



NOTE: This is a sample memorandum of law for an affirmative asylum case. The applicant in this case, along with all other individuals mentioned, is fictional.

This sample is intended to provide attorneys and accredited representatives with an idea of how to write a memorandum of law for an affirmative asylum case. It is not intended as legal and country conditions research for actual cases and should not be relied on as such.

USCIS Asylum Office
1525 Wilson Blvd.
Arlington, VA 22209

Re: Abbas Mustafa Sarabi, A 456-224-388

Dear Asylum Officer,

I am pro bono counsel for Abbas Mustafa Sarabi, A 456-224-388. I am submitting this memorandum of law on behalf of Mr. Sarabi, a native and citizen of Afghanistan, in support of his application for asylum, withholding of removal, and protection under the Convention Against Torture. The Taliban have threatened numerous times to kill Mr. Sarabi, an ethnic Hazara who worked for the Human Rights Foundation, on account of his political opinion, his race, his religion, and his membership in a particular social group. Country conditions in Afghanistan have only gotten more dire since Mr. Sarabi was evacuated to the United States in August, and Mr. Sarabi has every reason to fear that the Taliban would act on their threats were he forced to return to Afghanistan.

I. STATEMENT OF FACTS

A. The Taliban Have Threatened Numerous Times to Harm and Kill Mr. Sarabi and His Family

Abbas Sarabi is an ethnic Hazara who was born and raised in Bamyan, Afghanistan. Like many Hazara, he is a Shia Muslim. His family faced discrimination and the threat of violence at the hands of the Taliban during his childhood because of their ethnicity and their religion.¹

Mr. Sarabi studied English and journalism in college, first at the University of Peshawar in Pakistan, and then at the University of Kabul. At the University of Kabul he met his future wife, Maryam, whom he married in October 2008. He and Maryam stayed in Kabul after they graduated from university in 2008. Mr. Sarabi worked as a journalist, first for the Afghanistan Times and then after a few years for Etilaat e Roz, where he covered government corruption and human rights abuses.²

Starting in 2015, Mr. Sarabi did high profile human rights work, researching and writing on human rights issues in Afghanistan with the international NGO Human Rights Foundation (HRF).³ This included providing extensive reporting for HRF's 2019 report on human rights practices in Afghanistan, "Human Rights Abuses in Three Provinces Under Taliban Control."⁴ The report, which is included along with Mr. Sarabi's asylum application, showed that residents in three Taliban-controlled provinces were unable to criticize or question the Taliban without dire consequences. The report covered the Taliban's practice of preventing girls from attending school, and highlighted the Taliban's repression of freedom of media in these provinces. It was this report in particular that motivated the Taliban to repeatedly threaten Mr. Sarabi's life.

Soon after the report was published, Mr. Sarabi received a threat letter from the Taliban that called him a traitor and an infidel for working on this report, and for working for a European-led NGO, and demanded that he leave his job right away. This was the first of many such messages. Mr. Sarabi received numerous other letters that said he had made a serious mistake in criticizing the Taliban and that "his family would pay a dear price for his actions." He also received frequent text messages from unknown numbers that said things like "infidel," "traitor," and "your family will pay."⁵

In the summer of 2020, Mr. Sarabi's wife Maryam started receiving threatening texts with messages such as that she would pay for her husband's mistakes, or that Mr. Sarabi should quit his job if he knew what was good for his family. Because these messages were clearly related to

¹ Ex. A, Declaration of Abbas Mustafa Sarabi (hereinafter "Sarabi Decl.") ¶¶ 1-8

² Sarabi Decl. ¶ 16

³ Exhibits G and H

⁴ Ex. I, Human Rights Foundation 2019 report on Afghanistan researched and written in part by Abbas Sarabi

⁵ Sarabi Decl. ¶ 21, Declaration of Maryam Sarabi, Ex. K, (hereinafter "Maryam Decl") ¶ 17; Ex. J, text of two threats sent to Abbas Sarabi

Mr. Sarabi's work, and because they mentioned the Taliban and indicated that Mr. Sarabi had angered the Taliban, he and Maryam understood them to be coming from the Taliban.⁶

The Taliban did not only send threatening messages – they physically menaced Mr. Sarabi and his wife. In November 2020, Mr. Sarabi realized that unmarked cars were following him as he drove to and from work. Even more distressingly, men Mr. Sarabi and his wife believed to be Taliban menaced Maryam Sarabi. Two strange men dressed like members of the Taliban followed her as she walked their son Ahmad to school. When she came outside they blocked her path and glared at her, calling her a Hazara infidel. One of them said “We know your husband is spreading lies that are against Islam. If he does not stop, you might not find your son here when you come to get him here.” This threat to the life of their child terrified Mr. Sarabi and his wife. They moved to Bamyan and got new cell phones, hoping to escape the terror of the relentless threats.⁷

The escape did not last long. Soon after Mr. Sarabi and his wife got to Bamyan, they started receiving threatening texts on their new phones. Maryam Sarabi received a hand-written letter that called Mr. Sarabi an infidel and said “we know where you are.” Maryam Sarabi was teaching at a school at that point, and threat letters arrived there as well. The school was so upset by this that they asked her to leave her job.

The constant threats – which Mr. Sarabi and his wife interpreted as death threats given both the content of the threats, and their knowledge of the Taliban – deeply affected both Abbas and Maryam Sarabi. Maryam had trouble sleeping, lost weight, and experienced anxiety. Abbas experienced anxiety and nightmares, and had trouble concentrating at work.

In May 2021 the Sarabis returned to Kabul, enrolled their son Ahmad in a new school, got new phones, and moved in with Mr. Sarabi's cousin Hamed. Mr. Sarabi drove different routes to work and changed his work hours to avoid detection. None of this worked – in June 2021 he received yet another threatening text. And after their next-door neighbor, who was also Hazara, was murdered by the Taliban, Mr. Sarabi and his wife made the difficult choice to go into hiding. While they were in hiding with relatives in mid-August 2021, several heavily armed Taliban stormed his cousin Hamed's house – his former residence in Kabul. They severely beat Hamed with the butts of their guns while demanding to know Mr. Sarabi's whereabouts. They ransacked the house and broke a glass bowl over Hamed's head, and told Hamed to tell Mr. Sarabi that “his time would be coming soon.”

Mr. Sarabi understood this to mean that the Taliban intended to kill him. He and Maryam brought Ahmad with them to the airport in Kabul as the evacuation got under way, and were

⁶ Sarabi Decl ¶ 22, Maryam Decl ¶ 18

⁷ Sarabi Decl ¶¶ 23-4, Maryam Decl ¶¶ 19-22

fortunate to finally be able to board a plane that brought them first to Qatar, then to Germany, and finally to the United States, where they landed on September 2, 2021.

The Taliban continued to search for Mr. Sarabi after he fled Afghanistan, storming into his father's house in Bamyan and threatening to kill his father if he did not reveal Mr. Sarabi's whereabouts.⁸ The Taliban also murdered Mr. Sarabi's former supervisor at the Human Rights Foundation in December 2021.⁹ Both of these horrifying events reinforce that Mr. Sarabi's life would be at extreme risk if he were forced to return to Afghanistan.

B. Numerous Reports Corroborate Mr. Sarabi's Account of Facing Taliban Persecution Because of His Human Rights Work

Numerous articles and reports corroborate Mr. Sarabi's account of being repeatedly threatened with death by the Taliban during 2020 and 2021 because of his work with the Human Rights Foundation. The United Nations Assistance Mission in Afghanistan (UNAMA) noted in a report on the killing of human rights defenders between 2018 and 2021 that "The year 2020 witnessed a sharp increase in deliberate killings of human rights defenders."¹⁰ As the Human Rights Defenders Programme Director at the World Organisation Against Torture (OMCT) explained,

"The threat faced by human rights defenders stranded in Afghanistan is real. They are under attack on all fronts **as they are seen as enemies of the Taliban**. [emphasis added] Their offices and homes have been raided. Their colleagues have been beaten. They are forced into permanent hiding. They live under the constant threat of arrest, torture or worse."¹¹

D. The Taliban Have Killed and Persecuted Hazara Shia

Country reports also make clear that Hazara Shia like Mr. Sarabi and his family have faced serious threats under the Taliban. Human Rights Watch reports that in the first half of 2021, the Taliban launched numerous attacks against this community, some of them deadly.¹² Radio Free Europe reported in 2020 that "IS and Taliban militants -- Sunni extremist groups that

⁸ Sarabi Decl ¶ 38, Maryam Decl ¶ 25

⁹ Sarabi Decl. ¶ 37, Maryam Decl. ¶ 24, Ex. L, Declaration of Chris Ellery, ¶¶ 4-6

¹⁰ Ex.S, Special Report, "Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan 2018-2021," United Nations Assistance Mission in Afghanistan," February 2021

¹¹ Ex. N, Amnesty International, "Afghanistan: Taliban wasting no time in stamping out human rights, says new briefing," September 21, 2021

¹² Ex. J, Human Rights Watch, "World Report 2022: Afghanistan," ("Many attacks targeted Afghanistan's Hazara Shia community.")

consider Shi'a apostates -- have been blamed for devastating attacks that have killed hundreds of Hazara in [Kabul] in recent years.”¹³

C. Country Conditions Have Worsened Since Mr. Sarabi Fled Afghanistan

Since the U.S. withdrew from Afghanistan in August 2021, the Taliban have engaged in reprisals against those it views as having collaborated with U.S. and international forces, as well as those who worked for democracy and human rights.¹⁴

“Overnight in August, **anyone** connected to the former government – or **who engaged in civil society by advocating for women’s rights, rule of law, or even girls' education – became a de facto enemy of the state** and a target of the Taliban hunt for what it called “infidels.”¹⁵

People like Mr. Sarabi, who were known to have worked as “human rights defenders” are at serious risk of Taliban retribution:

“Since the Taliban takeover, HRDs [human rights defenders] are not only experiencing the collapse of the state framework and legal protection mechanisms within which they operated, but are also at direct threat of retaliatory actions for their work. Taliban claims that they would govern in a more inclusive manner have been quickly and fully contradicted by their actions.”¹⁶

Hazara Shia like Mr. Sarabi are also at grave risk under the Taliban, which has carried out massacres, atrocities, and forced evacuations in Hazara communities since the U.S. withdrawal.¹⁷

“Taliban officials in several provinces across [Afghanistan](#) have forcibly displaced residents partly to distribute land to their own supporters, Human Rights Watch said today. **Many of these evictions have targeted Hazara Shia communities**, as well as

¹³ Ex V, RadioFreeEurope/Radio Liberty, April 5, 2020, “Living Scared: In Kabul's Shi'ite Enclave, Hazara Fear A Taliban Return.”

¹⁴ Ex. O, Safety and Risk Mitigation Organization, “State of Human Rights Defenders in Afghanistan, Year 2021” (“Since the Taliban takeover, SRMO has documented 11 targeted killings of HRDs, CSAs and journalists, with another media worker seriously injured in an attempted killing and many more injured in beatings.”)

¹⁵ Ex. P, Christian Science Monitor, “For Afghanistan’s new enemies of the state, a life in hiding,” Feb. 1 2022

¹⁶ Ex. O, Safety and Risk Mitigation Organization, “State of Human Rights Defenders in Afghanistan, Year 2021”

¹⁷ Ex. Q, “Minority Hazara population face persecution under Taliban rule in Afghanistan - again,” NBC News, Oct. 10, 2021

people associated with the former government, **as a form of collective punishment.**”
[emphasis added]¹⁸

II. MR. SARABI QUALIFIES FOR A GRANT OF ASYLUM

To demonstrate eligibility for asylum, an applicant must show that he or she is a “refugee.”¹⁹ A refugee is any person who is outside of her or his country of nationality who is unable or unwilling to return to her or his home country because of “persecution of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”²⁰

A. The Taliban Persecuted Mr. Sarabi on Account of Political Opinion, Race, Religion, and Membership in a Particular Social Group

1. The Taliban Persecuted Mr. Sarabi Because of His Actual and Imputed Political Beliefs

Because Mr. Sarabi worked for an international human rights NGO, the Taliban considered him to have threatened them politically. They warned him that they would not tolerate what they viewed as his criticism of the Taliban. They demanded that he leave his job. They called him a “traitor,” indicating their belief that he held political views antithetical to theirs. Mr. Sarabi, by dint of his work as a human rights defender was a “de facto enemy” of the Taliban.²¹ The Taliban who persecuted him did so on the basis of political beliefs they imputed to him based on his work. Mr. Sarabi does in fact hold political opinions directly opposed to the Taliban, which he expressed in part through his work as an investigative journalist and then as a writer and researcher at the Human Rights Foundation.²²

2. The Taliban Called Mr. Sarabi an Infidel and Persecuted Him For His Actual and Imputed Religious Beliefs

The Taliban also persecuted Mr. Sarabi on account of religious beliefs they imputed to him, as well as his actual religious beliefs. Mr. Sarabi, like many Hazara, is Shia Muslim, while the Taliban are Sunni Muslim. His first experience of this was as a child, when he heard Taliban

¹⁸ Ex. U, “Afghanistan. Taliban Forcibly Evict Minority Shia,” Human Rights Watch, Oct. 22, 2021

¹⁹ INA § 208(a)

²⁰ INA § 101(a)(42)(A)

²¹ Ex. P, Christian Science Monitor, “For Afghanistan’s new enemies of the state, a life in hiding,” Feb. 1, 2022

²² Sarabi Decl. ¶¶ 7, 8, 10, 11, 17, 20, 32; Maryam Decl. ¶¶ 3, 7, 18.

calling Hazaras “infidels.”²³ On numerous occasions they called him an “infidel,” and threatened him with death for violating their vision of Islam.²⁴ They called his wife a “Hazara infidel.”

Dictionary.com defines “infidel” as “(in Muslim use) a person who does not accept the Islamic faith.”²⁵ Calling Mr. Sarabi – a Hazara Shia who worked for an international human rights NGO – an “infidel” is consistent with the Taliban’s view of Hazara and of those who worked for either U.S. or coalition forces or for international NGOs, and those who support democracy and human rights.²⁶ For instance, the Taliban in Panshvir Province issued a “Warning” in late 2021 that included this language:

“The Mujahideen of the Islamic Emirate in Panjshir province are informed that individuals and institutions under the name of civil society or human rights activists and the like operated openly in the previous government and in secret in the current system.

These people strengthen the Infidel system, which they serve under the name of democracy and freedom of expression and opinion.

Their work is considered illegal by the Council of Scholars of the Islamic Emirate.

Therefore, the Mujahideen of the Islamic Emirate are instructed to seriously find and pursue them and arrest them as soon as possible to stop their false and anti-religious activities.

In case of any violations and their resistance, they should be dealt with seriously in order to be a lesson for others.”

The Taliban viewed Mr. Sarabi as an infidel because of his human rights work for an international organization, and because of his ethnicity and actual religious beliefs as a Shia Muslim, and threatened to kill him for these beliefs.

3. The Taliban Persecuted Mr. Sarabi, a Hazara, Because of His Race

Mr. Sarabi’s experiences suggest that the Taliban also targeted him and his wife because of their ethnicity. Some of the threats Mr. Sarabi and his wife received included the phrase

²³ Sarabi Decl. ¶ 7

²⁴ Sarabi Decl. ¶¶ 21, 23, 25

²⁵ <https://www.dictionary.com/browse/infidel>

²⁶ Ex R, “What one death threat says about the Taliban’s campaign of fear,” Christian Science Monitor, Dec. 7, 2018

“Hazara infidel.” The Hazara are an ethnic minority in Afghanistan, the vast majority of whom are Shia Muslims.²⁷ This is consistent with Mr. Sarabi’s experience as a child in Bamyán when the Taliban first came to power and massacred hundreds of Hazaras – including three of his classmates and their fathers – in Bamyán. The Taliban, who are Sunni Muslims, have a long history of persecution and violence against Hazaras, who are Shia Muslims. Since the U.S. withdrawal, there has been widespread reporting of increased violence and persecution against Hazara communities by the Taliban.²⁸

4. The Taliban Persecuted Mr. Sarabi Because of His Membership in a Particular Social Group: Human Rights Defenders

The Taliban also persecuted because of his membership in a particular social group – Afghans who worked for international human rights organizations in Afghanistan. “An applicant for asylum . . . seeking relief based on ‘membership in a particular social group’ must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.”²⁹ A characteristic is immutable if it is either beyond the power of the individual to change, or so fundamental to his identity that he should not be required to change it.³⁰ In order to meet the particularity requirement, a group must be sufficiently distinct that it would constitute a discrete class of persons.³¹ Finally, to be socially distinct, “a group need not be seen by society; it must instead be perceived as a group by society.”³² That is, certain persons can be considered a group by society even though the members of that group are not necessarily identifiable by sight.

The unifying characteristic shared by this group is their association with, or perceived support for the international community in Afghanistan. This characteristic is immutable – Mr. Sarabi cannot change the fact that he worked for the Human Rights Foundation. Because of this work, human rights defenders like Mr. Sarabi will be at risk of violence at the hands of the Taliban, which views human rights defenders as allied with the international community and as opposed to the Taliban. Horrifyingly, the Taliban have already murdered Mr. Sarabi’s former supervisor at the Human Rights Foundation, as Mr. Sarabi learned in December 2021.

²⁷ Ex. Y, RadioFreeEurope/Radio Liberty, “Living Scared: In Kabul’s Shi’ite Enclave, Hazara Fear A Taliban Return,” April 5, 2020 (“Historically the poorest and most marginalized ethnic group in Afghanistan. . . Although there is no census, Shi’a are believed to make up around 15 percent of Afghanistan’s 30 million people, which is largely Sunni. Hazara account for the overwhelming majority of Shi’a in the country.”)

²⁸ See, e.g., Ex Q, “Minority Hazara population face persecution under Taliban rule in Afghanistan - again,” NBC News, Oct. 10, 2021

²⁹ *Matter of M-E-V-G*, 26 I&N Dec. 227, 237 (BIA 2014).

³⁰ *Matter of Acosta*, 19 I&N Dec. 211, 233-4 (BIA 1985).

³¹ *Matter of W-G-R-*, 26 I&N Dec. 208, 210 (BIA 2014) (citing *Matter of S-E-G-*, 24 I&N Dec. at 584).

³² *Id.* at 216.

Afghan civilians who are associated with, or perceived as human rights defenders who support the international community in Afghanistan are defined as socially distinct. They are recognizable in Afghanistan “as a discrete class of persons.” Afghans who worked for international NGOs report that their neighbors know that they “worked with foreigners.”³³ The group has “definable boundaries” that are “delineated and identifiable.” They are well known and identifiable by the Taliban.³⁴ Mr. Sarabi’s membership in this group is not something he is able to change. He already worked for the Human Rights Foundation, and is not able to change that.

5. The Relentless Death Threats Against Mr. Sarabi and His Family Constitute Persecution of Mr. Sarabi

“Persecution” encompasses more than physical harm. Serious death threats can rise to the level of persecution.³⁵ Mr. Sarabi endured a long series of threatening letters, texts, and physical threats by the Taliban. Some of these explicitly threatened to execute or behead him if he did not stop his work with the Human Rights Foundation.³⁶ Others did not explicitly threaten death, but given the tone and that they were clearly coming from the Taliban, Mr. Sarabi and his wife understood them to be death threats. Mr. Sarabi experienced psychological harm as a result of the relentless death threats – experiencing ongoing anxiety and nightmares, as did his wife.

“Persecution” also includes serious harm to family members as a way to harm the asylum seeker.³⁷ As the BIA has recognized, an applicant may establish persecution “where a person persecutes someone close to an applicant, such as a spouse, parent, child or other relative, with the intended purpose of causing emotional harm to the applicant, but does not directly harm the applicant himself.”³⁸ The Taliban repeatedly threatened and harmed members of Mr. Sarabi’s family, as a way to punish him and to force him to abandon his work, the work the Taliban saw as both politically and religiously opposed to their rule. Mr. Sarabi experienced great suffering because of the death threats to his wife and child, and the severe beating of his cousin.³⁹

³³ Ex. W, “International Employers Accused of Abandoning Afghan Staff,” Al Jazeera, August 27, 2021 (“All my neighbours knew that I worked with foreigners and three days ago they [the Taliban] came to my house and asked about me,” Ali says.)

³⁴ Ex. T, “Afghanistan: Human Rights Defenders Living Under a Climate of Fear - UN Expert,” United Nations Human Rights Council, November 2021

³⁵ See *Tairou v. Whitaker*, 909 F.3d 702 (4th Cir. 2018); and see *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (“[W]e have expressly held that the threat of death qualifies as persecution.”)

³⁶ Sarabi Decl. ¶ 22

³⁷ See Memorandum from Joseph Langlois, Director, Asylum Division, INS Office of International Affairs, to Asylum Office Directors, et al., Persecution of Family Members, (30 June 1997).

³⁸ *Matter of A-K-*, 24 I&N Dec 275 (BIA 2007)

³⁹ Sarabi Decl. ¶¶ 28, 33.

6. The Taliban - Currently the Afghan Government - Persecuted Mr. Sarabi

An asylum applicant must demonstrate that he or she was persecuted by his or her government, or by a group that his or her government is unable or unwilling to control.⁴⁰ At the time the Taliban persecuted Mr. Sarabi in the past, they were a group that the previous Afghan government was unable to control. Now, of course, they control the Afghan government.

B. Mr. Sarabi Has a Well-Founded Fear of Future Persecution

1. The Taliban's Past Persecution of Mr. Sarabi Creates a Presumption of a Well-Founded Fear of Future Persecution

A finding of past persecution creates a presumption of a well-founded fear of future persecution.⁴¹ As detailed above, Mr. Sarabi has already suffered persecution by the Taliban, and thus should be presumed to have a well-founded fear of future persecution.

The presumption of a well-founded fear of future persecution can be overcome only if the U.S. Department of Homeland Security can demonstrate that “there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant’s country of nationality.”⁴² This the Department cannot do. There has indeed been a fundamental change in circumstances in Afghanistan – following the U.S. withdrawal and the Taliban’s formation of a new government, it is now far more likely that the Taliban would persecute Mr. Sarabi were he forced to return to Afghanistan.

2. Even in the Absence of a Presumption, Mr. Sarabi Has a Well-Founded Fear of Future Persecution by the Taliban

Even absent a finding of past persecution, Mr. Sarabi has a well-founded fear of future persecution. An asylum applicant may demonstrate a well-founded fear of persecution in the future even in the absence of past persecution, by establishing that he or she subjectively fears persecution, and that this fear is objectively reasonable.⁴³ In order to demonstrate that her or his fear is objectively reasonable, an applicant must show that 1) He or she possesses one or more protected characteristics, 2) the persecutor is aware or could become aware that he or she possesses this characteristic, 3) that the persecutor is capable of persecuting the applicant, and 4) that the persecutor is inclined to persecute the applicant.⁴⁴

⁴⁰ See *Matter of Villalta*, 20 I&N Dec. 142, 147 (BIA 1990); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996); and *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) (en banc).

⁴¹ 8 CFR §208.13(b)(1)

⁴² 8 CFR §208.13(b)(1)(i)(A)

⁴³ See *INA v. Cardoza-Fonseca*, 480 U.S. 421 (1987)

⁴⁴ *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987) modifying *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985).

Where there is a pattern or practice of persecution of a group of similarly situated persons to which an applicant belongs, the applicant need not show that he or she would be individually singled out for persecution.⁴⁵ There is a clear pattern of severe persecution of human rights defenders in Afghanistan, as well as a pattern of persecution of Hazara.

““The threat is very real,” said Mary Lawlor, the UN Special Rapporteur on human rights defenders. **“Defenders tell me of direct threats**, including gendered threats against women, of beatings, arrests, enforced disappearances, and of defenders being killed. **They describe living in a climate of constant fear.**”

“Among those most at risk are defenders documenting alleged war crimes, women defenders, in particular criminal lawyers, cultural rights defenders, especially those working in banned sectors such as music, and **defenders from minority groups.**” (emphasis added)

Apart from the widespread pattern and practice of persecution of human rights defenders, Hazara, and other Shia, Mr. Sarabi has established a well-founded fear of persecution based on the threats he has already faced. Those threats have caused him subjective fear, and that fear is objectively reasonable. Mr. Sarabi worked for several years for the Human Rights Foundation, authoring a widely available report that the Taliban regard as a direct criticism and threat to their political power. He is a Hazara Shia. The Taliban have shown that they are well aware of all these protected characteristics, and have already shown their ability and inclination to persecute Mr. Sarabi. Because of his work, his ethnicity, and his religious beliefs, the Taliban has already threatened him, his wife, their young son, and his father with death, and brutally beat his cousin. The constant death threats took a severe mental toll on Mr. Sarabi and his wife, who suffered serious anguish as a result. The threats did not end after Mr. Sarabi left Afghanistan – Taliban showed up at his father’s home in Bamyan after Mr. Sarabi had already been evacuated to the U.S., demanding to know Mr. Sarabi’s whereabouts and threatening to kill his father if his father did not tell them.

Beyond this horrifying onslaught of direct death threats, the Taliban have shown themselves ready to murder people similarly situated to Mr. Sarabi. The Taliban murdered his former supervisor at the Human Rights Foundation in December 2021, not long after Mr. Sarabi had left. As the Asylum Office recognizes, “The persecution of family members or other individuals closely associated with the applicant may provide objective evidence that the applicant’s fear of future persecution is well-founded.”⁴⁶ The killing of one of Mr. Sarabi’s closest work colleagues, following the numerous death threats the Taliban delivered to him

⁴⁵ 8 CFR § 208.13(b)(2)(iii).

⁴⁶ RAIO Combined Training Course, Well-Founded Fear, January 17, 2019, at 18

because of his work with the Human Rights Foundation, are objective evidence that Mr. Sarabi's fear of return is well-founded.

C. Mr. Sarabi Is Not Subject to Any Bars to Asylum

1. Mr. Sarabi's Application is Not Time-Barred

Generally, asylum applicants must file their asylum applications within one year of arriving in the United States. There is an exception to this rule, however, for applicants who can demonstrate an "extraordinary circumstance." Maintenance of a lawful status, including parole, is by regulation one such extraordinary circumstance.⁴⁷ Mr. Sarabi was paroled into the United States on September 2, 2021. He has maintained his parole status since then; he is still well within the two years of parole he was granted when he arrived. Therefore he meets the requirements for demonstrating an extraordinary circumstance that exempts him from the one year filing requirement.

2. Mr. Sarabi Was Not Firmly Resettled in Pakistan

Mr. Sarabi spent under two years in Pakistan as a college student at the University of Peshawar from 2005-2007. As he explains, he had a student visa in Pakistan that ended when he left the University of Peshawar to enroll at the University of Kabul.⁴⁸ He did not receive any offer to stay there longer, was not eligible for any such offer, and no longer has the right to live there. Because he never received or was eligible for any offer of permanent residence in Pakistan, Mr. Sarabi was not firmly resettled there.⁴⁹

3. Mr. Sarabi Is Not Subject to Any Statutory Grounds for Denial

Mr. Sarabi has never persecuted others, has never been convicted of a crime anywhere in the world, and is not a danger to the security of the United States. He was never firmly resettled in a third country before arriving in the United States.⁵⁰ His application is not barred by any grounds for mandatory denial.

D. Mr. Sarabi Merits a Grant of Asylum in the Exercise of Discretion

Asylum is a discretionary form of relief. Although an asylum applicant has the burden of establishing that a favorable exercise of discretion is warranted, absent any adverse factors "asylum should be granted in the exercise of discretion."¹⁶⁴ Mr. Sarabi is a human rights

⁴⁷ 8 CFR §208.4(a)(5)(iv)

⁴⁸ Sarabi Decl. ¶ 12

⁴⁹ 8 CFR §208.15(a)

⁵⁰ See *generally*, Sarabi Decl.

defender and activist who puts his own life on the line in order to protect the lives of marginalized groups in Afghanistan. He has been working to help support his family since he was granted work authorization in the U.S. There are no adverse factors weighing against his application. He clearly merits an exercise of discretion, and a grant of asylum.

Respectfully submitted,

Cecilia R. Attorney, Esq.
Pro Bono Counsel for Abbas Sarabi

October 14, 2022