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The Fight of His Life

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The first time Captain Noorullah Aminyar traveled to the United States, in 2012, he felt calm and peaceful in a way he never had before. Back home in Afghanistan, he had slept fully clothed, boots on, hand on his rifle. The Taliban attacked every night, and he had to be ready. "But when I come to America," he told me, "I have no stress in America. I sleep good. I tell you, I have no stress. It was really easy. It was a good thing. You feel safe. I was born in the war. I grew up in the war. Always, your life is in danger. You find a little safe time, for sure you'll be happy."

For Aminyar, then twenty-eight, coming to America was an honor and an achievement. He attended the prestigious Defense Language Institute in San Antonio, the culmination of more than a decade of studying English, followed by a basic infantry officer's course at Fort Benning, Georgia, with American lieutenants. He was then selected for Ranger School, one of the few Afghan officers invited. Aminyar managed to gut his way through a two-week pre-Ranger slugfest, but then he separated his shoulder during a swim workout, and the injury forced him to drop out of the infamously brutal main course after a few days.

Such injuries are common, and Aminyar was offered a chance to stay in America to heal and then rejoin another class. But by then he had been gone for ten months, and so he returned home, as he never could stand to be away from his wife and children for long.

Back in Afghanistan, Aminyar was assigned to Shindand Air Base, near the Iranian border, to take command of a company of special operations soldiers known as the Mobile Strike Force. It was a prominent assignment, paired with US Special Forces advisors, capturing and killing leaders of the Taliban, who had grown more powerful than any time since the U.S. invasion in 2001. "The Americans told me, your company is the strongest company," he said. "We did successful operations in that place, by air and by land. And the Taliban was not able to stand against us."

"I was born in the war. I grew up in the war. Always, your life is in danger."

As Aminyar completed operations around the country, Taliban fighters began to recognize him. They learned his name, the names of his family members, and where he lived. In a Sharia court, the Taliban charged Aminyar, in absentia, with collaborating with Americans against his own people and faith. They tried him, found him guilty, and sentenced him to death. Then they started searching for him.

Later that year, in September 2014, Aminyar traveled a second time to the United States, to Camp Edwards, a National Guard base on Cape Cod, to learn how to plan U.N. peacekeeping missions. It was to be a short trip, only two weeks. But halfway through the course, Aminyar's commander, an Afghan colonel, pulled him aside.

There was a message from his father. The Taliban had found his wife, his children, his father, his mother, his brothers. They invaded his home and beat his family. "They are looking for you," his father told him over the phone, "and if you return back they will kill you."

Aminyar has five children, three boys and two girls; at the time, his youngest son was only six months old. If the Taliban came for him, Aminyar would defend his home. He had trained his whole adult life for such a moment. But he also knew the consequences of a gun fight with the Taliban on his own doorstep. "If this thing happens, in the shooting I will lose my family," he thought.

Aminyar told his father he would not return to Afghanistan. The next day, he tried to flee to Canada. He would spend the next three years in federal detention, as his asylum claim ground through the American immigration courts. To win his case, Aminyar had to prove to an immigration judge that the Taliban were so powerful that he could never be safe again in his home country. That the Taliban constituted the de-facto government of Afghanistan. That there was nowhere he could go where he'd be beyond the reach of their death warrant. That to send him home was to execute him.

In other words, Aminyar's case rests on the argument that America has lost the war in Afghanistan.

In April, I visited Aminyar at the Department of Homeland Security's Buffalo Federal Detention Facility, which lies about thirty minutes outside the city, in the small town of Batavia. The campus looks more like a 1990s suburban nursing home than a jail—grassy lawns, pink and teal furniture—until the alarms ring and the doors lock tight and polo-shirted men with radios run in response. As Aminyar and I sat and talked in a bleached-white visitor booth, a lieutenant of the guard—a former Marine machine-gunner, his arms thick with tattoos—watched over us, not unkindly.

Aminyar is dark-haired, neatly groomed, and intense; when speaking to me, he never broke eye contact even for a moment. He wore blue scrubs, code that he had committed no crime in the United States, and was held only as part of his asylum claim. Other detainees, criminals transferred from prisons while awaiting deportation hearings, wear orange and red jumpsuits, indicating the severity of their offenses. Among the blue-suit wearers, Aminyar was an elder statesman, one of the longest-held in Buffalo. When I asked him what detention was like, he told me "There is people from everywhere in the world. Everywhere in the world is people coming to America," unknowingly paraphrasing Neil Diamond.

Behind the visitors' lounge, past a series of secure doors and search points, Aminyar lived in a single open bay of bunk beds, sixty men per warehouse. He told me he slept very little; someone

was always watching a movie, using an exercise bike, going to the bathroom, rolling over on the creaking box springs. Cable television didn't show his favorite Bollywood music videos, so he learned to play dominos to pass the waking hours. He worked in the kitchen, assembling meal trays to send to the units. He ran and lifted weights. Five times a day he could pray. Five times a day the guards counted the men. It was tedious, slow time, but it was safe, and wasn't hard, if you followed the rules. "I always follow the rules," he told me. "I always follow the rules, all the time."

Always, except that once. When he got the phone call from his father, I asked him, why did he not return home to fight the Taliban, as he had for years? I understood fearing for his family, but he was the commander of a Mobile Strike Force, "the strongest company." Why not use that company to kill the Taliban?

In response to my question, he told me a story. In 2010, when he was a young Afghan Army officer, the Taliban came to his village. Alarmed, Aminyar told his brigade commander, who instructed him to go to the air base at Jalalabad and speak to the company there to plan an operation. Aminyar went to Jalalabad, but the commander was absent, and the lieutenants passed him on to U.S. Special Forces. "I told them about the situation," Aminyar said, but the Americans were busy with other priorities and declined to help. "They told me they already had a lot of planned operations. They didn't cooperate with me at that time. It did not happen." His voice weary and full of regret. The Afghan and American militaries didn't help him then, and Aminyar had no hope that they would help him when the Taliban returned.

When he told me this, I felt compelled to say out loud what I couldn't stop thinking: this man surely had served in combat with many of my special ops friends and colleagues, from my own days in uniform. In a different situation—when he wasn't wearing prison scrubs and I wasn't on assignment—we'd be drinking tea and sharing war stories. Who was on what mission when and where, and what did they do to survive, and who are we mourning that did not.

I wanted to say to Aminyar that he and I were veterans of the same war. I wanted to say that I had friends who are alive because of him.

But I didn't know how to share all of that, so it came out like this:

"I want to say, thank you for your service."

"You are welcome, sir," he said, without hesitation, and nodded with vigor.

Aminullah Aminyar, Noorullah's father, was also an army captain, in the service of King Mohammed Zahir Shah. When the Soviets invaded in 1979, his father joined the mujahedeen, to fight the communist puppet government. Noorullah was born in 1984, in the midst of the Soviet occupation, and came of age during the civil war that followed. "Without weapons, no one was able to walk around the village," he remembered. "The situation was really really dangerous."

Aminyar grew up in the Khogyani district of Nangahar Province, just south of Jalalabad on the Pakistani border, in a narrow valley of a river that drains the Hindu Kush. "Mujahedeen had seven big parties," he said, referring to the militias that terrorized rural villages. "Maybe some of

the family members are in one party, some of them in the others. Brothers on brothers, cousins on cousins. Home by home, village by village, was war."

"They are looking for you, and if you return back they will kill you."

In 1996, when Aminyar was 12, the Taliban took control of his district. They put an end to the mujahedeen anarchy by executing looters and brigands. The imams kept attendance sheets, mandated beards at least as long as the breadth of a man's hand. When one sick old man missed prayers, the Taliban dragged him from his home, whipped him, and threw him in jail. To keep his son out of the fighting, Aminullah enrolled him in extra English and computer classes. "My father, he spends more money on my education, less on food," Aminyar said.

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When Aminyar did join the Afghan Army in 2005, he did so out of a hope for a democratic future. After the American invasion that followed the 9/11 attacks, "the Taliban ran away to Pakistan," he said, and the country was "completely safe." Because he was educated, he became an officer, one of the first lieutenants in the rebuilt post-election force, and he proudly wore his uniform in his home village without fear. "I saw U.S. military, soldiers in Jalalabad City, without weapons, going into shops to buy stuff."

But the optimism didn't last. "Later on, maybe a lot of mistakes happen from Afghan military, and lots of mistakes happen from U.S. military," Aminyar told me. There were night raids, civilian deaths. The Taliban was reborn.

Aminyar proved himself quickly, and he was put on the fast track: commando training in Jordan, first instructor at the Afghan special operations school, platoon leader in Paktia and Khowst, liaison officer for his brigade in Kabul. In 2009, he was assigned to FOB Salerno, a large special operations base that he called Bagh-e-Sahara, the princess' gardens, for the many orange groves that grew there.

One night, Aminyar recounts, a squad of Taliban suicide bombers, dressed in the uniforms of a militia being trained by the CIA, attempted to cut a hole in the outer fence and sneak on to the base. A soldier in a guard tower spotted them with a search light, but the Taliban shot him. Aminyar heard the shot—attacks occurred so regularly at night that the whole base was awake and ready—and led his men outside the wire to surround the Taliban in a farmer's field. The pitched battle lasted much of the night, then went quiet. When dawn came, Aminyar ordered his soldiers to search the high grass, since "maybe some of them are alive or some are hiding." In fact, none of the Taliban were dead, only injured, and they started setting off their suicide vests. Twelve detonations later, six Afghan soldiers, two U.S. special forces advisors, and their interpreter were hurt, but nobody died, Aminyar said, and the Taliban didn't gain access to FOB Salerno. After that attack, Aminyar's unit was recognized for its bravery and skill, and he was selected for training in the United States for the first time.

Aminyar learned that the Taliban were targeting him personally when they sent a letter to his parent's home in Khogyani, instructing Aminullah to turn over his son to the Sharia Court for an investigation and trial. "When my father got that, I didn't take it seriously," Noorullah said.

"Later on, they sent the other letter, which was the decision of the Taliban court." Everyone in the village heard about the execution order.

Still, Aminyar had not planned to seek asylum in America on his trip to Cape Cod. His family was preparing for Eid al-Adha, only a few weeks away, and he had clothes at the tailor to pick up. But when his father called, he felt trapped.

All day, Aminyar fretted about what to do, confiding his troubles to a fellow Afghan officer named Mohammad Nasir Askarzada. The two men had little in common—Aminyar was a Sunni Pashtun, Askarzada a Shiite Hazara—and they had only known each other for a few weeks, since they met in Kabul while preparing to go to Massachusetts for the training. But Askarzada told Aminyar that he had an uncle and cousin in Montreal, and suggested they both go there and apply for asylum. To prove to Aminyar it was possible, Askarzada used his phone to look up YouTube videos showing people crossing a tall bridge to Canada.

During a break in the course, the Afghan officers went shopping at Walmart. Aminyar and Askarzada stayed close, discussing how they would flee, when the pair noticed that a higher-ranking officer, Major Jan Arash, was following them up and down the aisles of the store. Arash was stationed in Kandahar, and only spoke Dari. "I was afraid from him," Aminyar told me. "I said, maybe our colonel told him to follow." But then Arash caught up with them, and said, "My life is also in danger. Anywhere you guys going, I'm going with you." Aminyar said they were going to Canada. Askarzada spotted a taxi, and on a whim, they all got in.

"I have no plan. For sure I am nervous. I know nothing."

They told the driver they wanted to go to Boston. He asked no questions, and an hour or two later, he dropped them off at a downtown coffee shop. Arash had a cousin in Canada as well, and while he and Askarzada called their family members, Aminyar paced. "I have no plan," he said, "For sure I am nervous. I know nothing." There was great confusion about where to go and what to do. Arash's cousin said to go to New York City and promised he would come down and meet them and make a plan. But Askarzada's cousin gave an address in Niagara Falls, and told them to go there.

Initially, the three decided to meet Arash's cousin, so they hailed a new taxi and said they wanted to go to New York. This driver was suspicious, though, asking them what they planned to do there, and the three men began arguing in the back of the car. "Askarzada is speaking with his cousin," Aminyar said. "Several times I tell him to take the address and let me speak with him, but he just speaks with his cousin and gives the address to the taxi driver." Askarzada punched a new location in his phone. "This is the place we want to go," he told the driver. The Rainbow Bridge at Niagara Falls, on the Canadian border.

Mollified, the taxi driver said the fare would be sixteen hundred dollars. The three men counted their combined funds—they each had received a stipend to pay for the trip to America—and had just enough. As they drove all night across upstate New York, Aminyar's mind was bludgeoned flat by the magnitude of what he was attempting. "I didn't think about nothing in that time," he said.

The American city of Niagara Falls is full of Indian take-out joints, parking lots, and run-down motels, but across the river, its Canadian cousin glittered with high-rise casinos. The taxi dropped them at a shabby inn at 5 a.m., but there was no room, so the three men sat in the drizzle in a state park near the falls, watching the rapids rush past. They walked to a restaurant and had breakfast, and a few hours later, Arash's cousin met them, driving them around town while they talked. He said they should all go to a church in Buffalo, twenty minutes south, where he had heard refugees could stay and sleep. They could go slow, make a plan, arrange their travel to Canada carefully. But on the phone, Askarzada's cousin was insistent. No, come to the border now.

So the next morning, Aminyar, Arash, and Askarzada went to the Rainbow Bridge. Embedded in throngs of tourists, they walked the thin span across the gorge and stepped on Canadian soil. At the border control booth, all three handed their Afghan passports over to the uniformed officer, and requested asylum in Canada.

Two major international agreements govern the status of asylum-seekers at the Niagara Falls border: the 1951 United Nations convention on refugees and the 2002 Canada-United States Safe Third Country Agreement. The first dictates that individuals fleeing persecution from their government "for reasons of race, religion, nationality, membership of a particular social group or political opinion," may request asylum and not be forced to return home. The second says that Canada will not accept third-country refugees from the United States, or vice-versa. Unless they already have close family in Canada or the United States, every asylum seeker must apply in the country in which they first land.

Aminyar had never heard of either rule. "They make us interview, all the day," he remembered. "In the evening, the officer, he told us that I don't have family in Canada. That I came first to America, that America is immigrant country, and you have to seek first asylum in America." Aminyar walked back across the border, where he was taken into custody by American immigration officials.

A young Buffalo-based immigration lawyer named Matthew Borowski was eager to pick up pro bono work when he heard about the cases of the three Afghan officers. He had been licensed for less than a year, and he needed the experience, so he took on Arash's and Aminyar's claims. "I figured, the busier I stayed, the better I'd be as a lawyer," he told me. "I didn't know what I was getting myself into."

Borowski is a tall, bulky man with a square head and thick fingers, like a meat-packer or sparring partner at a boxing gym. Between his look and his last name, you'd never guess that his mother is from Iran, and his first language was Farsi. Borowski says "Afghanistan" with the lilt of the region, soft "g" and "a," not the nasal East Coast accent that punctuates the rest of his speech. He grew up in Philadelphia and attended law school at Drexel University before moving to Buffalo late in 2013. He chose the city because it lay on an international border, was home to immigrants from all over the world, and had a reputation as an underserved market. "Since the inauguration we've been swamped," he said. "I hate to say it, but Buffalo could use a few more immigration lawyers."

Successful asylum claims require a "nexus" of threats: an individual must fear persecution in their home country based upon "immutable characteristics," the fundamental and unchangeable nature of who they are. The system was set up in the immediate wake of World War II, and historically, asylum seekers have largely been religious and racial minorities and political dissidents fleeing oppressive dictatorships.

As a Shiite Hazara, Askarzada fit this traditional definition, and was allowed to apply for asylum in Canada because his uncle in Montreal is considered a close family member, per the Safe Third Country agreement. In addition, Askarzada's Canadian lawyer, Razmeen Joya, worked under an additional explicit legal mandate. Since 1996, Canada has not deported any Afghans back to their home country unless they had a serious criminal conviction on their record. Furthermore, because the desertions became an international news story, "we could say there was a new increased threat, because the Taliban could target him personally from the media coverage," Joya said. Askarzada was settled in three months.

Borowski's American claims were more challenging. Despite being a Dari-speaking Tajik, Arash was not considered a member of a persecuted group, so Borowski based his asylum claim on the Taliban's harassment of his family. After a year of denials and appeals, Arash was granted asylum and settled in Buffalo, where he got a job working security at the airport.

Aminyar's case was similar. As a Pashtun, the dominant ethnic group in Afghanistan, he could not claim any minority status either. Instead, Borowski argued that his immutable characteristic was not race or creed, but his success against the Taliban in battle, and the Sharia court death warrant that followed. So Borowski needed to prove two facts: that the Taliban was so powerful that it constituted a de-facto government in large swaths of Afghanistan, and that its members wanted to kill Aminyar for who and what he was to them. In other words, Borowski's task was to convince the immigration and justice divisions of the U.S. government that their fellow federal agency, the Department of Defense, had failed in their mission to destroy the Taliban.

There is no legal definition of "de-facto government," no clear standard that Borowski was asked to meet. U.S. asylum policy is administered case by case by several hundred immigration judges across the country. That makes decisions nonstandard, increasingly partisan, and—most frustratingly for the participants—unpredictable. Immigration judges have wide discretion, by design. "If I rob a bank and get arrested, I have a pretty good idea what my sentence will be," said Alex Nowrasteh, an immigration policy analyst at the Cato Institute, "but if I request asylum, anything might happen. The immigration legal code is second in complexity only to our federal income tax system."

The Transactional Records Access Clearing House at Syracuse University [publishes the asylum denial rates of every immigration judge](#). Those rates vary widely from judge to judge and city to city; for example, from 2011-2016, the El Paso, Texas court denied 96.6 percent of its 1,042 requests, while Arlington, Virginia approved 70.3 percent of its 3,717 cases.

Art Arthur, a fellow at the conservative Center for Immigration Studies and a former immigration judge (2011-2016 denial rate: 90.4 percent), said that his challenge as a judge was that "the law is very narrowly tailored. You want to be empathetic, to alleviate pain and protect

someone. But asylum law doesn't say that if something bad will happen to someone in their home country, they should be granted protection. There are specific guidelines, and it's important to maintain fidelity to the law." He is adamant that clear standards exist—"there's fifty years of case law to follow," he said—but he also admitted "at the end of the day, you can't take human nature out of the system."

Aminyar's asylum claim was first heard by Buffalo immigration judge Steven Connelly (denial rate 87.1 percent). Connelly rejected the application, as Borowski feared, and a \$25,000 bond stood while the matter went to appeal. Aminyar called friends and family in Afghanistan to ask for loans so he could leave detention, but in a country with a per capita income of \$562, he was unable to raise enough. Most were confused by the very concept of bail, and thought he was trying to pay a fine so he could be sent back to Afghanistan.

Aminyar and Borowski had higher hopes for their appeal. But five months later, the appellate body, the Board of Immigration Appeals in Falls Church, Virginia, upheld Connelly's decision, rejecting Borowski's argument that the Taliban constituted a de-facto government. Nowrasteh said the decision seemed indefensible: "Sounds like a nice legal fiction used to deny asylum claims," he told me. "The Taliban is actively seeking to become the government of Afghanistan. How could it not qualify?"

"The Taliban is actively seeking to become the government of Afghanistan. How could it not qualify?"

Aminyar was devastated, and confused by the lack of consistency. In Arash's case, "they say the Taliban is a de facto government of Afghanistan who controls large area of the country," he told me. "In my case, they say Taliban is not a de facto government in Afghanistan who controls large area of the country. The opinion of these two boards are against each other."

The opinions were different because the boards were different. The BIA is composed of sixteen administrative judges, appointed by the attorney general and serving at the pleasure of the president; the current board contains appointees from as far back as Janet Reno's tenure. Borowski knows the denial patterns of each judge, which are often predictably tied to the political party of the appointer. For high-profile cases, a panel of three judges considers the arguments, generally on paper without an appearance by the applicant. The fate of each asylum seeker, then, is often decided by luck: who will sit on their panel?

Aminyar was playing poker with a sixteen-card deck, and on the flop he was dealt one Eric Holder appointee and two from Michael Mukasey, a liberal and two conservatives. Four months after Arash's successful appeal—in which a different selection of judges heard essentially the same case from the same attorney—Aminyar's appeal was denied.

In their decision, the BIA judges identified the prime obstacle in Aminyar's case. Even if the Taliban were a de-facto government, the "controlling legal precedent" is a 1988 decision known as Matter of Fuentes, and their hands were tied. Fuentes was a police officer in El Salvador who requested asylum in 1982, saying that he could not return home because while on the job he had been attacked by drug smugglers and guerrillas seeking to overthrow the government. But the

BIA ruled that although being a cop is dangerous and terrorists would see him as a symbol of government, the threat to his life was not related to an "immutable characteristic"—race, religion, nationality, membership in a particular social group, political opinion—as defined by the United Nations. If Fuentes feared for his life, he could quit and no longer be a cop and the danger would be relieved.

Borowski is unconvinced by the precedent's merit in Aminyar's case. "This whole Fuentes argument is a strawman argument," he said. "Aminyar can turn in that uniform and go home and there's still a death warrant signed for him." Sure, he says, the Taliban would like to kill any Afghan soldier, just as Salvadoran rebels wanted to kill any police officer. But the Taliban wants to kill Aminyar specifically, personally, for leading successful operations against them.

The BIA said that for Aminyar to be granted asylum he must have a demonstrated political opinion, which they did not find. Borowski finds this laughable. "He volunteered for the Afghan army to fight the Taliban. That's his political opinion." His client agrees.

"They have lack of knowledge," Aminyar said of the Taliban. "God said, you kill one innocent person, it means you kill all of humanity. And He said, if you save one person, that means you save all of humanity. God, He ordered us to help each other. These are really stupid people, bad people."

While Borowski worked on filing a series of motions for a new appeal, Aminyar focused on raising his bond. In detention, he felt useless. With his military pay suspended, he was desperate to get a job to send money home to his family. "I am young. Any type of job I can work," he told me.

Aminyar told his younger brother to sell his wife's and mother's jewelry, plus the family's two cars, to make bail. But everyone in Jalalabad wanted to sell their cars, and no one wanted to buy—the economy had crashed since most American forces had left—and Aminyar's brother could find no customers. The family called an American bail bondsman, who offered to loan the cash on ten percent interest, but they couldn't find collateral; one family friend, his father's cousin's wife's brother, was ready to hand over the deed to his house, but then got cold feet—he was scared he'd lose his family's home if Aminyar lost his case. Eventually the family made a connection with an Afghan businessman in Toronto, who offered to courier to Aminyar the little bit of money his father had managed to raise. He brought a check for ten thousand dollars and put it in Aminyar's commissary account. Borowski requested that the twenty-five-thousand-dollar bond to be lowered, but was denied, and Aminyar remained in jail.

Aminyar was undeterred. Despite Borowski's warnings that it is exceedingly difficult for an immigrant detainee to receive parole, Aminyar started spending hours in the detention center's law library. He had the time. He petitioned his immigration judge, the BIA, the federal Second Circuit, other district courts, the ICE office in Buffalo, ICE headquarters in Washington. Most responded that they did not have jurisdiction over the case.

All this time, his family in Afghanistan continued to live in fear of the Taliban, fleeing from place to place, avoiding their home. Aminyar's father, Aminullah, had been a pharmacist who ran a drug store with a partner. When the Aminyar family left town, Aminullah's former partner brought in one of his brothers to help run the store. But in late 2016, Aminyar said the Taliban came to the shop and demanded taxes, mafia-style extortion and racketeering. Aminullah's partner and his brother refused, saying they paid their taxes to the rightful government. The Taliban shot both in the head, killing the brother and severely wounding Aminullah's partner; the man can no longer speak or walk. A third brother declared that he would seek revenge for the crime. The Taliban heard about his plan and killed him too. Only one brother, the youngest, is left standing. He took the wives and children of his older brothers into his home, closed the pharmacy, and moved the whole family out of the village.

Several months later, in January 2017, the Taliban scored another victory, one that Borowski believed would make the difference in Aminyar's case. Aminyar's youngest brother, Sefatullah, who was twenty-two years old, had never finished high school, and his father wanted him to graduate. So he went back to Khogyani long enough to finish school, and that's when the Taliban found him. After his last exam, they kidnapped Sefatullah, killed him, and dumped his body along with a note addressed to his older brother, the Army captain collaborating with the Americans, saying that the rest of the family was next.

Aminyar was heartbroken. "What is happening to my family today is because of me," he told me. But he also knew his brother's death helped his claim. Borowski had been filing motions petitioning the BIA "to reopen [Aminyar's case] due to changed country conditions." They contained news articles on the Taliban's military victories as proof they were a de-facto government. Now he filed a supplemental motion, with photos of Sefatullah. But the BIA denied the motion again, citing Fuentes. "I thought, wow, they won't even reopen. What does it take for a panel of this board to reopen a case?" Borowski said.

Frustrated by the BIA process, Borowski decided to try an additional concurrent tack. He filed a petition for review in federal court, Manhattan's Second Circuit Court of Appeals. He felt a little intimidated working at such a high level on such a major case. During the BIA process, Borowski had argued against Department of Homeland Security attorneys who were professional and competent, but also over-worked. At the Second Circuit, though, he would be up against a Department of Justice lawyer from the Office of Immigration Litigation. These attorneys played in the major leagues, with lighter case loads and prestigious work on important legal issues. And here he was, a new law school grad from a small office in Buffalo.

But then something unexpected happened. The case never made it to the Second Circuit judge, because the Department of Justice attorney suggested the whole matter be remanded back to Connelly, the immigration judge, for a do-over. For Aminyar, there was risk in accepting the decision—the appeals process could start again from scratch—but he could revisit his bond again, maybe be released, and even be given immediate asylum if Judge Connelly changed his mind based on the new evidence.

Borowski saw the offer as a tacit admission of agreement with his position. If the government attorneys thought they had a strong case, "you take it and win," he said. To his mind, the Department of Justice was sending a clear recommendation: start over, and get the case right the second time. An appeals court, Borowski said, isn't "the parent who comes with the towel and cleans up the mess. They're the parent that points the child to the towel and says 'wipe that up.'"

On the afternoon of July 10th, Aminyar was sitting in his usual chair in the detention bay, playing dominos "to make myself busy, to pass the time," when he got an unexpected summons from the guard to come "process." It was such a surprise that Aminyar protested, thinking he was being deported. "What is going on? Why am I doing process?" he asked frantically. The guard didn't know. "I went to the process. I was very worried. An officer was standing there with two papers. He said, "I want to give you bond.'"

When Aminyar's case was remanded back from the Second Circuit, Borowski requested that the original twenty-five thousand dollar bond be lowered, but Connelly never acted. So Borowski pleaded with the ICE lawyers to intervene. He knew that ICE—using an administrative procedure ostensibly designed to save the government money, by preventing prolonged incarceration—could offer a separate "immigration bond," of five thousand dollars. Aminyar had enough sitting in his commissary account. He paid the bond and became, temporarily, a free man. (ICE did not respond to a request for comment.)

The next afternoon, Borowski picked up Aminyar in the lobby of the Batavia detention center. They went to Target and Borowski bought his client new clothes and shoes; Aminyar's possessions had been accidentally given away years ago. They ate dinner with Ryan Witmer, Borowski's law partner, and his girlfriend, who made them all *zereshk polo*—Persian chicken and rice with saffron and barberries—and that night Aminyar stayed at her apartment, where he slept in his own room in his own bed, in silence. "You find a little safe time, for sure you'll be happy," he had said, about his first trip to America. The peaceful calm was finally back.

Two days after his release, Aminyar and I met up in Buffalo. He wore a new grey polo shirt, jeans that were too big, and boxy black sneakers. He was all smiles as we shook hands, which we had not been allowed to do at the detention center. Aminyar was working on getting a phone and working papers, but between errands he was spending most of his time on Facebook, catching up on three years' worth of messages. He placed his first video call to his family; his wife in tears and his children smiling big rows of new adult teeth. "I call to my mother, she didn't recognize me. I say, it is Noorullah, but she says no. They didn't recognize me. They didn't recognize my sound."

Even after three years in jail, Aminyar has no regrets about his decision to seek asylum. "My life in detention was better than my life in Afghanistan with the danger that I faced," he told me. "If I went back to Afghanistan, I would be dead already. For my wife and my children, it was difficult [for me] to be in detention, but my wife was happy that I was alive."

When I asked him about his hopes for the future, he looked me directly in the eye and spoke words that sounded as if they had been thoroughly prepared, practiced over many years in jail. "I hope to win my case in the next hearing with the immigration judge," he said. "To be able to

save my family, my wife and children. For them to join me in America. To have a safe life. I believe this time Judge Connelly will have a good justice decision. I hope for same justice Askazarda got in Canada, that Arash got in America. I want to get the same justice. Any safe place they send me, that's okay to me."

Like the war in Afghanistan itself, Aminyar's case lingers. His next hearing in front of Judge Connelly, he of the 87.1 percent asylum denial rate, takes place August 22. That day, almost three years after he walked across the Rainbow Bridge, Aminyar could be granted permanent asylum, or he could begin a new round of multi-year appeals at the BIA. That day, in a small courtroom near Buffalo, the United States government will have another opportunity to decide if the Taliban dominate Afghanistan, and America is losing its longest war.