**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/05016/2010

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Date Sent** |
| --- | --- |
| **On 26th October 2011 and 7th August 2013** | **On 19th August 2013** |
| | …… |

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**H R**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

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| For the Appellant: | Ms Hooper of Counsel.<br>Mr J Walsh of Counsel, instructed by Luqmani Thompson & Partners |
| For the Respondent: | Mrs M Tanner.<br>Mr L Tarlow, Home Office Presenting Officers |

## DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Immigration Judge Monson made following a hearing on 17th June 2010 at Taylor House.

**Background**

2. The Appellant is a national of Afghanistan born on 10th August 1992. He left Afghanistan in April 2006 and claimed asylum in the UK on 7th June 2007 having been encountered in the back of a lorry in Liverpool. On 10th September 2008 he was granted discretionary leave until 9th February 2010 due to his age but refused asylum. The Appellant appealed against the decision to refuse him asylum and his appeal was dismissed in a determination promulgated on 1st December 2008. On the 5th February 2010 he made a further application for leave to remain which was refused on 25th March 2010 and this refusal is the subject of the appeal before Immigration Judge Monson.

3. Immigration Judge Monson recited the Appellant's immigration history and recorded that the determination of the first Immigration Judge although challenged had been found not to contain any material error of law. He cited the case of Devaseelan [2002] UKAIT 00702 and considered the additional evidence in support of the appeal before him. That evidence consisted of statements, objective evidence including a country expert report from Dr Giustozzi dated 25th May 2010 and a considerable bundle of further medical evidence and assessments from the Appellant's social workers.

4. The Immigration Judge recorded that the "new" medical evidence did not materially advance the Appellant's case on credibility and he considered that there were two significant alternative possible causes of the mental health problems experienced by the Appellant other than the cause which he himself advanced, namely the events which took place in Afghanistan which preceded his departure to the UK.

5. The Immigration Judge dismissed the appeal on asylum grounds and on Article 8 grounds. It was conceded that the Appellant had not established a family life in the UK and the Immigration Judge concluded that it would not be disproportionate to the potential interference with his private life were the Appellant to be removed.

**The Appellant's Case**

6. The Appellant claimed that his step-uncle, a Shia Muslim fundamentalist who was head of the family, worked for the Hizb-e-Wahdat Party and also held a position in the government although he believed that the government was wrong to collaborate with foreign forces. Approximately six months before the Appellant left Afghanistan, his step-uncle forced him to begin classes in how to be a strict Muslim and he was required to distribute leaflets in mosques or other public places expressing opposition to the presence of foreign forces in the country. His teachers began to try and brainwash the class into becoming suicide bombers and he and his

fellow classmates were encouraged to become martyrs by using bombs against foreign troops. A priest told the Appellant that he was soon going to be a martyr and the Appellant informed his mother that he was being groomed to be a suicide bomber. When she interceded with his step-uncle he beat her, told her not to interfere and said that if the Appellant did not become a martyr he would kill him together with his mother and brother. The family went to his maternal uncle who took them to Herat on the border with Iran and the Appellant was handed over to an agent. His mother said that she and his brother would follow later. Once they left the country the agent became very aggressive and in effect he became the agent's slave.

**The Grounds of Application**

7. The Appellant's representatives filed extensive grounds. Firstly, it was argued that the first Immigration Judge clearly erred in law in respect of whether she had considered the Appellant's case as if he were a minor child notwithstanding that it was recognised that the Appellant was not granted an order for reconsideration against that determination. The Immigration Judge in this appeal compounded that error by failing to consider the evidence on the basis that the Appellant was still a minor at the time of the hearing before him and he was recollecting events which took place when he was a child of 13. The Immigration Judge did not consider the impact of the complex post traumatic stress disorder on the likely quality of the evidence given by the Appellant who was still a child.

8. Secondly, the Immigration Judge failed to consider the Appellant's case as at the date of the hearing. He appeared to focus his attention on a future point in time when the Secretary of State might choose to remove him.

9. Thirdly, the Immigration Judge made irrational findings of fact in the light of the detailed evidence from all professionals involved with the care of the Appellant when he stated that there were no substantial grounds for believing that the Appellant would retain the vulnerability of a child and if there was no prospect of the Appellant being able to live independently at the age of 18, the pathway plan would not provide for this objective. At the date of the hearing the evidence recorded by the Immigration Judge was that the Appellant was in a high support semi-independent placement by Lambeth Social Services with overnight staff seven nights a week and an additional fifteen hours of one-to-one key work support a week. He had complex needs and required ongoing access to mental health and care services. There was no indication in the evidence at all that the professionals expected the situation to change between the date of the hearing and the Appellant's 18th birthday, which was two months later.

10. With respect to Article 8, the Immigration Judge failed to make any findings of fact in relation to the situation which the Appellant would actually encounter if returned to Afghanistan and separated from his support network. He failed to state what parts of the medical evidence were accepted and what impact the Appellant's removal would have upon him were he to be returned to Kabul. Neither was there any

adequate consideration of the reliance by the Appellant on the support of his brother in the UK which forms an important aspect of his private life.

11. It was also argued that the Immigration Judge erred in relying on HE (DRC) v SSHD UKAIT 00321 which was of limited relevance to the Appellant's case since he had been under the consistent and intensive care of mental health professionals in circumstances where those professionals have had cause to investigate the veracity of his account because they were concerned that the Appellant was a potential risk in the UK.

12. Next it was argued that the Immigration Judge failed to consider the objective material adequately. There was extensive objective evidence submitted by the Appellant in his bundle to which the Immigration Judge was specifically directed. The objective evidence showed that the Hizb-e-Wahdat Party was co-operating with the Taliban and the strongest support base for this wing was Bamyan, the place where the family had fled to. The leader of the group obtained a seat in the national assembly between 2005 to 2007. He was based in Kabul. The party was the main Shiite group aligning itself with the Taliban there. They and other armed groups were forcibly recruiting children mainly through relatives and training them in the manner described by the Appellant. The Immigration Judge's finding that the Appellant's family would not become involved with a party supporting the Taliban, as they had been persecuted by the Taliban in the past, failed to take into account the objective evidence which demonstrated that such people did become supporters of the Taliban.

13. Finally, the Immigration Judge failed to consider Rule 395 at all in the determination which was relevant in itself and also relevant to the issue of proportionality.

14. Permission to appeal was granted by Senior Immigration Judge Nichols for the reasons stated in the grounds on 23rd July 2010.

**Submissions**

15. Ms Hooper submitted that the first Immigration Judge plainly did not take the correct approach to cases involving children. She recognised that even if the second Immigration Judge was not entitled to find an error of law in the unchallenged determination of the first Immigration Judge, he was required not to fall into the same error. In AA (Afghanistan) v SSHD [2007] EWCA Civ 12 the Court stated that the brief and general reference by the Adjudicator in that case was not a sufficient recognition of the inherent dangers in relying on an interview with an unaccompanied minor child, and the apparent unawareness of the general prohibition on such interviews is not remedied by a brief reference to the Appellant's age because it did not take adequate account of those dangers. In this case the first Immigration Judge had relied on a note made at the asylum screening desk which was not even signed or dated nor read back nor approved by the Appellant. She plainly erred in doing so and the second Immigration Judge was similarly wrong to follow her determination.

16. She accepted that the first determination was the correct starting point for the second Immigration Judge's determination but submitted that the second Immigration Judge was required to assess the case holistically. He had set out in his determination the principles for the determination of asylum claims but had made no reference to unaccompanied minors, namely that in such cases there was a need to give children the benefit of the doubt and more weight should be given to objective factors. He simply made a brief reference to the fact that the original Immigration Judge had said that she had taken into account the fact that the Appellant was a minor and that he was suffering form mental health problems. But he had given it no substantive consideration and had not stated how the effect of the Appellant's age and mental condition related to his assessment of the findings of fact on the evidence before him. Nothing in the determination recognised that the Appellant was recounting events which took place when he was 13, this was a point of real importance as recognised by the High Court between R (on the application of) TS and the SSHD and Northamptonshire Country Council [2010] EWHC 2614 (Admin) which emphasised the importance of treating a child as a child.

17. Ms Hooper reminded the Tribunal that the Appellant was a minor at the date of the hearing and submitted that the Immigration Judge was wrong to base his finding on a future state of affairs when the Appellant would be 18.

18. Thirdly, Ms Hooper turned to the mental health evidence. She accepted that there was limited evidence before the first Immigration Judge. However, she submitted that the second Immigration Judge was wholly wrong to rely on the case of HE for the proposition that the part which psychiatric reports can play in the assessment of credibility is usually very limited indeed. In that case there had been a single report from a psychiatrist following a one and a half hour interview conducted for the purpose of the hearing. Here there was substantial evidence of a high level of involvement by the psychiatric services who were concerned that the Appellant might pose a terrorist risk in the United Kingdom. It was explicitly considered whether the Appellant's symptoms were psychotic or auditory hallucinations stemming from the reliving of past events. The psychiatric evidence concluded that the most likely cause was past events. The medical evidence, which had never been challenged, in specifically assessing whether the Appellant was a terrorist risk, was wholly differing in character from the evidence in HE. She relied on the case of Y and Z (Sri Lanka) v SSHD [2009] EWCA Civ 362 which stated that care was required where the factual basis of the psychiatric findings is sought to be undermined by suggesting that an Appellant might have been exaggerating his symptoms and in the first instance this was a matter for the experts themselves. It is only if the Tribunal had good and objective reason for discounting that evaluation that it could be modified or disregarded. The Tribunal was obliged to give acceptable reasons for rejecting any such evidence, and there was only one reasonable conclusion open to the Immigration Judge which was that the Appellant had been subject to terrorist training in Afghanistan which had resulted in a diagnosis of PTSD which was so severe that it required involuntary hospitalisation.

19. Next, Ms Hooper submitted that the Immigration Judge had failed to refer to the objective evidence which was supportive of the Appellant's case as outlined in the grounds. The Immigration Judge had also made factual errors in paragraph 80 of the determination, failing to take into account that the objective evidence gave details of exactly the circumstances claimed by the Appellant in the place that the family fled to.

20. Finally, she addressed Article 8. All the evidence from the mental health professionals was that the Appellant was not fit to live independently. It was not open to the Immigration Judge to find that the situation would be different in two months time when the Appellant turned 18. There was no assessment of what would happen to the Appellant if his support structure was removed and he was exposed to the difficult conditions in Kabul.

21. Mrs Tanner submitted that the Immigration Judge had rightly relied on the asylum interview which had been properly conducted in accordance with the proper procedures for children. He did not rely on inadmissible evidence but on the evidence from that interview and from his witness statement. She submitted that there was no error in the second Immigration Judge's application of the case of Devaseelan.

22. She argued that the Immigration Judge had correctly taken into account all of the evidence including the medical evidence in the round and was entitled to rely on the case of HE as he did. The mere repetition of evidence did not make it any more credible. There were a number of other factors which could have caused the Appellant's mental health problems, for example the treatment which he was subjected to whilst in the hands of the agent. He was entitled to rely on the expert evidence of Dr Giustozzi which was that the Appellant could reasonably be expected to be able to evade pressure from his step-uncle once he had turned 18 and would not be vulnerable to enforced recruitment as a suicide bomber. She accepted that the Immigration Judge may have made factual errors in the determination with respect to the objective evidence but submitted that they were not material.

23. By way of reply Ms Hooper maintained that the first Immigration Judge had relied on the informal note at paragraph 6.2 of her determination and held it against the Appellant that in that so-called interview there was no mention at all of the Appellant claiming to be a potential suicide bomber. She submitted that the expert had in fact made a distinction in his report between forced recruitment which took place against the wishes of the family and forced recruitment, which took place against the wishes of the child and his definition, which was the latter, was in effect the risk of abduction. She submitted that there was no evidence that the Appellant's symptoms were caused by a trauma other than the one identified by the health professionals and to suggest that it was merely speculative. She was concerned that the Immigration Judge wrote that the Appellant "was perceived as having a mental health problem" which was not a proper reflection of his condition.

**Consideration of Whether there is a Material Error of Law**

24. The Immigration Judge did err in law.

25. Firstly he stated that Ms Hooper's attack on the first Immigration Judge's approach to the assessment of evidence from a minor was made in extensive grounds for reconsideration of her decision. The criticism was not upheld and therefore was not a matter which could be re-opened now. That must be right. The second Immigration Judge was not hearing an appeal against the decision of the first Immigration Judge. On the other hand the second Immigration Judge was required not to fall into the same alleged error and himself rely upon inadmissible evidence. He did not mention the note relied upon by the first Immigration Judge and therefore did not rely on it directly. However he did not demonstrate in the determination his awareness of the fact that the Appellant was recounting events which took place when he was 13 years old. Neither did he refer to the appropriate guidelines nor to paragraph 352 of the Immigration Rules which relate to the interviewing of children. Indeed there is no recognition in the determination of the importance of treating the Appellant at all material times as a child.

26. The Immigration Judge also fell into error in his treatment of the mental health issues and the psychiatric evidence. The mental health evidence in this appeal was extensive and the Immigration Judge's conclusion that the fact that the episodes took place was not probative of underlying cause, is insufficiently reasoned given the strength of that evidence and the fact that the health professionals concerned were specifically looking at whether the Appellant was himself a risk to the UK as a suicide bomber. The clear evidence from a variety of sources was that the dissociative episodes experienced by the Appellant were brought on by stresses linked to his experiences in Afghanistan. The strength of the medical evidence is not reflected in the determination.

27. Ms Hooper's criticism of the Immigration Judge's treatment of the objective evidence which again is extensive, is also born out. Whilst circumstantial, it is apparently broadly supportive of the Appellant's case. Moreover it seems that there are factual errors in this determination.

28. If the Immigration Judge's conclusions in respect of the credibility of the claim are flawed then even if the Immigration Judge was entitled to rely on the expert view that the Appellant would not be at risk on return as a potential suicide bomber recruit, it does have an impact on the assessment of the risk to the Appellant more generally, and in respect of internal relocation and of course is relevant to Article 8.

29. The appeal was adjourned for a rehearing before a panel of two Senior Immigration Judges.

**The Adjourned Hearing**

30. After an inordinate and inexplicable delay this matter came before me on 7th August 2013.

31. At the adjourned hearing the Appellant produced a consolidated bundle including statements relating to the asylum claim, a country expert report dated May 2010, extensive documents relating to the Appellant's mental health, evidence of his private life and objective evidence relating to the present situation in Afghanistan. I also had an up-to-date detailed report from Dr Bell, consultant psychiatrist, and a skeleton argument produced by Mr Walsh.

32. I heard oral evidence from the Appellant who confirmed that the contents of his witness statements were true. He said that he had not had contact with his family since he left Afghanistan. They had travelled with him to the border and told him that they would be following him but the Red Cross had checked across Europe and had been unable to trace them. He had been in touch with the Red Cross on a regular basis since 2009.

33. He confirmed that he was continuing to take the medication referred to in the reports, namely an anti-psychotic drug and an anti-depressant, and was currently under the care of mental health professionals. He said that he tried to keep busy and the therapist had helped him a great deal. He spent his time during the day at college or doing other activities and had no-one to return to in Afghanistan and he did not know how his life would be.

**Submissions**

34. Mr Tarlow did not seek to challenge the Appellant's evidence that he had no one in Afghanistan who would be able to support him on his return. He relied on the refusal letter dated 25th March 2010 and submitted, rather half heartedly that, whilst services in Afghanistan were not as good as they might be, he would be able to access treatment there. According to the latest medical report the Appellant was presently under the care of his GP. He said that, having acquired a number of skills in the UK would be able to make his own way in Afghanistan. The threshold to establish a breach of Article 3 was a very high one and the argument lay in favour of the Secretary of State so far as the proportionality balance was concerned.

35. Mr Tarlow did not pursue with any enthusiasm his submission that services would be available for the Appellant. Indeed he helpfully drew the Tribunal's attention to a passage in AK which states that

> "In addition, whilst the overall picture is of aid and humanitarian organisations struggling unequally to deal with the manifold problems of the urban poor and ID population and whilst we do not seek to minimise the significant incidence of physical and mental health problems and food insecurity, there is little evidence of significant numbers of such persons in Kabul suffering destitution or inability to survive at subsistence levels. These are cold words for those actually living in these conditions but we reiterate our opening observation that our task in this case is a limited one of assessing country condition by reference to established legal criteria, Article 15(c) in particular." (paragraph 225)

36. He observed that Afghanistan was clearly struggling to cope and relied upon the country guidance case of AK (Article 15(c)) Afghanistan CG (2012) UKUT 00163 for the proposition that around 60% of the population in Afghanistan suffer from mental health problems.

37. Mr Walsh said that he was not going to argue that the Appellant had a well-founded fear of persecution on return from the Taliban or from his uncle but said that the authorities would have an interest in him and the account of events which he had given of the events which referred to his departure from Afghanistan was plausible. He submitted that there would be no prospect of the Appellant being able to access mental health treatment in Afghanistan and relied upon the Respondent's evidence in the COIS report of February 2013. This Appellant suffers from a severe mental illness and is dependent on anti-psychotic drugs. He took me through the medical evidence in detail and submitted that the Appellant's health was extremely precarious and if the support network which he presently enjoyed was removed he would become very ill indeed. The appeal ought to be allowed on Article 3 grounds but if not on Article 8 since the Appellant had been in the UK for a long period of time, had made significant efforts to integrate here and the UK had put a significant investment in his mental health.

**Findings and Conclusions**

**The Medical Evidence**

38. The Appellant arrival in the UK at the age of 14 in 2007. He attended accident and emergency departments on various occasions and was sectioned under Section 3 of the Mental Heath Act and held at the Snowfields Adolescence Unit and subsequently transferred to The Bill Yule Unit Adolescence Secure Unit at the Bethlem Royal Hospital. The senior clinical psychologist who prepared a report for the original hearing said that his presentation varied from threatening and aggressive to withdrawn and catatonic. He has had a number of spells in the intensive care setting describing auditory hallucinations and regular dissociative states.

39. He was an inpatient for about a year, and was discharged in February 2009 and then managed by the mental health services for Lambeth who saw him on a regular basis. However, the psychologist noted that since his discharge HR continued to present with acute dissociative states when he became unresponsive, mute and did not initiate any movement. Since his discharge he attended A&E on many occasions and by February 2010 there had been three further inpatient admissions.

40. A further report was provided by Dr Bradley Hillier in January 2011. HR was asked to complete a trauma symptom checklist and he scored an overall relatively high score with scores clustering on anxiety, dissociative, depressive and sleep disturbance subscales in particular. Dr Hillier diagnosed post-traumatic stress disorder but said that it was not possible to exclude psychotic illness. The presence of the features which he identified may be indicative of a high risk of him

developing it in the future. He scored particularly highly on the dissociative subscale.

41. At that time HR was taking anti depressant medication Sertraialine and the anti-psychotic drug Risperidone.

42. The latest report is from Dr Bell who interviewed HR in June 2013. He recorded him as saying that he had hallucinations and he heard voices a lot of the time. Dr Bell said that he saw scars on his arms which were typical of self-harm. HR said that he had been cutting himself and drinking his blood since 2010, the last occasion being two weeks ago.

43. Dr Bell said that it was clear that HR suffers from paranoid ideation. He said that it was clear that he suffered from a severe psychiatric disorder and this had been the case at least since his first presentation in 2008. A more appropriate diagnosis than post-traumatic stress disorder would be of chronic traumatised state. The boundary line between chronic traumatised state and personality disorder is not clearly defined and it would be appropriate to consider him as suffering from a disorder of personality development resulting from traumatic experiences and this in turn makes him vulnerable to psychiatric breakdown. He said that he had given consideration to the possibility that HR was feigning psychiatric disorder and he felt very confident that this was not the case. It would not be possible to do so over such a long period of time with such a consistency of symptomatology, having seen many different psychiatrists who had made similar diagnoses.

44. Dr Bell said that his psychiatric disorder was very highly context dependent which was typical of such cases. Within the bands of certain environmental contexts, individuals can be relatively stable although very vulnerable to breakdown. There had been periods in his life when he was relatively stable.

45. He said that HR clearly had symptoms of psychosis including auditory and visual hallucinations typical of psychotic states and schizophrenia. On balance he considered that the symptoms were part of the combination of personality disorder and traumatised state rather than being suggestive of schizophrenia but this would need to be kept under review. HR should be managed by the appropriate local mental health services and would need regular review. Medication was important but the core part of treatment involved the establishment of secure, enduring and trusting relationships with mental health personnel who are skilled in their management of complex traumatised states associated with personality disorder.

46. Dr Bell said that his diagnosis did not depend on the truthfulness of the historical picture and was largely derived from a careful examination of the current mental state and review of records. If the Appellant was found not credible as regards his personal history this would not undermine the diagnosis although it would raise questions as to its itology.

47. It was clear to him that if HR were returned to Afghanistan there would be a serious and rapid deterioration in his psychiatric disorder. Although chronologically an

adult, because of his psychiatric illness, he functioned in a regressed child-like manner. He was an extremely vulnerable young man and easy prey to exploitation by others. Disruption to his immediate environmental context would be a potent stressor and the belief that he would be in danger would act as a future potent stressor. The disruption would increase his degree of paranoid ideation to such an extent that he would find it extremely difficult to distinguish between the ideation and events in the external world. Being returned to the place in which he believed that he had suffered traumatic experiences would be likely to have the effect of his becoming overwhelmed with thoughts, memories and feelings such that he would not be able to manage and would be a further cause of his deterioration. His risk of suicide/self-harm would be elevated from mild to moderate to very high.

48. With respect to medical treatment in Afghanistan, Dr Bell said that he did not have expert knowledge but it was very highly unlikely that there would be appropriate psychiatric facilities available to treat his disorder. In any event the treatment which he needs is not restricted to medication and involves secure, enduring and trusting relationships with mental health personnel. It was not likely that there would be resources available to him.

**Evidence of available treatment in Afghanistan**

49. The information as to the treatment available to the Appellant in Afghanistan comes from the COIS Report and the report of Dr Giustozzi dated May 2010.

50. Dr Giustozzi wrote as follows:

> "The provision of mental health care in Afghanistan is almost non existent. The country's only mental health hospital (Kabul) is in bad condition due to war damage and lack of maintenance. Furthermore it lacks equipment. The hospital has 50 beds. In 2003 some patients were reported to be permanently chained to the beds while violent and schizophrenic patients were confined to darkened cells. In 1998 there were another 44 beds available for mental health care in the rest of the country with specialised departments in the hospitals of Jalalabad and Shiberghan but it is not clear how many (if any) are effectively available today. There is a problem of understaffing as many of the already limited number of trained mental health professionals have left the country. According to the latest World Health Organisation's figures (2001) there are just eight psychiatrists, eighteen psychiatric nurses and twenty psychologists in the whole country and some of them are thought to have actually left the country. If we consider that according to the World Health Organisation about 4,000,000 people in Afghanistan suffer from various some of mental health problems it is obvious that the chances of having access to care for the average Afghan patient with mental health conditions are slim indeed. The opportunities for psycho-social support are almost non-existent in Afghanistan mainly because of the extreme shortage of trained mental health professionals. Although the government had made mental health one of its priorities in the reconstruction of the health system, in practice little was done not even in terms of starting

> training programmes for mental health specialists. The situation led a doctor to define the mental health care system of Afghanistan as almost non-existent during a briefing to the Congress of the US. Counselling is available in small clinics thinly distributed around the country. Even in Kabul they are few and far between and attending them could seriously disrupt attending school or presence at the job place.
>
> During one of my trips to Afghanistan in 2006 I visited two chemist stores in Kabul and asked about the availability of specialist treatments of various kinds. In the stores which I visited such drugs were not available. International medical sources confirm that specialist drugs such as psychotropic drugs are reported not to be available. The mental health hospital in Kabul receives only $100 worth of medicines monthly for 2,500 patients."

51. The other source of information comes from the COIS report. It quotes Radio Free Europe/Radio Liberty's article "Little Succour for Afghanistan's Mentally Ill" 3rd May 2012 which states:

> "Among the mental illnesses affecting Afghans most are depression, **....** anxiety and post-traumatic stress disorder but precise statistics are difficult to pin down. One frequently mentioned figure estimates about 60% of the population is affected by some form of mental illness. Other estimates range from around 15% range to as high as 98%.
>
> Even one of the leading authorities in the field of mental health in Afghanistan, the World Health Organisation, expresses scepticism and attempts to quantify the problem. Ahmad Assadi, communication and advocacy officer of the WHO in Afghanistan, cites a lack of recorded data and mental health professionals to properly diagnose patients. In an email he simply says that Afghans are in great need when it comes to mental healthy treatment. That conclusion is difficult to dispute. With some 30,000 inhabitants Afghanistan has only a handful of mental health treatment facilities nationwide."

52. COIS also reports the Huffington Post article of 16th May 2012 on the use of "shrines" to treat the mentally ill. It says that for 300 years shrine keepers have been taking in the mentally ill.

> "The prescription is drastic. Those sent here are chained to the walls of the small windowless rooms. They are fed only water, black pepper and bread. They are not allowed to bathe anything except their faces, hands and feet. Speaking with others is prohibited. If a shrine keeper decides their situation is improving they may be unchained for a few minutes so they can pray, walk outside or visit a proper bathroom."

**The asylum claim**

53. The Appellant says that his father was killed in 1999 with his brother and his step-uncle, a Shia Muslim Fundamentalist then became head of the family. About six

months before the Appellant left Afghanistan he was forced to begin attending classes in how to be a strict Muslim and required to distribute leaflets in mosques expressing opposition to the presence of foreign forces in the country. With others he was encouraged by the teachers to become a martyr by using bombs against the foreign troops. When he informed his mother that he was being groomed to be a suicide bomber she arranged with the help of his maternal uncle, for his departure from Afghanistan.

54. The evidence is that this is an Appellant who suffers from delusions. Indeed he told Dr Bell that he saw the jihadi school teachers and hears them telling him things. He also saw a friend in the room who used to come with him to the madrassa. Dr Bell noted that during the interview he often looks towards the (empty) chair where he could see Abass in a perplexed way.

55. The overwhelming probability therefore is that the Appellant's account of being sent to the madrassa and being prepared to be a suicide bomber is an expression of his illness and not grounded in reality. There is no reasonable degree of likelihood that the authorities in Afghanistan would perceive him as of any interest to them at all. He would not be at risk for a Convention reason.

**The Article 3 claim**

56. The undisputed evidence in this case is an Appellant who has suffered and continues to suffer from complex and severe mental health illness. According to Dr Bell he was continuing to cut himself and drink his own blood only two weeks ago. Although Dr Bell said that he was presently under the care of his GP it is clear that this is not a proper characterisation of the treatment which he presently received. HR told me and I accept that in fact he is currently under the care of a number of mental health professionals.

57. HR's unchallenged evidence is that he had made efforts since 2009 to trace his family through the Red Cross and whilst he did not provide documentary evidence he was clear that it existed. I accept that had his representatives told him to produce it he would have been able to do so. He has no one to return to in Kabul.

58. The unchallenged evidence from Dr Bell is that, on return, HR's mental state would rapidly deteriorate. The only evidence about the availability of medication comes from Dr Giustozzi whose evidence again was not challenged, that psychotropic drugs are not available.

59. The COIS Report refers to the State's main facility to treat mental health patients in Kabul as having a capacity to treat just 60 patients at a time. It refers to the use of traditional treatments, employing mullahs to cure people by means of exorcisms and sufferers turning to holy shrines. The report refers to a private hospital in the northern city of Mazar-i-Sharif which has modern equipment and which over the past twelve months has treated 964 patients from different provinces, but there is no realistic prospect of the Appellant, unaided, being able to go there.

60. Appellants will only succeed in medical cases on Article 3 grounds in very exceptional circumstances since the suffering is not the result of an intentional act or omission of a state or a non-state body. Article 3 cannot be relied upon to address the disparity in medical care between the UK and Afghanistan and the fact that an Appellant's circumstances would be significantly reduced is not sufficient in itself to give rise to a breach.

61. This Appellant has a significant history of self-harm and the unchallenged view of the psychiatrist is that his removal would bring the elevation of risk to very high. However this is not the basis upon which I conclude that he meets the exceptional and extreme test required in the assessment of whether there would be a breach of Article 3 by his removal. What brings his case within the protection of Article 3 is the likely treatment that he would get rather than that which he would be denied. There is a causal link between his removal and the treatment which he would suffer as a person with his degree of illness without family support to protect him.

62. The Appellant would be returning to Afghanistan without family support, as an adult, but one who functions in a childlike manner. He is dependent on anti-psychotic medication which would not be available to him. It is therefore extremely likely that his psychosis would rapidly deteriorate. He would suffer from visual and auditory hallucination. It is most unlikely that he would be able to access appropriate care. The likely treatment would be the traditional treatment, including the shrines referred to in the Respondent's own evidence i.e. being chained to walls in the dark, being given minimal food and prevented from bathing and speaking to others. It was not argued that would not be a breach of Article 3.

**Decision**

63. The original decision has been set aside. It is remade as follows. The Appellant's appeal is dismissed on asylum grounds. It is allowed on human rights grounds.

Signed Date

Upper Tribunal Judge Taylor