

Two Years of Empty Promises: The UK Leaves Afghans Stranded and At Risk

August 2023



A man and woman are walking across the Jalalabad-Kabul highway in Dranto. Photo Credit: ©Kayhan



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Last but not least, we extend our appreciation to our colleagues at [Refugee Legal Support](#) and [Safe Passage International](#) for their thoughtful review of the report.



Image: A woman is carrying branches of grass in Yakawlang district.
Photo Credit: ©Kayhan

Foreword

I am proud to present “**Two Years of Empty Promises: The UK Leaves Afghans Stranded and At Risk**” a report prepared by APBI. This report focuses on the challenges faced by Afghans seeking safe routes to the UK, particularly after the momentous shift in Afghanistan in August 2021, when the government collapsed and the Taliban took control of Kabul.

The lack of access to safe routes has caused immense despair, fear, and desperation for many Afghans, leaving them feeling abandoned and trapped in dangerous and uncertain circumstances. For those eligible for resettlement under the Afghan Relocation and Assistance Policy (**ARAP**) and the Afghan Citizens’ Resettlement Scheme (**ACRS**), the lengthy delays, inconsistencies, and narrow eligibility criteria of these schemes have been deeply disheartening.

Many have put their lives on hold, hoping for a safe and better future in the UK, only to find themselves stuck in administrative bureaucracy with no end in sight, leading to feelings of uncertainty and hopelessness.

The separation from loved ones, the pain of displacement, and the constant worry for the safety of family members back home add to the emotional toll. The limitations on family reunion options make the process even more challenging and emotionally draining.

Faced with these challenges, many Afghans feel abandoned and betrayed by the promises of safe resettlement. The lack of action and progress from the UK Government leaves them questioning their fate and the humanity of the international community, resulting in a feeling of being forgotten in these dire circumstances.

This report critically assesses the safe routes for vulnerable Afghans seeking refuge in the UK, based on casework, case studies, and focus group discussions, presenting the experiences and various challenges that project lawyers have come across in their casework. To better understand the obstacles and threats faced by Afghan people applying for resettlement or reuniting with family members in the UK, we conducted several one-to-one interviews with clients, incorporating their views into various parts of the report, which provides valuable first-hand insights into the struggles of accessing safe routes.

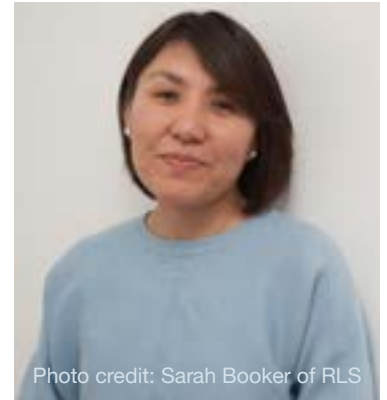
Throughout this report, we showcase the dark and bright sides of Afghanistan using a collection of photos that capture the Afghan people, the Afghan culture, and the beauty of Afghanistan’s landscapes. These photos were taken by a passionate Afghan photographer.

We propose a series of recommendations to alleviate the difficulties faced by Afghans in reaching safety, and these recommendations were formulated based on Afghan community members’ perceptions and experiences, which were collected during several focus group discussions.

Our hope is that this report will shed light on the pressing needs of vulnerable Afghans and serve as a catalyst for urgent action by the Government. We remain committed to collaborating with stakeholders and decision-makers to ensure the safety and well-being of those seeking refuge in the UK.

Shamim Sarabi

Community Engagement and Research Lead of APBI project



Executive Summary

In August 2021, Afghanistan witnessed a momentous shift when its government collapsed and the Taliban took control of Kabul. The aftermath has been devastating for the people of Afghanistan, who are now experiencing a humanitarian crisis. Afghans refugees have the second highest resettlement needs in the world.¹

The UK Government has introduced two resettlement schemes for Afghans to come to the UK: ARAP and ACRS. Both resettlement schemes aimed to resettle thousands of Afghans. However, both schemes have fallen well short of the ambitious targets that the Government set. This has led to thousands of eligible Afghans left waiting in desperate and dangerous circumstances.

The ARAP scheme, launched on 1 April 2021,² has struggled to cope with the applications it has received. More than 100,000 people³ applied under ARAP in its first year, although some of these were duplicate applications. The backlog of cases in November 2022 was around 72,000⁴ and as of September 2023 around 2,000 applicants are still awaiting an eligibility decision.⁵ As at August 2023, 11,474 people⁶ have been relocated under ARAP, including around 5,000⁷ during Operation Pitting (the Government's evacuation mission in August 2021). Lengthy delays, inconsistencies and a lack of transparency have meant that the ARAP scheme has failed to operate as an effective safe route for Afghans to enter the UK.

1 UNHCR: "UNHCR Projected Global Resettlement Needs 2023"

2 Gov.uk: "Afghan Relocations and Assistance Policy: further information on eligibility criteria, offer details and how to apply", 7 September 2023

3 Hansard: "Afghan Relocations and Assistance Policy", Volume 718; debated 18 July 2022

4 House of Commons Library: "UK immigration routes for Afghan nationals", 26 January 2023

5 Hansard: "Afghan Relocations and Assistance Policy", Volume 737; debated 11 September 2023

6 Gov.uk: "Afghan Resettlement Programme: operational data", 30 August 2023

7 House of Commons Library: "Resettlement scheme for locally employed civilians in Afghanistan", 16 December 2021



Image: Labourers in Bamian old bazaar waiting for work.
Photo Credit: ©Kayhan

The ACRS scheme, launched in January 2022,⁸ aimed to resettle 5,000⁹ Afghans in the first year, increasing to up to 20,000¹⁰ over time. As of August 2023, 9,676 Afghans¹¹ had been granted indefinite leave to remain under Pathway 1, 66 Afghans¹² were resettled under Pathway 2, and 41 Afghans¹³ were resettled under Pathway 3. The lack of an application form and narrow eligibility criteria have contributed to these alarmingly low numbers. The number of Afghans resettled under Pathways 2 and 3 are is a real cause for concern and demonstrates that the Government needs to take urgent action to address the issues that have led to the ineffectiveness of both of these pathways as a safe route for Afghans to enter the UK.

There are different rules governing family reunion applications depending on an individual's immigration status. Someone with settled status (i.e. British citizenship or indefinite leave to remain) can apply for reunion with certain family members under Part 8 of the Immigration Rules and its various appendices. For those with refugee status, the main way to apply for family reunion is under Appendix Family Reunion (Protection) of the Immigration Rules. ARAP and ACRS have their own family reunion criteria which overlap in part with the more general family reunion routes. All of these routes are undermined by the narrow, hard-to-meet criteria, various difficulties in providing the necessary evidence and an absence of Visa Application Centres in Afghanistan.

The limited safe routes push many vulnerable Afghans to seek alternative often dangerous ways to find a safe harbour. Since summer 2021, the number of Afghans crossing the Channel on small boats has been on the rise. According to the Government's statistics, there were 8,429 Afghan arrivals in the year ending March 2023, compared to 2,466 in the year ending March 2022, 554 in 2020, 82 in 2019 and 3 in 2018.¹⁴

Since its launch in March 2022, APBI has been committed to assisting with addressing the growing need for Afghans to access crucial legal information, advice, and representation concerning safe routes to the UK.

*“APBI has been extraordinary in the sense that ordinarily no one in this world gives you a helping hand.” – Majeed, an APBI client**

The **“Two Years of Empty Promises: The UK Leaves Afghans Stranded and At Risk”** report by APBI highlights the challenges faced by Afghans seeking safe routes to the UK via resettlement schemes, and the family reunion rules. Its findings are based on extensive casework, research, case studies, and focus group discussions with clients and Afghan community members. This report concludes with a series of recommendations for the Government to urgently consider in order to address the highlighted issues.

8 Gov.uk: "Afghan Citizens Resettlement Scheme", 6 January 2022

9 Gov.uk: "Afghan Citizens Resettlement Scheme", 6 January 2022

10 House of Commons Library: "UK immigration routes for Afghan nationals", 26 January 2023

11 Gov.uk: "Afghan Resettlement Programme: operational data", 30 August 2023

12 Ibid

13 Ibid

14 Gov.uk: "Irregular migration to the UK, year ending March 2023", 25 May 2023

*Not their real name

Urgent Actions

- **Ensuring Timely Process of Applications:** The Government must take immediate action to streamline procedures in order to minimise delays, backlogs, and uncertainties for eligible at-risk applicants.
- **Safe and Secure Biometrics Enrolment:** The Government must explore alternative methods for collecting biometric data, such as enrolling biometrics upon arrival in the UK rather than in Afghanistan, given the difficulty with providing biometrics from Afghanistan.
- **Expand Concessions on Document Flexibility:** The concessions to the Immigration Rules that provide document flexibility published by the Government in January 2022¹⁵ – where Afghans can draft a letter explaining the reasons they cannot provide or obtain a document – should be expanded and applied on a case-by-case basis.

Scheme-specific Actions

- **ARAP – Assess ARAP Applications on a Case-by-Case Basis:** The Government should adopt a compassionate approach to address cases where Afghan family members of ARAP applicants were not included in the original application (e.g. due to an error or lack of assistance in filling out the form). These cases should be reviewed and reconsidered, allowing for a family reunion route.
- **ACRS – Broaden Eligibility Criteria and Reunite the Immediate Family Members of Those Who Arrived Under Pathway 1:** The Government should consider increasing the cap on the number of places available under the ACRS scheme to accommodate the high demand from eligible individuals, and the eligibility criteria for the scheme should be broadened to include other vulnerable groups, such as religious minorities, the Hazaras, and LGBT individuals, as previously committed to by the Government. Additionally, the immediate family members of those who arrived under Pathway 1 of the scheme should be reunited, as also previously committed to by the Government.
- **Family Reunion – Broaden Family Reunion Scope to Account for “Non-nuclear” Families:** The Government should expand the focus of family reunion to include dependants and wider families. The current family reunion rules only permit nuclear families (i.e. traditional families, meaning parents and their children), which does not reflect Afghan culture, where “family” would refer to the extended family that live together in a large emotionally and economically dependent group. The Government should expand the scope of family reunion for Afghans akin to the Ukraine Family Scheme visa¹⁶, which includes immediate and extended family members.

¹⁵ Home Office: “Concessions to the Immigration Rules for Afghan nationals for work and study routes”, 17 January 2022

¹⁶ Gov.uk: “Apply for a Ukraine family scheme visa”, January 2023

Fall of Kabul

October 2001

The US administration conducted a military operation against the Taliban government, targeting their military capital. This operation led to the collapse of the Taliban regime on 9 December 2001.¹

October 2004

Afghanistan elects its first democratically elected President, President Karzai.⁴

October 2014

Responsibility for Afghanistan's security is handed back to Afghan forces, and the British combat mission ends. British troops remain in Afghanistan in a training and advisory role based in Kabul and Helmand.⁶

April 2021

US President Joe Biden announces a full withdrawal of US troops from Afghanistan by September 2021. Taliban attacks begin to intensify and the Taliban start to seize several territories. The UK Government puts in place the Afghan Relocations and Assistance Policy (**ARAP**), allowing eligible Afghans, who formerly worked with the UK Government, to relocate to the UK.

13 August 2021

The UK Government launches Operation Pitting, an evacuation operation to evacuate British nationals from Afghanistan.⁹

6 January 2022

The UK Government opens the Afghan Citizens' Resettlement Scheme (**ACRS**).¹¹

August 2003

NATO takes over security in Kabul, the capital of Afghanistan. At its height, the number of NATO troops reaches 130,000, from 50 countries.² The UK helps establish Provincial Reconstruction Teams in Afghanistan to improve security, strengthen local political institutions under the new Afghan government and help with the development and reconstruction of infrastructure in the country.³

April 2006

Camp Bastion, a purpose-built base for UK troops, opens in Helmand Province and violence increases over the summer. During the peak of the fighting between NATO forces and the Taliban, more than 600 flights leave Camp Bastion every each day, carrying troops and supplies.⁵

2002 – 2021

457 members of the UK armed forces are killed whilst serving in Afghanistan.⁷ An estimated 66,000 Afghan troops and 48,000 Afghan civilians are also killed.

July 2021

UK Prime Minister Boris Johnson announces that most UK troops have been withdrawn from Afghanistan and that the UK Government would use 'every diplomatic and humanitarian lever to support Afghanistan's development and stability'.⁸

15 August 2021

After encircling Kabul, the Taliban claim victory over the capital city.¹⁰



Image: A woman in burqa and a small girl are walking in Charasyab, Kabul, with an old castle behind them.
Photo Credit: ©Kayhan

The withdrawal of international troops and the subsequent fall of Kabul have a devastating impact on the people of Afghanistan. It is estimated that 97% of Afghans are now at risk of poverty, up from 47% in 2020.¹² Afghanistan also ranked last globally in the Women, Peace and Security index published by the Georgetown Institute for Women, Peace and Security in 2022.¹³

The exclusion of women from society has had a wider economic impact. According to UN Women, 94% of the NGOs that they surveyed fully or partially ceased their operations in light of a ban on women working for local and foreign NGOs.¹⁸ Following the major withdrawal of international aid after August 2021¹⁹ Afghanistan desperately needs those who do remain to be able to function. Yet the Taliban have also made it near impossible for the UN to function by directly prohibiting their female staff from working.²⁰ The UN cited this ban as a key reason for why it has struggled to raise the money it needs to support Afghanistan. Major donors, including the UK and US governments, significantly decreased their donations in 2023.²¹ This withdrawal of aid has hurt ordinary Afghans who cannot meet their basic needs or access employment or healthcare.²²

- Women and girls in particular have acutely felt the consequences of the events of August 2021. The Taliban have decimated their rights, making daily life extremely difficult. Amnesty International described the current situation for women living in Afghanistan as akin to 'death in slow motion.'¹⁴ Particularly concerning is the reversal of the progress made on girls' education. From 2002 to 2021, almost 4 million Afghan girls enrolled in primary and secondary school. However, in September 2021, the Taliban banned girls from attending high school, making Afghanistan the only country in the world where girls cannot continue their education past primary school.¹⁵ They have since also banned girls from attending university.¹⁶ The Taliban have further marginalised women by imposing restrictions on travel without a *mahram* (male chaperon) and oppressive dress requirements.¹⁷
- The economic collapse, difficult climate conditions and deteriorating security have led to a desperate humanitarian crisis across Afghanistan. Despite these circumstances, the Government plans to spend 53% less on its foreign aid allocation across Afghanistan and Pakistan for 2023/24 compared with 2022/23.²³

About the Afghan Pro Bono Initiative (APBI)

In March 2022, APBI was launched as a collaborative effort between Refugee Legal Support, Safe Passage International, and 14 leading law firms. The project's aim is to address the pressing need for Afghan nationals and their families to access crucial legal information, advice, and representation concerning safe routes to the UK, particularly after the Taliban takeover.

APBI assists individuals in applying for reunion with their families in the UK and accessing the ARAP scheme, along with providing information on the ACRS. A key aspect of the project is establishing strong connections with Afghan community groups, as their specific needs for legal information are central to the project's success. To meet the project clients' and the community members' needs effectively, the project focuses on sharing legal and practical information in their preferred language, ensuring that reliable information is shared with the targeted community.

The project has been greatly enriched by the dedicated contributions of volunteer lawyers from the 14 leading law firms involved, who have been instrumental in providing essential legal support to the project, its clients, and the community as a whole.

*“APBI has been extraordinary in the sense that ordinarily no one in this world gives you a helping hand.” – Majeed, an APBI client**

*Client names have been changed throughout this report to protect people's identities.



Image: Green tea and candies with a traditional rug in the background set the scene in a Jalalabad street restaurant. Tea is a symbol of hospitality in Afghan culture.
Photo Credit: ©Kayhan

Project Impact

Since the beginning of the project, APBI has provided legal support in the forms of direct legal representation, one-off legal advice and up-to-date legal information to Afghans and their family members in Afghanistan, neighbouring countries and the UK.



1,250+ people received answers to their enquiries

“Thank you for your knowledge, guidance, and kindness. I am grateful for your support and appreciate the time and support you have given me.”

Asifa, an Afghan community member



303 Afghan individuals received one-off advice

“Thank you very much from your team for supporting and helping me and other Afghans to join their family members, thank you very much!”

Nazo, an APBI client



121 Afghans were provided with legal representation

“I am really thankful and satisfied by the service. You have helped me a lot. You have been working day and night and have done a lot for us.”

Monir, an APBI client



Approximately 60% of cases involved children and women

“We are very impressed with your dedication, commitment and professionalism which definitely resonated as excellent assets throughout the journey of the case. Looking back at our initial interaction in the first phase of the last year, it seemed extremely hard to get the split family reunited and, surely, it could not become possible without your unparalleled work.”

Rahim, an APBI client

“I have seen first-hand the devastating impact that the lack of safe routes and the narrow eligibility criteria for the UK Government’s Afghan schemes have on those in need of protection. APBI project has consistently received an average of 100 referrals per month that regularly raise the same issues. Each desperate plea for help exemplifies the inadequacy of the UK Immigration Rules on family reunification and of the UK Government schemes for Afghans. Taken as a whole, these pleas epitomise the failure to deliver on promises made to Afghan nationals in August 2021.”

Mariana D’Arcadia, APBI Project Coordinator



19 individuals were accepted into the UK

“I really cannot find a word to thank my lawyer for reuniting me with my baby. I am so happy, I lost the words.”

Mujgan, an APBI client



9,760+ hours donated by volunteers to the project

“I’ve really enjoyed the time I’ve spent working on various APBI projects because it’s enabled me to connect with a wide range of people, each with their own story and dreams. As the political climate gets ever more hostile, it is comforting to feel like I am part of a strong, collective effort to counteract that.”

Ella Rees, from Allen and Overy



140+ lawyers volunteered to help

“I have worked as an APBI volunteer by attending initial calls with clients and helping produce this report. I am amazed at how much work goes into APBI projects and how dedicated the staff are to each case. Through APBI I have learnt so much about the reality of the day-to-day struggles of Afghans and the challenges they face in their own country as well as in coming to the UK. After the fall of Kabul, I wanted to find a way to help so I joined APBI project. I think it is important to dedicate our time and resources to people who need it most.”

Laetitia Nappert-Rosales, from Allen & Overy



Image: Crowd in Band-e-Amir, Bamiyan.
Photo Credit: ©Kayhan

Navigating Challenges: Emerging Trends in Access to Safe Routes

This section will assess the main immigration routes for Afghans into the UK with analysis of the various challenges that the supervising lawyers have encountered through their casework.

Summary of Routes to the UK

There are three main immigration routes for Afghans into the UK*. These are:

- (A) **Afghan Relocations and Assistance Policy (ARAP)**, which enables Afghan citizens who worked for or with the British Government in Afghanistan in exposed or meaningful roles to relocate to the UK with a partner, dependant children and additional family deemed eligible;
- (B) **Afghan Citizens' Resettlement Scheme (ACRS)**, which allows vulnerable Afghans and those who have assisted the UK efforts in Afghanistan to be referred for resettlement in the UK; and
- (C) **Family Reunion**, which allows relatives of those in the UK who meet strict requirements to be granted a UK visa.

*Although there are other visas available, such as student visas or investor visas, we will not discuss these in this report.





Image: A man and women walking across the Jalalabad-Kabul highway in Dranto.
Photo Credit: ©Kayhan



ARAP and ACRS Background

1. The ARAP Scheme Categories

The ARAP scheme began in April 2021 and is targeted at Afghans, and certain family members, who are or were employed in Afghanistan by the UK Government and are now at serious risk from the Taliban. The ARAP scheme does not have any quotas, nor is it limited to a role or time served. Some contractors are also eligible. There are four different categories of eligibility:

- (a) **Category 1** – People who were directly employed by the Government assessed to be facing a high and imminent threat to life. They are eligible for urgent relocation to the UK.
- (b) **Category 2** – People who were directly employed by the Government or were contracted to provide linguistic services in support of the UK's Armed Forces, on or after 1 October 2001. They are eligible by default for routine relocation to the UK.
- (c) **Category 3** – People who do not meet the Category 1 or Category 2 requirements but might be eligible for other support (short of relocation) as deemed suitable by the ARAP team.
- (d) **Category 4** – Special cases which will be considered on a case-by-case basis. This is for those who were directly employed by a Government department, provided goods and services under contract or worked closely alongside the Government and contributed to the UK's military or national security objectives with respect to Afghanistan and now face a high risk of death or serious injury, or hold information which would give rise to a national security risk.

As at May 2023, 11,398 people had been relocated under ARAP,²⁴ including around 5,000 during Operation Pitting. The Government estimates that there are around 4,600 Afghans (including dependants) that are still eligible for relocation, 1,600 of whom have already received a relocation offer.²⁵

Image: Crowd in Kote-Sangi bazaar, Kabul.
Photo Credit: ©Kayhan

2. The ACRS Pathways

ACRS was announced by the Government in August 2021 in response to the takeover of Afghanistan by the Taliban. It formally opened on 6 January 2022, with the Government pledging to resettle up to 20,000 Afghans.²⁶ It sits alongside the ARAP scheme, but unlike ARAP, ACRS is by referral only and Afghans cannot apply directly to the Home Office. There are three main pathways of referrals:

- (a) **Pathway 1** – People identified under Operation Pitting, i.e. those who were evacuated by the Government from Afghanistan in summer 2021. As at August 2023, 9,676 people had been granted indefinite leave to remain (**ILR**) under this pathway.²⁷
- (b) **Pathway 2** – Refugees in neighbouring countries i.e. those who fled to refugee camps in neighbouring countries and are identified and referred by the UNHCR. This pathway commenced on 13 June 2022 and the Government anticipated that up to 2,000 referrals would be made in the first year. As at August 2023, 66 Afghans have been resettled under this pathway.²⁸
- (c) **Pathway 3** – At risk individuals in Afghanistan and the surrounding region. Currently there are up to 1,500 places for eligible British Council and GardaWorld contractors, Chevening alumni, and eligible immediate family members who were able to submit an expression of interest in August 2022. As at August 2023, only 41 Afghans had been resettled under this pathway.



ARAP and ACRS Trends

1. The ARAP Scheme

1.1 Delays and Understaffing

The delays applicants face when waiting for an ARAP decision are a major flaw in this scheme. Through its casework, APBI has found that even in urgent (and more straightforward) Category 1 and Category 2 cases, clients have been waiting for an initial decision for almost two years. APBI recently made a freedom of information request (an **FOI**) which revealed that as at 17 January 2023 just five positive decisions had been made under Category 1 of the ARAP scheme (high and imminent risk). Law firm Deighton Pierce Glynn reported in March 2023 that some ARAP applications made in mid-2021 were still awaiting a decision.²⁹ More than 100,000 people applied under ARAP in its first year,³⁰ although some of these were duplicate applications, and the backlog of cases in November 2022 was around 72,000 and as of September 2023 around 2,000 applicants are still awaiting an eligibility decision.³¹

APBI recently made another FOI which shows that as of January 2023, there were only 36 full-time caseworkers plus around 100 other staff involved with ARAP. Given the delays our clients have experienced, it is clear that this is an insufficient number of staff. This low number also sits in stark contrast with the reported 540 government staff working on the Homes for Ukraine scheme.³² The issue of delay is made worse as it is very difficult to challenge the delays or flag when an application is particularly urgent and should be expedited (discussed further in section 1.2). APBI's experience is that MPs are not easily able to chase the Government or get answers regarding ARAP scheme applications, with confusion arising about whether to send requests to the Home Office or the Ministry of Defence (the **MOD**). APBI believes that these significant delays substantially undermine the purpose of the ARAP scheme and increase the danger faced by those already at high risk due to their work with the Government. The Taliban are very suspicious of those who worked with the UK and US governments, accusing some of being spies.³³

“The delays on ARAP applications have an unimaginable impact on our clients, all of whom are living in hiding and at risk on a daily basis. The expedition criteria is an extremely high threshold – applicants have to show an imminent and high threat to life, but even when this is evidenced the response to expedition can take months; we have seen this directly on our caseload who are waiting. For those who have worked alongside the UK government they feel completely forgotten and have lost all hope that they will be supported. When they chase up an application they get no response and for those without representation there is no remedy.”

– Helena Cullen, APBI Supervising Lawyer at SPI

1.2 Decision-making and Administrative Hurdles

One of the key issues with the ARAP scheme is the decision-making process: on top of the lengthy delays, it is inconsistent, and lacks transparency. Currently both the MOD and the Foreign, Commonwealth and Development Office (the **FCDO**) make ARAP scheme decisions. The fact that different government departments are responsible for making eligibility decisions leads to inconsistencies in decision-making and in the implementation of the scheme. For example, in August 2022, APBI became aware that whilst the FCDO had implemented a process to review refusals of additional family member (**AFM**) cases under the scheme, no such process had been implemented for cases decided by the MOD.

The Government has not published any policy guidance setting out their procedures for recording, processing, considering and prioritising and/or expediting ARAP applications, nor has it published in the public domain any data regarding the number of applications received, the number of applications decided, the timescales for those decisions, criteria warranting prioritisation/expedition, and other such relevant information. It is only through correspondence with the Government's solicitors that information has been provided concerning the ARAP process and the criteria for expedition. This perpetuates a sense of injustice felt by ARAP applicants and makes it hard for them to understand the system. During focus group discussions that APBI held with members of the Afghan community, all of the participants highlighted how difficult it is to understand the ever-changing rules and guidance, particularly when this information is only available in English.

“For me the scheme is chaos and confusion. The policies are always changing which makes it really hard to understand.”

– Nawa, a focus group participant

This issue is particularly prevalent in Category 4 cases that are decided on a case-by-case basis. APBI received a refusal in one Category 4 case for a client working in counter-narcotics (which is listed as a national security objective in the guidance) on the basis that the person had not contributed to the UK's national security objectives. There was no reasoned decision given. This lack of rationale makes it very hard to understand the decision-making process and advise clients on the merits of their applications. APBI has also had instances where decision-makers have repeatedly emailed a client without copying in their legal representative. It is vital that decision-makers work alongside the legal representatives to create a proper, functioning system that can be explained to, and navigated by, clients.

There has also been more than one instance of a data breach involving ARAP applicants, again highlighting the administrative difficulties the Government is experiencing.³⁴ APBI is aware of cases where the details of other ARAP applicants have been shared with clients, and clients have been asked to confirm which application is the correct application. This had led in some cases to clients creating new email addresses and submitting duplicate applications due to concerns that their email account is not secure. It is extremely frustrating for applicants that there is no engagement when they try to follow up on delays with their cases and this is compounded further by these administrative difficulties as applicants are left in the dark about regarding the status of their application.

On 17 March 2023, in response to a written parliamentary question, Armed Forces Minister, James Heapey MP, stated that the Government is processing and deciding more ARAP scheme applications than they are receiving. He also explained that they are “aiming to process all outstanding applications by August 2023”.³⁵ Whilst it’s vital that people get decisions swiftly, these decisions must also be fair, and of good quality. The Government must ensure the quality of its decision-making whilst speedily processing the remaining applications.

1.3 Ambiguities in ARAP Family Reunion

A further issue is family reunion and the lack of clarity regarding ARAP’s AFM policy and application process. Successful ARAP applicants can apply to bring with them their partner³⁶ and any of their children who are under 18.³⁷ Any AFMs must have a high risk of death or serious injury due to the risk of targeted attacks as a result of the applicant’s employment with the Government or have specific vulnerabilities which have led to an exceptional level of family dependence meaning their needs could not be met outside of the UK, even with practical and financial support from the applicant.³⁸

In Autumn 2022, the Government introduced Appendix ARAP,³⁹ bringing ARAP AFM applications within the rules. Previously, the details of the AFM policy were contained in a short document which did not always reflect the reality of the decision-making process and has been withdrawn (rather than updated) since the introduction of AFM within the rules. The working policy on the review procedure is especially unclear – for example, we have received correspondence indicating that there is no right to review, where the MOD has made a decision, then there is a right to review.

When ARAP AFM applications were being made outside of the rules (**LOTR**), a LOTR form that was given to some applicants, although this was never publicly published. Appendix ARAP states that to be eligible, family members must have been mentioned in the initial ARAP application form,⁴⁰ however the only relevant question in the form asks how many family members are with the applicant, and does not leave space to include any details. At the early stages of ARAP there was no additional family member policy so applicants did not know that they could include them. It seems that even with the new rules, the old LOTR form is continuing to be used. Clarity regarding the criteria of the AFM policy and how the process works would greatly improve this area.

Without an effective family reunion route, the Government is failing to protect vulnerable Afghans whose families have been torn apart. This is particularly acute for the direct family of ARAP members who were not evacuated under Operation Pitting, possibly because they were not included in the original form, which happened in cases we are working on where ARAP principals had someone else helping with the form or an error was made. For these cases, the Government’s position is that they should apply under Appendix FM⁴¹ if they were not included in the original application, which seems particularly cruel to those individuals who would have been resettled in the UK had they not been caught up in the chaos of the evacuation.

2. The ACRS

2.1 Lack of Application Form and Narrow Eligibility

A key issue for those wanting to be considered under ACRS is the lack of an application form or registration process. The scheme is referral only, making access to ACRS extremely challenging. Places on the scheme are capped at such a low number that there are many more people who fall under the eligibility criteria than there are places for them. This lack of access makes it hard for APBI to give advice to those who fall under the eligibility criteria but have no means of being referred. The two referral pathways into the scheme are the UNHCR (Pathway 2) and the FCDO (Pathway 3). There is no way to access Pathway 2 directly or to advocate for inclusion under Pathway 2. The UNHCR make it very clear that registration is not a pathway to resettlement due to the high numbers of people that they register.⁴² The UNHCR have their own criteria for resettlement, which is based on protection and vulnerability and often include those who have been displaced for a significant time.

The difficulties in referral to the scheme are compounded by the Government's mishandling of the administration of the scheme. For example, many of our clients who used the ACRS helpline in 2021 were led to believe that they had an application in progress but it now transpires that they do not. This is time wasted and gives false hope for vulnerable people, which flies in the face of the Government's commitment to help the people of Afghanistan.

There has been very limited access to Pathway 3 specifically. In summer 2022, people who believed they were eligible under Pathway 3 had an eight-week period in which to express their interest using an online form but this was limited to certain groups (listed below). 11,400 people expressed an interest,⁴³ demonstrating the scale of need. However, by January 2023 only 200 people had been contacted to confirm their eligibility⁴⁴ and the latest figures show that just 14 people have been resettled.⁴⁵ APBI was concerned by the inability to submit supporting documents on the initial expression of interest form, as this means it is not clear on what basis these decisions are being made.

Pathway 3 has faced particular criticism from MPs for being 'opaque and difficult to navigate'⁴⁶ and for lacking urgency.⁴⁷ Pathway 3 was intended to fill the gaps created by ARAP, which only applies to people

who have been employed in certain roles with the Government. For the first year, Pathway 3 applies to eligible British Council and GardaWorld contractors, Chevening alumni, and immediate family members. MPs, such as Jim Shannon, have called on the Government for clarity regarding if and when the eligibility criteria will be widened to include other vulnerable groups such as religious minorities, the Hazaras and LGBT people⁴⁸, which the Government has previously committed to supporting.⁴⁹ There have yet to be any firm plans announced regarding this expansion. As it currently stands, the narrow eligibility of ACRS means many vulnerable Afghans have no way to apply for resettlement in the UK. We would urgently ask the Government to clarify their plans for the future of Pathway 3 and make a firm commitment to broadening its scope.

It is disappointing that the Government's pledge of 20,000 spaces under ACRS includes the approximately 6,500 Afghans who were evacuated during Operation Pitting (i.e. Pathway 1). Many of those evacuated were the family members of British citizens, rightly evacuated for their safety and granted subsequent ILR but then illogically included in the resettlement quota. We are aware through our casework of one example of British children being granted ACRS ILR and a space on the scheme, even though they are already British! We agree with the criticism that has been levelled at this approach,⁵⁰ as it is artificial manipulation of statistics in order to reduce the Government's level of help. Given the eligibility requirements for those applying under Pathway 3, it would vastly improve the reach of ACRS if these people were registered as resettled under a more expansive version of ARAP which already covers certain people who have worked for, or alongside, the Government. This would then ring-fence the ACRS quota for other vulnerable groups at risk who, as discussed above, currently have no safe routes to the UK, e.g. pro-democracy supporters, ethnic minorities, women and members of the LGBT community.

*"Too restrictive in criteria, too limited in ambition and too slow in implementation."*⁵¹

– Stuart McDonald MP describing ACRS

2.2 Categorisation of Arrivals

Another issue with ACRS is the way the scheme categorises its beneficiaries in the UK. Those resettled under Pathway 1 and Pathway 3 are granted ILR, whereas those under Pathway 2 are granted refugee status (due to the UNHCR having made a refugee determination). This means that those arriving under Pathway 1 and Pathway 3 do not have certain benefits afforded by virtue of having refugee status. This has a significant impact, in particular, on family reunion since Afghans resettled to the UK under these pathways (including the Afghans evacuated to the UK under Operation Pitting) are not eligible for refugee family reunion. Applying with ACRS or ARAP ILR rather than with refugee status means facing high application fees, an English language requirement, and financial/accommodation requirements (as discussed further in the Family Reunion Trends section).

Therefore, despite being granted ILR, some of those arriving under ACRS or ARAP are significantly disadvantaged in terms of family reunion compared to recognised refugees. An added layer of complexity that comes with not having refugee status is that a Convention Travel Document is not provided. Instead, clients have to apply either for a national passport or for a certificate of travel, which makes travel more complicated as they are more restrictive in terms of countries that will grant visas, particularly to European countries where clients may have other family members. Applicants must pay a high fee to obtain such a certificate, and they are granted for a temporary period on an exceptional basis if an applicant can show that the Afghan authorities unreasonably refused to grant a passport.⁵² Given the context of the situation in Afghanistan, we believe everyone arriving under ACRS, regardless of which pathway, should be granted ILR and categorised as a refugee.



Image: A little boy is walking alone on a road in the Jalrez district of Maidan Wardak.
Photo Credit: ©Kayhan

2.3 Complexities with ACRS Family Reunion

There does not appear to be any way to apply via ACRS for family members to join Afghans who have arrived via this route. This is especially difficult given that arrivals under Pathways 1 and 3 are not categorised as refugees. Officially the position is that all direct family members are eligible but there is still no guidance for those who were not evacuated. The Home Office approach is to say that a client's only option is to make an application under Appendix FM which, as mentioned above, carries stringent requirements. At the end of last year, the Government published AFM guidance for those being resettled under Pathway 3 of ACRS.⁵³ The guidance stated that the ACRS principal should give details of their immediate family (i.e. spouse/partner and dependant children under 18) on the initial expression of interest form, with the ability to give details of any additional family members at a later date.

Additional family members will only be granted resettlement in exceptional and compelling circumstances. The guidance in relation to those eligible under Pathway 3 makes clear that these family reunion rules are outside of the Immigration Rules, and any cross-referring is 'for ease of reference only'. The position is even less clear for those here under Pathway 1, as they are directed to a webpage which simply says information will be made available. As with ARAP, the ACRS scheme lacks clarity on how to meet the family reunion eligibility criteria.

A further cause for concern is the fact that clients have reported being offered immigration advice by Home Office hotel caseworkers regarding family reunion routes. This is a worrying development because, as far as we are aware, the Home Office hotel caseworkers are not regulated to provide immigration advice. One of APBI's clients was told that applying for family reunion under Appendix FM was 'closed', presumably in reference to the complications of the route and travel to the visa application centre, but this was nonetheless not correct information. One of the issues raised by members of the Afghan community is the overwhelming amount of general information without any detail. ACRS clients need proper sign-posting and guidance in relation to the family reunion process.

A group of charities, including SPI, wrote an open letter last year to the then Home Secretary Priti Patel asking for an effective family reunion process for those arriving under ACRS.⁵⁴ To date, the Government has not acted on these recommendations, and has declined to meet with the group of charities. In contrast, when Russia invaded Ukraine, a specific scheme was set up for Ukrainians who have family members in the UK, the Ukraine Family Scheme was set up for Ukrainians who have family members in the UK, which shows that the Government has the capability to create such schemes where there is the political will to do so.



Image: Chihil Dukhtaran (the forty girls) hill in Kabul city, the graveyard of students of Sayed ul-Shuhada School. Photo Credit: ©Kayhan



Image: A woman in a traditional Hazaragi dress is embroidering cross-stitch.
Photo Credit: ©Kayhan

3. Family Reunion Background

The family reunion scheme allows certain family members to join their relatives in the UK. There are different rules governing family reunion applications depending on whether someone has refugee status or not. Someone with settled status, i.e. British citizenship or ILR, can apply for reunion with certain family members under Part 8 of the Immigration Rules and its various appendices. For those with refugee status, the main way to apply for family reunion is under Appendix Family Reunion (Protection)⁵⁵ of the Immigration Rules. Some applications can also be made 'outside the rules' where Article 8 of the ECHR (**Article 8**), the right to respect for private and family life, is engaged or there are particularly compelling circumstances.

3.1 Under the refugee family reunion route (**Appendix Family Reunion**), a refugee in the UK can apply for the following people to join them:

- a) (a spouse, civil partner or partner); or In the case of a marriage or civil partnership, these must have been entered into pre-flight (i.e. before the sponsor left their country of origin to seek asylum). In the case of unmarried partners/partners with no civil partnership, the parties must have been living together in a relationship akin to marriage or civil partnership for two or more years before they fled their country.⁵⁶
- b) children under 18⁵⁷ (although there are provisions to allow over 18s to join in exceptional circumstances). Any children must have been part of the family unit pre-flight, and must not be married themselves or leading an independent life.

3.2 Non-parent refugee relatives can sponsor children under **Appendix CNP** where there are 'serious and compelling family or other considerations'.⁵⁸ Unless there are exceptional circumstances,⁵⁹ applications must meet the following requirements:⁶⁰

- a) **financial and accommodation:** the sponsor must be able to adequately accommodate and maintain the applicant without recourse to public funds (i.e. any government benefits or assistance). the sponsor must own or exclusively occupy the accommodation.
- b) **care:** suitable arrangements must have been made for the applicant's care and accommodation.

There are , however, exceptions for those who cannot meet the maintenance and accommodation requirements where they are the only relative that can support the child and the child is dependent on them.⁶¹

The equivalent provision exists for children joining non-parent relatives who have settled status in the UK,⁶² but without the exceptions to the maintenance and accommodation requirements.

3.3 Under **Appendix FM**, someone with settled status can apply for the following people to join them:

- a) a spouse, civil partner or partner; and
- b) children under 18.

Applications made under Appendix FM have the following requirements:⁶³

- a) **financial:** the sponsor must be earning at least £18,600 per year pre-tax. They must also earn an extra £3,800 for their first child, and an extra £2,400 for each additional child.
- b) **accommodation:** the family must be able to live with the sponsor without the house being 'overcrowded.'; the definition of interpretation of which is specified in legislation.⁶⁴
- c) **english language:** adult applicants must be able to pass a basic A1 English test.

3.4 Sponsors with settled status can also apply for adult dependant relatives to join them under **Appendix Adult Dependant Relative**, which is subject to its own requirements,⁶⁵ including:

- a) **personal care:** the applicant must need long-term personal care which is either not available or is unaffordable in their home country.
- b) **care:** the sponsor must be able to adequately accommodate, maintain and care for the applicant without recourse to public funds.



Image: A woman in black hijab with a young girl in Kabul city.
Photo Credit: ©Kayhan

4. Family Reunion Trends

The following section will explore the challenges we have seen our Afghan clients face when making family reunion applications. These generally relate to those with refugee status who want to reunite with their family, but these challenges are also relevant in some circumstances to those who have been resettled under ACRS or ARAP and now wish to apply for family members to join them.

4.1 Narrow Scope of the Rules

The fundamental issue with family reunion is that the scope of the Immigration Rules is too narrow. Most of the cases that APBI has dealt with have lots of complicated facts and do not fall within the rules. Although complex, these are not unique cases, demonstrating the urgent need for broader rules.

The narrow scope of the rules is also a particular issue for minors wanting to join non-parent family members such as siblings or uncles and aunts. There is a pathway for this under Appendix CNP but there have to be 'serious and compelling family or other considerations'⁶⁶, which is a very high burden to meet and makes this very restrictive.

Case study: Our clients were undocumented unaccompanied minor refugee children surviving alone in Pakistan. Their only living relative was in the UK, and they were applying to be reunited. The Home Office did not consider this 'seriously compelling', stating that their situation was 'no different to other Afghanistan nationals in Pakistan?'

Unless there are exceptional circumstances, this pathway is further restricted by the sponsor needing to be able to adequately accommodate and maintain the child.⁶⁷ Even where a child is able to reunite with non-parent family members under Appendix CNP, this route leaves the child with limited leave in the UK and no recourse to public funds. It also involves a complex route to settlement, meaning that some children will decide to make an asylum application in their own right (as almost all those applying under this route would have a claim under the Convention) to secure their status and route to settlement. This seems unnecessary, given the added stress to the child of making an asylum claim and the costs and bureaucracy involved. APBI's view is that to make this route more accessible the Government should remove the application fee, as the fee waiver process adds more complexity and delay to already desperate situations, and grant ILR to anyone coming under this route.

Furthermore, refugee children in the UK under the age of 18 cannot sponsor their parents to join them via family reunion.⁶⁸ This is despite the fact that s.55 of the Borders, Citizenship and Immigration Act 2009 (**s.55**) requires decision-makers in matters concerning immigration to have regard to 'the need to safeguard and promote the welfare of children who are in the UK'. It is plainly in the best interests of most children that they are with their parents. The Government has tried to justify this policy in the past on the basis that it wants to avoid 'creating incentives for more children to be encouraged, or even forced, to leave their family and attempt hazardous journeys to the UK'.⁶⁹ However, the House of Lords' EU Committee found that there was no evidence to support this 'anchor' child claim.⁷⁰ The Government's approach, which was in effect even pre-Brexit, differs to that taken by most EU countries, where the standard position is that unaccompanied minors can sponsor their parents and in many cases their parents' dependant children.⁷¹ This area is likely to become a growing issue as, in 2022, 5,242 asylum applications were made by unaccompanied children, up from 3,775 in 2019.⁷² Nevertheless, in a recent report, the Independent Chief Inspector of Borders and Immigration (**ICIBI**) stated that the Government is not collecting data on the number of child sponsors who make family reunion applications outside the rules, which could be used 'to inform policy development'.⁷³ In a 2020 report, the ICIBI found that the issue of child sponsors was a 'ministerial red line'⁷⁴ so it seems unlikely that there will be any imminent change to this policy. A judicial review claim challenging the lawfulness of not allowing child sponsors on the basis that it contravenes s.55 was dismissed in March 2023.⁷⁵ The judge ruled that the relevant rules were in place prior to s.55, so the Home Secretary has not made any decision which engages s.55.

Even if a fact pattern fits within the rules, it is often very hard to make successful applications. For example, with adult dependant relatives it is a very high test to demonstrate that



Image: View of Bamiyan city, taken from the highest Buddah of Bamiyan, known as Salsal.
Photo Credit: ©Kayhan

they need long-term care to perform their daily tasks and cannot get this help in their country of origin even with the financial support of the sponsor.⁷⁶ Also, this type of application costs £3250, making it unaffordable for most of our clients. Highlighting the difficulty in obtaining an adult dependant relative visa: just 35 were granted between 2017 and 2020 (inclusive).⁷⁷

The narrow scope of the rules means they do not reflect the composition of many family units particularly for families living outside of the Western world in countries such as Afghanistan. A good example of this is adoption. Under Sharia law, adoption is banned, which means that 'adopted' Afghan children will never be able to provide an official adoption certificate to satisfy the requirement under the Immigration Rules, as a guardianship system operates instead. Without a formal adoption certificate, an adopted child is instead categorised as a 'de facto adoption' which means they fall outside of the rules and the applicant will need to prove exceptional circumstances and argue their Article 8 right to private and family life. In most cases there is simply no way to easily evidence these family ties.

Another example is the arbitrary 18 years of age cut-off for children to join their parents. In most cases, a child who is 18 will suffer significant hardship if left in Afghanistan whilst their parents and younger siblings go to the UK. It is not reflective of reality to have such a strict cut-off. As part of the Government's immigration changes in June 2022, they amended the rules to allow children over 18 to join a refugee parent where there are exceptional circumstances⁷⁸ such as being financially and emotionally dependent on the parent and not having any other relatives to support them.

Although this is a welcome expansion of scope, it is not yet clear how hard it will be to meet the exceptional circumstances test, and other stakeholders have expressed similar concerns.⁷⁹

When speaking to Afghan refugees in the UK, the issue of the definition of a family and what this means to people in Afghanistan was raised. Many families in Afghanistan are large groups who live together and are emotionally and economically dependent on one another. This misaligns with the UK rules, which prioritise 'nuclear' families. APBI accepts that familial lines have to be drawn in the rules somewhere but more could be done to align the rules with the reality of the familial set up in Afghanistan. Given the cultural sensitivities around what defines a family, and the fact that family units are not delineated by law but rather the specific circumstances each family finds itself in, it would be a marked improvement to have a category within the family reunion rules that captures anyone with a dependence on the sponsor, without having such strict tests to meet. The Government clearly understands that extended family members may wish to join a relative in the UK, as the Ukraine Family Scheme has such a category which, among others, includes grandparents, aunts/uncles, cousins and parents-in-law.

APBI had hoped that the Government would take a compassionate approach to cases that fall outside the rules, given the exceptional circumstances in Afghanistan, however this has not been our experience. In one particularly harsh refusal, three minor Hazara children who were victims of torture were rejected on an application to join their sister in the UK. This rejection was despite being told directly by the Home Office that the family members could be included in an application to ACRS.

4.2 Appendix FM Requirements

The inability to satisfy the Appendix FM requirements is a major issue for many Afghans trying to access family reunion. People with settled status (i.e. those under ARAP, Pathway 1 and Pathway 3 of ACRS and refugees with ILR) have to meet the Appendix FM requirements set out in the background section above in order to fall within the applicable family reunion rules. People who have recently arrived in the UK under ACRS and ARAP are likely to be living in bridging hotel accommodation. Crucially, whilst living in a hotel, they will not meet the accommodation requirements as they will not have multiple rooms and may not have exclusive use of the space. The Government did announce in March that it intends to help resettled Afghans access 'independent, settled accommodation and to end the use of hotel bridging accommodation for that cohort'⁸⁰ through increased housing funding. However, more recently it announced that third-country ACRS and ARAP arrivals would only be facilitated 'where suitable accommodation can be secured ahead of arrival, including where individuals can be supported to arrange accommodation themselves'. This may become yet another impossible barrier to entry for Afghans in need.

The requirement to pass the A1 English Language test, although basic, is another barrier to accessing safe routes. This is particularly challenging for women in Afghanistan, who are not likely to have high levels of education. The situation for women has worsened since the Taliban took control. In December 2022, the Taliban banned women from attending university with immediate effect,⁸¹ and in March 2023 1.1 million girls were prevented from attending secondary school until further notice.⁸² Women are also forbidden from leaving the house unless accompanied by a *mahram* (a male chaperon) which means even if they are educated enough to pass the test, they cannot leave their house to sit the exam without a *mahram*. For many of our clients who are lone women waiting to reunite with their husbands, this is an insurmountable challenge. This issue regarding language tests has been raised by backbench MPs in Parliament,⁸³ but there is no indication that this rule will be relaxed. It is possible to apply for an exemption if the applicant is a long-term resident in a country with no test centres and it is not reasonable or practical for them to travel to another country where there are test centres.⁸⁴ As it currently stands all of the approved test centres in Afghanistan are closed. Given this background, it would be helpful if the Government automatically waived the language requirements for Afghans for the time being.

In addition to the accommodation and language requirements, there are high costs associated with Appendix FM applications. To submit an application there is a fee of £1,538 per applicant, as well as the Immigration Health Surcharge, which is £624 per adult applicant per year and £470 per child applicant. Although there is no guidance relating to fee waivers in these circumstances, it is possible to apply for a fee waiver for out-of-country applications if an applicant can show that they cannot pay the fee and meet their essential living needs. APBI has successfully applied for fee waivers in family reunion cases, but it is another layer of delay and administrative burden. Finally, applicants cannot get legal aid for these applications, so they have to pay for a private lawyer, which can be in the region of £1,500-2,000. Therefore, a sponsor in the UK applying for his wife and two children to join him would need to be earning at least £18,600 per year pre-tax, be living in a two bedroom property, and pay around £10,000 in application fees and legal costs. This is an unobtainable standard for most Afghans who have fled to the UK in desperate circumstances.



Image: Three women walking on Dehbory street in Kabul city during the early days of the Taliban takeover. The requirement for wearing a full-body black hijab was not compulsory at the time. Photo Credit: ©Kayhan

4.3 Passports, Visas and TB tests

Across all three routes, a lack of passport and/or a visa for the country where a client is currently living is a major issue. Copies of an applicant's passport are requested for identification purposes, but many people do not have a passport, and if they do, it may be expired. We understand from our clients that since the Taliban takeover it has become increasingly hard to apply or renew an Afghan passport, due to the unaffordable cost and the fact that refugees often have to approach the people from whom they are fleeing.

“Expecting us to obtain document attestations from the very government they are fleeing or seeking protection from can pose significant challenges and risks.”

– Jamal, an APBI Client

In order to apply for entry clearance, the applicants must attend a visa application centre (**VAC**) to enrol their biometrics, i.e. have their photo taken and give their fingerprints. At the time of writing, there are currently no VACs in Afghanistan, meaning clients have to travel to Iran or Pakistan instead. The need to travel to a VAC creates many difficulties. As discussed, many Afghans do not have valid passports, making it impossible to cross into a neighbouring country legally. Even where someone does have a passport they need to obtain a visa for Pakistan or Iran and this is currently extremely difficult. Anecdotally, we understand that relations between Afghanistan and Pakistan are continuing to deteriorate and that there are concerns that getting a Pakistani visa will soon become impossible. In one case, a client had her visa to Pakistan rejected three times with no explanation. Each time she applied for this legal visa it cost AFN 1,500 (around \$15). She reported that she could get a visa if she paid a broker for it but the cost is around US\$600 for a six-month visa. This cost is prohibitively expensive for most clients that APBI works with, given that the average income in Afghanistan is less than US\$400 per year.⁸⁵ In addition to paying for a visa, clients then have to factor in the cost to travel to one of these countries as well as accommodation and food when they arrive. For those who are successful under ACRS and ARAP, the Government is supposed to help with travel and accommodation costs.

“The guards at the Pakistani border know that you have no choice but to leave Afghanistan so they exploit the situation and ask for a lot of money.”

– Wagma, an APBI client

To complicate this area further, those applying for family reunion have to submit their application form and then wait for a VAC appointment to become available. The availability varies regularly, making it hard for clients to plan. Given how difficult it is to obtain a visa and make arrangements to cross into Pakistan or Iran, it is an extra challenge to align this with an appointment becoming available.

Crossing any border out of Afghanistan is fraught with difficulty and is often dangerous. Many of APBI's clients are vulnerable, as they are women, children or at such high risk that even leaving the house to travel is too dangerous. All of these factors elevate the danger of trying to cross the border, as discussed in *R (KA & Others) v SSHD & ors* where the first claimant unsuccessfully argued that the requirement for his family to enrol biometrics before their family reunion application could be considered was a breach of his Article 8 right to family life.⁸⁶ APBI cannot advise on foreign visa-related queries, which makes this area hard to navigate with clients who are anxious to attend the VAC as soon as possible so that their applications can move forward.

It is possible in urgent circumstances to apply for a deferral of the biometrics appointment and officials do have discretion to waive the requirement⁸⁷ if authorised at a Ministerial level.⁸⁸ This position was confirmed in *R (KA & Others) v SSHD & ors*.⁸⁹ Home Office guidance suggests that the deferral or waiver of the biometrics requirement will only happen in urgent cases where an individual can demonstrate that 'there are circumstances that are so compelling as to make them exceptional which are beyond the control of the individual'.⁹⁰ All practitioners, including APBI, have found that this is extremely hard to do successfully. This is partly due to the lack of clarity as to how to make the request but also a complete failure of the process of making the request via the UKVI main contact form, which means multiple attempts often need to be made before any response is given. APBI's experience is that the Home Office has only engaged with such applications where they involve an unaccompanied minor.



Image: Traditional-style homes on mountains of Kabul city.
Photo Credit: ©Kayhan

The Home Office has recently published an 'unsafe journey' policy for those who cannot attend a VAC appointment due to the dangers in getting there. The new policy states that the biometrics requirement will only be waived in this scenario if the individual can 'demonstrate their circumstances are so compelling as to make them exceptional'.⁹¹ We await to see how these requests will be dealt with going forward.

This is an area of clear differential treatment from Ukrainian refugees where the Government granted a complete waiver on biometrics, meaning Ukrainian refugees enrolled their biometrics once they arrived in the UK. This parallel was rejected as being unhelpful in a recent judgment by Knowles J, who stated that the security considerations were 'plainly different'.⁹² Ministers have also used national security considerations as justification for the difference.⁹³ Whilst APBI recognises the importance of security, we believe that the Government could take a different approach that satisfies security checks and better supports applicants.

The inability to attend a VAC often delays clients by many months. With family reunion applications, this means significant delay before the Home Office even begins to review an application. The Government website currently states that once they begin their review, the processing time for refugee family reunion is around nine months. These long delays means clients are left waiting in dangerous and precarious situations for an unacceptable period of time. We would press the Government to urgently rethink the refusal to waive the biometrics requirements for all Afghans, and follow the approach taken for Ukrainian refugees such that Afghans can also register their biometrics on arrival.

4.4 Evidentiary Problems

Providing complete and substantive evidence is another major issue affecting all three aforementioned types of application. For clients who have been living in dangerous, unstable environments for many years it can be extremely difficult to provide even the most basic evidence. Although the Home Office guidance requires decision-makers to ‘be mindful of the difficulties individuals may face in providing documentary evidence’,⁹⁴ this does not reflect the experience of APBI and our clients. One crucial example is evidence pertaining to marriage when trying to demonstrate a spousal relationship. The Home Office prefers to receive a marriage certificate, which, while commonplace in the UK, is not something that many couples in Afghanistan have. In a report prepared by the Norwegian Refugee Council, it was noted that only 3% of the internally displaced Afghan women interviewed had a marriage certificate.⁹⁵ There have been reports of the Government asking clients for birth and marriage certificates with stamps from the Afghan government, which would mean revealing themselves to the Taliban.⁹⁶ The Government has since apologised for this but it highlights the evidentiary challenges that Afghans face in proving their circumstances and the Government’s lack of understanding and appreciation of the extremely perilous environment that Afghans are trying to flee from.

“The documents have to be less than 3-4 months old. Because my case took such a long time, I had to provide documents again and again. It is very frustrating and risky.”
– Marjana, an APBI client

A further evidentiary difficulty occurs when trying to demonstrate a ‘genuine and subsisting relationship’ between partners. The strongest way to do this is through message and call history. However, for clients living in extremely challenging conditions, consistent evidence of this nature does not always exist. The internet connection in Afghanistan is often unstable leading to periods where couples cannot communicate. Equally, if either person damages or loses their phone, it may take some time to get a replacement due to the cost. Internet difficulties can also have a practical impact on the collection of evidence. Our caseworkers need to have lengthy and repeated calls with each client to prepare witness statements and explain what evidence is needed. As well as unstable internet connection, chaotic living conditions and dangerous environments can make this particularly challenging.

Clients interviewed for this APBI report raised these evidentiary problems, pointing out in particular the difficulties of locating birth certificates and identification documents where their names are consistent on all of them. One client mentioned that he was born without a birth certificate and with no surname, so the birthdate and surname on his tazkira and school, university and college documents do not match. It therefore makes it difficult to submit a piece of ID for the schemes where there are discrepancies across the documents.

“There are some cultural aspects regarding Afghans that need to be highlighted and adjusted. For example, we Afghans do not have any birth certificates, as it is not in our law, culture, and system to have them. We do not need them in Afghanistan. It’s different there.”
– Hassan, an APBI Client



Image: Kabul city, Kotesangi bazaar, a few days before Eid.
Photo Credit: ©Kayhan



A further issue, more specific to the ACRS and ARAP schemes, is employment evidence. There is no clear guidance on what particular evidence the Government requires to prove the necessary employment links. Although the Government has said that they do not expect people to be able to provide all the requested documentation,⁹⁷ many clients struggle to provide anything at all that proves their employment history and status. Some may have training certificates but these do not necessarily demonstrate employment history and status. Given the sensitive situation in Afghanistan, and the risks people face by virtue of having worked with the Government, it can be hard for clients to find former colleagues to give supporting statements. It can also be difficult to find such colleagues, given the nicknames often used in a military context. The lack of records held by Government departments and/or their unwillingness to provide such records compounds the issue further. One client made a subject access request to a Government department, who responded to say they could not locate any documents, and another had their request refused by the MOD, who invoked the Official Secrets Act 1989. APBI has noticed a strict interpretation of ‘working alongside’ the Government for the purposes of the ARAP scheme, for example, a client, who had lived in Camp Bastion, was rejected for Category 4 on the basis that they did not work closely alongside the Government. The difficulties faced in collecting employment evidence makes this hard to rebut. This is another area where we see inconsistencies in the way the ARAP criteria is applied, particularly across Government departments. Helpfully, there have been recent court cases which have looked at the interpretation of the ARAP scheme, for example the Administrative Court quashed the refusals to relocate eight prominent Afghan BBC journalists under Category 4. The refusals were given on the basis that their applications did not meet the first limb of the Category 4 test, namely that they did not ‘work alongside’ or ‘closely support’ the Government’s national security objectives. The Court held that ARAP should be taken as a whole, and that although the BBC is not a Government department, the journalists had undertaken ‘significant activities’ which were closely aligned with the ‘democracy-building’ activities of a Government department.⁹⁸

“If I keep my employment papers Taliban will find me and kill me. If I destroy them my application will be rejected, I do not know what to do?”

– Jamal, an APBI client

Image: A crowd gathers on a winter evening in Kampani Roud, Kabul city.
Photo Credit: ©Kayhan



Recommendations



Provide Translations of Guidance and Application Forms

The Government should translate the available guidance, application forms and information about the UK schemes on the government website into Dari and Pashto. This is essential to help Afghans understand the application process and enable them to gather the required documents and evidence for their application.



Safe and Secure Biometrics Enrolment

To ensure applicants' safety during biometrics enrolment, the Government should explore alternative methods for collecting biometric data, such as enrolling biometrics upon arrival in the UK rather than in Afghanistan, given the difficulty with providing biometrics from Afghanistan.



Provide Bite-sized Information

The Government should provide factsheets that are easy to read and follow, with key information about the UK schemes, making them more accessible to Afghans who may not understand the lengthy and complex guidance on the schemes.



Expand Concessions on Document Flexibility

The concessions to the Immigration Rules that provide document flexibility published by the Government in January 2022⁹⁹ – where Afghans can draft a letter explaining the reasons they cannot provide or obtain a document – should be expanded and applied on a case-by-case basis.



Eliminate Financial and Language Barriers

The Government must take urgent steps to waive or significantly reduce the application fees and the English language requirements for applicants pursuing family reunion. Eliminating these barriers is essential to ensuring access to family reunification and preventing vulnerable family members from being abandoned in Afghanistan.



Ensure Timely Process of Applications

The Government must take immediate action to minimise delays and backlogs to ensure that eligible applicants at risk do not remain in uncertainty. The Government should implement streamlined procedures to drastically reduce delays and expedite the process for those in need of urgent protection.



Provide Emergency Travel Documents

For Afghan applicants who are unable to get a passport or ID to travel to the UK, the Government should provide emergency travel documents if these applicants have otherwise met the criteria under the UK schemes.



Transparency and Expansion Pathway 3 of ACRS

The Government should provide clarity and transparency regarding the future of Pathway 3 and its eligibility criteria. A clear plan for expanding the scope of Pathway 3 will ensure that vulnerable Afghans such as religious minorities, the Hazaras, and LGBT individuals have a way to apply for resettlement in the UK.



Assess ARAP Applications on a Case-by-Case Basis

The Government should adopt a compassionate approach to address cases where Afghan family members of ARAP applicants were not included in the original application (e.g. due to an error or lack of assistance in filling out the form). These cases should be reviewed and reconsidered, allowing for a family reunion route.



ACRS Family Reunion Rights

The Government must develop a clear and accessible process for ACRS family reunion under Pathway 1. Despite promising that immediate family members, and in exceptional circumstances, additional family members, of those eligible under Pathway 1 would be resettled, this has not happened. Also, those granted ILR under ACRS scheme should have the same family reunion rights as recognised refugees. The Government should remove any additional barriers that currently prevent ACRS applicants from accessing family reunion provisions.



Include Dependants in Family Reunion Scope

The Government should expand the focus of family reunion to dependants and wider family, as the current available family reunion options only permit nuclear families (i.e. traditional families of parents and their children). Our clients do not consider that the UK schemes are set up to reflect Afghan culture or way of life, since in Afghanistan 'family' would refer to an extended family that live together in a large emotionally and economically dependent group. The Government should expand the scope of family reunion for Afghans akin to the Ukraine Family Scheme visa, which includes immediate and extended family members.¹⁰⁰



Expanding Routes for Afghans

The Government should create additional safe routes for Afghans at risk such as special education or employment-based pathways.



Allow Resettled Afghans in the UK to Request Refugee Status

The Government should permit Afghans resettled in the UK to convert their status, to refugee status as was granted in July 2017 to Syrians who came to the UK under the Syrian Vulnerable Persons Resettlement Scheme.¹⁰¹ This would allow Afghans to benefit from things such as access to student support and an internationally recognised refugee travel document.

Glossary

- ACRS** = Afghan Citizens' Resettlement Scheme
AFM = Additional Family Member
AFN = Afghan Rupee
APBI = Afghan Pro Bono Initiative
ARAP = Afghan Relocation and Assistance Policy
Convention = The 1951 Refugee Convention
ECHR = European Convention on Human Rights
EU = European Union
FCDO = Foreign, Commonwealth and Development Office
FOI = Freedom of Information Request
Government = Government of the UK
ICIBI = Independent Chief Inspector of Borders and Immigration
IRL = Indefinite Leave to Remain
LGBT = Lesbian, Gay, Bisexual and Transgender
LOTR = Leave Outside the Rules
Mahram = Male Chaperone
MOD = Ministry of Defence
MP = Member of Parliament
NATO = North Atlantic Treaty Organisation
NGO = Non-governmental Organisation
RLS = Refugee Legal Support
SPI = Safe Passage International
UK = United Kingdom
UKVI = UK Visas and Immigration
UN = United Nations
UNHCR = United Nations High Commissioner for Refugees
US = United States of America
VAC = Visa Appointment Centre



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Image: Two men resting in Parwan Province, observing Golghondi Hill, also known as “the flower hill”.
Photo Credit: ©Kayhan



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