

Afghan Immigrants in Iran and Citizenship

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Abstract

Presence of Afghans in Iran has been critical issue for Iranian government. During the Open Door Policy of Iran, huge population of Afghans entered Iran without official monitoring. They have married and got children. Many of these marriages are not officially registered in Iran nor in Afghanistan. Therefore, Iran has faced many illegitimate marriages and children. This paper is to explain the reasons of Afghan entrance to Iran, their situation in Iran and the consequences of their presence for Iranian government. The main goal of the article is to demonstrate how critical the problem is if it is not dealt with as soon as possible.

Keywords: Afghans, Iran, immigration, marriage, citizenship

1. Introduction

History has contemplated emergence of organized human societies and land boundaries that have created countries and since then urbanization became an important factor in human immigration from the rural areas to urban centers. Accordingly, internal and international rules have been enacted to deal with this phenomenon. The migration has economic, political, and cultural reasons while changing social norms have added a new dimension to human motility. (Khajehpour, 1996; Zanjani, 2001). One of the countries with the most immigrants or people displacements in the past half century is Afghanistan. Outset of displacements of millions of Afghans to Iran and other countries was the invasion of Russia to Afghanistan and also their internal wars, which for years have had resulted in many negative consequences (Farhang, 1996; Sadeghi, 2007).

As mentioned above, the first wave of immigration occurred after the capturing of Afghanistan by the Russia¹. A decade-long war resulted in the death of at least one million Afghans while more than five million Afghans wandered to neighboring countries. The second wave caused by internal war between different Mojahed groups in the years between 1989 to 1995. Finally, the third wave goes back to the emergence of the Taliban in the period between 1996 and 2001. (Abadi, 2003; Articles, 1997; Sadeghi, 2007). As an extremist religions group, Taliban created new difficulties. It prohibited public education for girls, killed the Shiite of Hazara, thus causing a large number of Afghans, especially Shiites, to move to neighboring countries, particularly Iran.

In the first flow about 40% and in the second and third flows about 36% of the displaced Afghans went to Iran. There have been economic and cultural reasons for immigration of afghans to Iran and other countries (Farhang, 1996; Sadeghi, 2007). According to Statistics Center of Iran, in 1990 about three million Afghans were living in Iran (Ahmadi, 1998). The presence of Afghans in Iran has been for different reasons such as language, history, and culture (Sadr, 2003). By the end of the 70s, it was estimated that there were around two million Afghans in Iran. Among them, tens of thousands of workers, professionals, semi-professionals and technicians who had been trained live in the various industrial, agricultural and services sectors of Iran. Many businesspersons, merchants and business affairs officers with highly familiar with the economic situations of both Iran and Afghanistan were educated in Iran. In fact, the situation was such that Iran society had long-term investment in Afghans as special social forces. (Ashoori, 2010; Bayat, 2000).

Even nowadays, the situation in Afghanistan situation is such that, seven children die per day due to disease, 50 mothers die at childbirth, and only one girl out of five can go to school, while 80% of schools were destroyed by the long wars and from six million students, only two million can go to school. Of course, the meaning of school in this situation is only a tent not a building. Moreover, 70,000 women lost their husbands, only in Kabul alone there are 60000 child laborers and all of them are at risk from child contraband, sexual abuse, and even

¹ After the assassination of Noor Mohammad Tareh Ki, the head of the Communist coup in Afghanistan, by Hafiz Aminollah, Russia realized that he was not the one to maintain the Russian interest in Afghanistan. Therefore, the Russian army invaded Afghanistan on the orders of Leonid Berjenov, the head of the Communist Party of Russia, with the excuse that the legal government of Afghanistan had asked for their help. After the direct interference of the Russian military forces in Afghanistan, the struggle between Afghan Mojaheds and the communist regime of this country entered a new phase and became a real war.

risk of being killed for the illegal organ trade. Under such circumstances, the reluctance of the migrant Afghans to return to their country is understandable (Sadr, 2008). The resident Afghan society in Iran, during these years benefited from cultural and social changes and had every reason to stay in Iran while at the same time they served as the pull-factor for many other Afghans to come to Iran.

2. Policy of Iran towards Afghan's Immigration

The Islamic Republic of Iran for over two decades adopted a casual approach toward Afghans immigration. Iranian governors have for some time believed that the exodus of Afghans to Iran was only temporary and it would stop in due time and as such all plans and solutions were on a temporary basis with the exceptions of some special cases. Iran is one of the few countries where the Afghan immigrants live in major cities and intermingle with the local Iranian population. One reason for these was the willingness of the Iranian communities to welcome the Afghans as people from a friendly neighboring country and in the spirit of Muslim goodwill. The dispersal of immigrant Afghans to various parts of Iran was also the result of the lack of organization and camping facilities for the settlement of these immigrants (Alavi, 2002; Hoodfar, 2004, 2007b).

The Iranian government's ideological attachment to the Islamic world was associated with encouraging and inviting Afghans to settle in Iran and integrate them into Iranian communities based on its open-door policy. A sense of friendship and brotherhood with the Iranians influenced many Afghans particularly Shiites of Hazara to move to Iran. After all, Iran is a Muslim and Shiite country and Afghans will be safe from wars and ethnic discriminations. Although the Afghans movements to Iran started before the 1979 Islamic Revolution for economic reasons, after the Islamic Revolution, the eastern borders of Iran were vulnerable to Afghans and their families. Therefore, large groups of political and war refugees who affiliated to various Islamic parties were welcomed; also, Constitutional Law emphasis on expanding international relations with other Islamic and democratic movements justified their presence in Iran (Sadr, 1998). Article 154 of the Iran Constitutional Law makes it Iranian foreign policy commitment to support the poor people against the oppressors in every corner of the globe.

According the mentioned article, the people of Afghanistan were struggling against the forces of the Soviet Union and it was natural for Iran to support the Afghans in this struggle. In this way, during the years of the Soviet presence in Afghanistan, approximately two million or more Afghans entered Iran. There were no obstacles against entering of Afghans to Iran due to the open door policy of the Iranian government and neither was there any strict control over these immigrants who could settle in the cities of their choice. Green cards were issued for political refugees and blue cards for other migrants. One thing that made immigration to Iran more attractive for Afghans was their access to education system. During the time of the open-door policy, even with the existence of all the limitations imposed by the Iran government on the education of Afghans, their children could still study in different ways such as autonomously within the Afghan communities who were living in Iran. Among the Afghan children, the illiteracy rate is zero.

Such a favorable situation for Afghan immigrants in Iran continued until end of Iraq-Iran war and the demise of Ayatollah Khomeini, the founder of the revolution. These events led to replacement of open-door policy with a closed-door policy. Iranian weak economy was in disarray and the presence of the substantial Afghan population had given rise to some social and other problems. There was an attempt to force repatriation of Afghans back to Afghanistan. (Mesbahzadeh, 1999; Mohammadi, 1991). However, the Afghans were ready to work in Iran's labor market with lower wages compared to those of Iranian workers, and deteriorating economic situation led the Iranian government not to take the repatriation exercise too seriously. In general, the Iranian government had swung from one extreme to another over the issue of the Afghan migrants. In all the years after the Iraq-Iran war, the presence of Afghans was considered a source of economic difficulties and social problems on the one hand, and the repatriation of Afghans was used as a bargaining chip with the new government of Afghanistan for political advantage and on the other hand.

3. Afghans in Iran: Wanderer, refugee or Asylum

The first Afghan's migrants to Iran came during the Pahlavi dynasty, to seek work and other economic activity. The Iranian government of that time allowed Afghan immigrants into the country without any strict control and even issued resident cards to all Afghans: green card for political migrants and blue cards for others. Therefore, they freely entered and settled in the villages and cities and mingled with Iranian society (Sadr, 2008). After starting skirmishes, Soviet Union military attack to Afghanistan, appearance of Mujahedin government and rising Taliban in Afghanistan out of domestic wars, social-economic-political problems, Afghans were categorized as wanderer. This position was continuing until they reached to neighbor countries borders for escaping from these unsuitable conditions. Their position changed from wanderer to refugee after arriving to Iran and fraternal welcoming from Iranian government.

Asylum was a suitable situation for Afghans during the years that Iran was so busy about Iraq-Iran war but continued to accept Afghans. Likewise, Iran made their presence more serious by issuance asylum cards for them. After finishing Iraq-Iran war, difficulties and especially economic problems, started to show themselves. Growing population and economic problems caused Iran to stop accepting Afghans and in result denied to issue any card for their residence in Iran. In Khatami presidency period, Iran government started to expel Afghans. Afghanistan at that time had a stable central government (Sadeghi, 2007).

It was natural Iran with all those difficulties did not have any duty about Afghans when Iranian people were living in unsuitable conditions. In Ahmadi Nejad presidency period, these expulsions were going more and more and of course, this activity could not help to Iran government. Because Iran did not has serious control on its borders especially eastern borders. Therefore, Afghans came illegally to Iran without any ID card and it could be a good excuse for Iran to expel them more and more. Afghans lived in Iran as a citizen. There was no limitation for where they choose to live and could make even family bay marriage with Iranian women.

4. Iranian citizenship

Soil (the country of birth) or ancestry (upon birth); Marriage and requesting for Iranian citizenship are three possible ways of acquiring Iranian citizenship. The first way of obtaining Iranian citizenship is Original Citizenship. Article 976 of the Iranian Civil Code covers obtaining Iranian citizenship through original citizenship. Of course, to execute the soil system, there is need to pay attention to Article 977 of the Iranian Civil Code too. Citizenship acquired through ancestry is explained in Clause 2 of Article 976. According to Clause 2 of Article 976 all persons whose fathers are Iranian, whether born in Iran or in other countries, are Iranian citizens (Madani, 2010; Nasiri, 1998).

Two other ways are generally called Acquiring Citizenship. (Madani, 2010; Nasiri, 1998; Saldjoughi, 2002). Article 983 of the Iranian Civil Code pertaining to Iranian citizenship says: “An application for naturalization must be submitted to the Director of the Ministry of Foreign Affairs through the Governors or Governors General. The Ministry of Foreign Affairs will complete, if necessary, the particulars concerning the applicant and will send the papers to the Council of Ministers for an appropriate decision “to reject or approve the application. If the application is approved, a document of nationality will be issued to the applicant.”

In this case, two points are significant. The first one is that the government is the only competent authority to grant or deny citizenship and the second one is that the government is not obliged to justify or explain the reason for the decision” which cannot be challenged. In the case of Clause 2 of this Article, the period of residence in foreign countries in the service of the Iranian government will be considered as residence in Iran. According to the context of Articles 979 and 983, the conditions of the rules for granting of Iranian citizenship can be summarized as follows: residential condition, capability condition, and financial condition.

5. Marriage with Iranian women to obtain Iranian citizenship

Those who wish to obtain Iranian citizenship can get it through marriage or make a request to the Iranian government. According to opinion of Iranian legislators, the citizenship obtained in this way is referred to as the “Iranian citizenship acquisition”. Article 42 of Iran’s constitutional law says “Foreign nationals may acquire Iranian citizenship within the framework of the laws. Citizenship may be withdrawn from such persons if other States accept them as their citizens or if they request for it.”

Acquiring citizenship will be possible through marriage and a request for Iranian citizenship that must be made according to Clauses 6 and 7 of Article 976 of the Civil Code. Iranian nationality rules have two distinct situations: the foreign women who are married to Iranian men and Iranian women who are married to foreigners. The marriage of foreign women married to Iranian men is not critical; but the marriage of Iranian women to foreigners can cause problems in specific situations. Two states consider about Iranian women who marry foreigners:

- 1- The woman will retain her Iranian citizenship if her husband’s country rules accept dependence in the citizenship system. According to this system, the citizenship of the husband will not be imposed on the wife and she can keep her Iranian citizenship. Of

course, if the husband's country rules allow Iranian women to change their citizenship to their husbands' citizenship, she must offer a justified application to the Ministry of Foreign Affairs of Iran. With this permission, she can change her citizenship.

- 2- Whenever an Iranian woman marries a foreigner whose country citizenship rules are based on national unity, the Iranian woman will lose her Iranian citizenship. In fact, her husband's citizenship will be imposed on her.

Iranian women, who marry foreigners and accept their husband's citizenship, cannot enjoy the rights and advantages of their original (Iranian) citizenship. In addition, according to a second note to Clause 987 of the Civil Code of Iran they do not have permission to own immovable properties in Iran. (Almasi, 2009; Balazadeh, 2004; Madani, 2010; Nasiri, 1998). However, according to these states, Iranian women who accept their husband's citizenship can return to their Iranian citizenship after divorce or the demise of their husbands. They must accompany their application with death or divorce certificates to the Ministry of Foreign Affairs of Iran. With this permission, they will have the right to return to their original citizenship with full rights and advantages like any other Iranian citizen.

6. Problem of Afghan's marriage in Iranian Women

The marriages of Iranian women with Afghans have been only one of the consequences of this social adaptation, especially in the poorer border areas. For the families with many children and low income, the marriage of their daughters with Afghans lowered the economic cost of providing for the girls and this was considered a blessing. Many of the fathers permitted the marriage of their daughters by receiving dowries from 200 to 800 thousand Tomans² depending on the time of marriage, economic status of the family and health or ability of the girl (Khajehpour, 1996; Mohammadi, 1991; Sadr, 2008).

Due to the limiting and strict rules and regulations enacted during the time of Pahlavi (Reza Shah)³; none of these marriages were registered officially. However, in Clause 1060 of the Civil Code of Iran had stated that Marriage of Iranian women with foreign citizens have to receive special permission of the government. In addition, Article 17 of the Marriage Law was approved on 23/05/1310 (1931) emphasized that Marriage of Iranian women with foreign citizens even without legal limitation should be done through special permission of government.

According to mentioned regulation, therefore, Iranian women who marry foreign Muslim males should provide several documents including the certificate from the official authority of the man's native country that confirms the marriage with the Iranian woman and the official status of the marriage in the man's native country. In addition, in some cases, the Ministry of Domestic Affairs requires a guarantee from the man to show respect and good manners toward the wife, and provide financial support, etc. A certificate from a local official authority or political official is also required to confirm marital status of the man. Another certificate was necessary to confirm the man has no criminal record and is free from any legal

² Currency of Iran; 200 to 800 Tomans is equivalent to USD 160 to USD 620.

³ Imperial government of Iran from 1305 (1962-1979)

liabilities in his native country, while yet another certificate was needed that certifies the man to be in a sound financial position issued by an official authority of his native country. Approval would be issued after submission of these documents to the Ministry of Domestic Affairs, (Articles 2 and 3 of the Marriage Law No 50990 dated 6/12/1345 (1966), the Board of the Ministers).

However, since no Afghan man was able to refer to any Iranian officials because of his illegal residence status, and even with a residence card, he would be unable to meet the other requirements of the above-mentioned regulations; there was no opportunity to get a marriage approval. Even in the case of being able to meet all of the above-mentioned requirements, because of several reasons including lack of access to the government of Afghanistan and lack of responsible governmental offices. An Afghan man in such a situation would not be able to get the required marriage approval except for a small number of them. But due to the restrictive laws, these marriages situations continued because of the economic-cultural poverty of these Iranian families and also the desire of Afghans wanting to have a enjoying life like other Iranian citizens (Sadr, 1998, 2008)

Also, according to Afghanistan citizenship laws, Afghan citizenship had been imposes on foreign (Iranian in this case) women and according to the Iran Civil Code, an Iranian woman after marriage to a foreign citizen can maintain her Iranian citizenship unless according to the laws of the husband's country. Therefore, Afghan husband's citizenship is imposed on her; hence, the children resulting from such marriages are not Iranian but are considered as Afghans. Actually these marriages are not legal because the Afghanistan government does not consider these children as Afghan citizens. Therefore, the consequence of these illegal marriages are children without an identity status, in other words, they are stateless (Hoodfar, 2007a; Sadr, 2008).

When stability returned to Iran, the significant presence of Afghans showed itself as a serious problem in all economic, cultural, political and social areas. This was when the Iranian government decided to repatriate Afghans to their country but many Afghans resisted this move. This was because many of Afghan families had lived in Iran for years and had experienced a deep cultural change during their life in Iran. Intentionally or unintentionally these groups were influenced by the Iranian culture and thinking and had been acquired an identity closer to that of Iranians than Afghans. There was also the less than conducive living situation in Afghanistan. The appearance of the Taliban and their brutal rule made it almost impossible to live in Afghanistan. It was therefore understandable that Afghans in Iran would do their best to obtain Iranian citizenship and stay in the country with their Iranian spouses and children (Hoodfar, 2007a)

7. Afghan-Iranian Children and Problem of Citizenship

At the beginning, these marriages were not supposed to pose any major problems for the government and society of Iran. However, the real difficulties showed themselves when children were born to these marriages. Identity card was the first thing that these children needed but due to the illegal status of their parents' marriage, the Iran government did not accept any responsibility for them. According to Clause 978 of the Civil Code of Iran, the

nationality of these children was not identified because the mother's nationality does not determine the child's citizenship. The situation has continued after Islamic Revolution of Iran. However, because of war conditions, the Iranian government paid little attention to this problem. In addition, the Afghans, in post-war period were perceived as hard working labor with low wages. During these years, Afghans continued their life and illegal marriages that continued to spawn a growing illegal generation.

The problem of the children without ID card among families with Iranian mothers and Afghan fathers caught the attention of the legal fraternity. The Iranian legal fraternity argued on the basis of the nationality of the mothers and demanded equal rights for men and women in obtaining citizenship for their family. They decided to point to the Iranian government's role in accepting Afghans freely in the past through its open-door policy and used this as an excuse to force the government to grant Iran citizenship to the families of Iranian women who married Afghans.

However, the main point is that they paid attention only to the legal side in pressing for equal rights for men and women. They did not consider the implications that granting Iran citizenship to this huge population would create serious economic, political, cultural and social problems. While the careless manner in which the Iranian government had accepted Afghans in the early days following the Islamic revolution caused problems with this sudden change from open door to closed-door policy, and there was widespread anger and resentment, granting Iranian citizenship to these families would create far greater problems in future. One of these problems was uncontrolled population growth that would have implications such as unemployment, a greater level of poverty, lack of health and education facilities among many others. Iran was already facing these difficulties on a smaller scale with the present population and adding more would not be to Iran's interest (Hoseyni & Dehghani, 2002; Sadr, 1998, 2008).

Until 1984, the children from these marriages could get an ID card under their Iranian mother's family name according to Number 4 of Article 976 of the Civil Law and Article 16 of the Registration Law of Iran, which allowed the mothers to take an ID card for her children. By the end of 1984, the Iranian government added a new condition to Article 45 of the Registration Law that took away this right from Iranian mothers. To circumvent this, Iranian mothers, in order to be allowed to take ID cards for their children had to declare that but children did not have fathers and that the children were illegitimate. However, in the 1990s, this loophole was closed to them.

In all these years (Haghpanah, 2003) the Iranian government has not recognized such marriages of mixed nationals as official and consequently did not grant any legal status to these marriages. If their husbands died or left them, neither the government nor the institutions supported them. These marriages were unofficial and unrecognized, neither the Iranian government nor Afghanistan accepted them as legal, both these countries are not willing to grant ID cards and citizenship to these children. In fact, these children do not even have a legal identity to apply for citizenship. (Hoodfar, 2007a; Zanjani, 2001)

Reducing the level of official and social services for Afghan residents in Iran, increasing the

cost of education, health and urban services, denying Afghan children the opportunity to attend school, no work permits, and so on, were the plans that were proposed by the Iranian government as pressure leverages to force Afghans to return to Afghanistan in 2005. However, the actual process of forced repatriation slowed down especially when the Afghanistan political situation was in crisis, but still it continued and by 2006 it was estimated that the number of Afghans left in Iran was 743,856. However, the influx of Afghans into Iran continued illegally by 2008 as so the Afghan population in Iran was back to more than two million.

8. Conclusion

The voluntary presence of Afghans in Iran, and the continuation of the immigrant flow of Afghans to Iran were creating serious problems and daily negative consequences for Iran and proving to be increasingly expensive for the Iranian government in terms of material and spiritual costs. If Iran Islamic Republic did not settle Afghans in camps, or did not limit their movements within Iran, were not because of humanitarian considerations or ideal of Iran, neither because of the natural hospitality of Iranian culture. Rather, the main cause of the changing and confusing policies regarding Afghans in Iran was the lack of planning and foresight, and the belief that the Afghan problem would be only be temporary. The mistaken view of the Iranian authorities that the Afghan presence in Iran was only temporary had now necessitated the drastic action of forced repatriation. (Pahlavan, 1997; Sadeghi, 2007)

It was now too late and the Afghans themselves had no desire to return to Afghanistan. To them, the situation back in their home country was intolerable, with few employment opportunities, inadequate public services, and little hope for a reasonable life. Besides, having stayed in Iran for several years and being allowed to engage closely with the local Iranian community had led to a cultural transformation among the Afghan immigrants besides the social ties that now bound them due to their Iranian spouses and the offspring of these marriages. The lack of serious attention to Afghans situation for long time has complicated the problem especially after their children are born. It have led to large population of stateless people in Iran that in the future may cause the Iran government high social, economic and political costs

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