008 – Attachment 3).

According to the US Office of Personnel Management’s *Citizenship Laws of the World* report published in March 2001, “Citizenship laws are based upon the Official Gazette of the Ministry of Justice for the Republic of Afghanistan dated March 19, 1992.” The report notes that dual citizenship is not recognised, however, a “former citizen of Afghanistan, who fled the country due to political instability or war and has acquired new citizenship, may still hold “unofficial” Afghan citizenship. The report continues:

LOSS OF CITIZENSHIP:

- **VOLUNTARY:** Voluntary renunciation of Afghan citizenship is permitted by law. Contact the Embassy for details and required paperwork. The following persons are not allowed to renounce citizenship:
 - o Person who has continuing financial obligations to the government or other institutions.
 - o Person who has been convicted of a crime and sentenced to jail.
 - o Persons involved in national security, whose loss to the country might endanger Afghan security.
- **INVOLUNTARY:** The following is grounds for involuntary loss of Afghan citizenship: Person voluntarily acquires foreign citizenship and does not fall under the exempted status described under “Dual Citizenship.” Persons concerned with dual citizenship should not assume their Afghan citizenship was lost by default. Embassy should be contacted and citizenship formally renounced (US Office of Personnel Management 2001, ‘Afghanistan’, *Citizenship Laws of the World*, March, p.13 – Attachment 4).

According to the Afghan Joint Electoral Management Body Secretariat and UNHCR, and reported by the Immigration and Refugee Board of Canada on 8 January 2008, Afghanistan is using citizenship legislation which was passed in 1315 of the Afghan calendar (1936) (Immigration and Refugee Board of Canada 2008, AFG102673.E – *Afghanistan: Information on citizenship since the fall of the Taliban government (1996-2001)*, 8 January http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451627 – Accessed 1 December 2008 – Attachment 5). According to Article 1 of the *Law of Citizenship in Afghanistan*, “All residents of Afghanistan are Afghans and are citizens of Afghanistan except those who hold other valid citizenship documents, provided the Afghan Government has no claim against such documents.” According to Article 16, “No Afghan national can renounce his citizenship until he has reached the adult age and the Council of Minister has approved his renunciation.” According to Article 17, “An Afghan national who has accepted the citizenship of another state without observing the provisions of Article 16, above, shall not be considered a non-Afghan, but she shall be barred from all service in the Afghan Government” (*Law of Citizenship in Afghanistan* (16 Agrab 1315), UNHCR website <http://www.unhcr.org/refworld/pdfid/42d63de34.pdf> – Accessed 1 December 2008 – Attachment 6).

A discussion on the legitimacy of cabinet ministers and government officials who hold dual nationality appeared on *Tolo Television* on 17 December 2007. Mohammad Azam Rahaward Zaryab, writer, researcher and participant in the discussion “did not believe Afghans should

hold a second nationality, particularly since Afghanistan [had] not signed any agreement to allow that” (‘Afghan TV hosts discussion on issue of officials’ dual nationality’ 2007, *BBC Monitoring South Asia*, source: *Tolo Television*, 20 December – Attachment 7).

The Immigration and Refugee Board of Canada contacted an official at the Embassy of the Republic of Afghanistan in Ottawa on 27 November 2007 in regard to which legislation currently governs citizenship in Afghanistan. The official “stated he was not aware of which legislation was currently governing citizenship in Afghanistan...However, he indicated that laws governing dual citizenship had recently changed to allow for dual citizenship” (Immigration and Refugee Board of Canada 2008, *AFG102673.E – Afghanistan: Information on citizenship since the fall of the Taliban government (1996-2001)*, 8 January http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451627 – Accessed 1 December 2008 – Attachment 5).

According to advice provided to the Immigration and Refugee Board of Canada by the Embassy of Afghanistan in Ottawa on 7 February 2005, “Afghanistan does not recognize dual citizenship.” The advice continues:

However, the decision, made back three years ago, remains void of any bilateral or multilateral enforcement bearing as it has been adopted solely by the Government of Afghanistan. The decision principally aims to facilitate and ultimately pave the way for the return of expatriates including refugees abroad to Afghanistan and to get them engaged in the ongoing political and reconstruction processes. The Government has yet to establish regulatory and even statutory frameworks to define legal parameters of the issue both domestically and within the context of bilateral relations involving other States, and for that matter Pakistan. At present, laws and rights of Afghan nationals for dual Afghanistan-Pakistan citizenship remains pending (Immigration and Refugee Board of Canada 2005, *ZZZ43326.E – Pakistan/Afghanistan: Whether an individual can be a citizen of both Pakistan and Afghanistan, particularly in the case of a person who was born in Pakistan to parents who are Afghan citizens* (2005), 28 February <http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=448493> – Accessed 1 December 2008 – Attachment 8).

According to advice provided the Immigration and Refugee Board of Canada by the Embassy of Afghanistan in Ottawa on 17 September 2004, “a citizen of Afghanistan shall continue to remain a subject of the country unless he or she officially applies for relinquishment of the citizenship.” The advice continues:

According to Acts governing citizenship in Afghanistan, a citizen of Afghanistan shall continue to remain a subject of the country until and unless he or she officially applies for relinquishment of the citizenship. Yet, in the event one should choose to do so, an application made through due process to that end will still be subject to a final approval by the head of the State of Afghanistan (Immigration and Refugee Board of Canada 2004, *AFG42910.E – Afghanistan: Whether a citizen of Afghanistan who had left the country in 1994 continues to retain his or her citizenship; if so, whether the spouse and children of such an individual, who are citizens of Ukraine, are able to access Afghan citizenship; if so, the procedure for acquisition of Afghan citizenship by spouses and children of Afghan citizens; whether the procedures is the same for males and females*, 24 September http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=411731 – Accessed 1 December 2004 – Attachment 9).

List of Sources Consulted

Internet Sources:

Government Information & Reports

Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

United Nations (UN)

UN Refugee Agency – Refworld <http://www.unhcr.org/cgi-bin/texis/vtx/rsd>

Non-Government Organisations

Amnesty International <http://www.amnesty.org/>

European Country of Origin Information Network <http://www.ecoi.net/>

Human Rights Watch <http://www.hrw.org/>

Search Engines

Google <http://www.google.com.au/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. *Constitution of the Islamic Republic of Afghanistan* (Ratified 26 January 2004), unofficial translation on the Embassy of Afghanistan, Washington DC website <http://www.embassyofafghanistan.org/constitution.html> – Accessed 1 December 2008.
2. Austrian Centre for Country of Origin and Asylum Research and Documentation 2007, *Country Report Afghanistan – 11th Country of Origin Information Seminar Vienna, 21-22 June 2007*, November.
3. *Law on Citizenship of the Islamic Emirate of Afghanistan* (24 June 2000), UNHCR Refworld website <http://www.unhcr.org/refworld/pdfid/404c988d4.pdf> – Accessed 1 December 2008.
4. US Office of Personnel Management 2001, *Citizenship Laws of the World*, March.
5. Immigration and Refugee Board of Canada 2008, *AFG102673.E – Afghanistan: Information on citizenship since the fall of the Taliban government (1996-2001)*, 8 January http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451627 – Accessed 1 December 2008.
6. *Law of Citizenship in Afghanistan* (16 Aqrab 1315), UNHCR website <http://www.unhcr.org/refworld/pdfid/42d63de34.pdf> – Accessed 1 December 2008.

7. 'Afghan TV hosts discussion on issue of officials' dual nationality' 2007, *BBC Monitoring South Asia*, source: *Tolo Television*, 20 December. (FACTIVA)
8. Immigration and Refugee Board of Canada 2005, ZZZ43326.E – *Pakistan/Afghanistan: Whether an individual can be a citizen of both Pakistan and Afghanistan, particularly in the case of a person who was born in Pakistan to parents who are Afghan citizens* (2005), 28 February <http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=448493> – Accessed 1 December 2008.
9. Immigration and Refugee Board of Canada 2004, AFG42910.E – *Afghanistan: Whether a citizen of Afghanistan who had left the country in 1994 continues to retain his or her citizenship; if so, whether the spouse and children of such an individual, who are citizens of Ukraine, are able to access Afghan citizenship; if so, the procedure for acquisition of Afghan citizenship by spouses and children of Afghan citizens; whether the procedures is the same for males and females*, 24 September http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=411731 – Accessed 1 December 2004.