Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/07441/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th December 2015	**On 6th June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

AN
(ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Blair of Counsel instructed by Coventry Law Centre.
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1 This is an appeal against the decision of Judge of the First-tier Tribunal Robertson dated 1 May 2015, in which the Judge dismissed the Appellant's appeal against the Respondent's decision of 10 September 2014 to refuse to vary his leave to remain, and to make a decision to remove the Appellant under section 47 Immigration, Asylum and Nationality Act 2006. The nature of the Appellant's challenge to that decision is such that it is necessary to consider the Appellant's earlier immigration history in some detail.

2 The Appellant was born on 6 September 1995 in Afghanistan. He left Afghanistan in around March 2009, and arrived in the UK on the 29 September 2009, and claimed asylum on 4 November 2009, on which date a screening interview took place. He was then 14 years old. A witness statement and SEF form were completed for the Appellant on 1 December 2009, and he had a child SEF interview on 2 March 2010.

3 The Respondent refused asylum 18 March 2010, but granted the Appellant discretionary leave to remain to 6 March 2013, by which time the Appellant would have been 17 ½, in accordance with the Respondent's relevant policy regarding unaccompanied asylum seeking children.

4 The Appellant claims to be from the Wardak province of Afghanistan, and that the Taliban stored weapons in the basement of the Appellant's home. They would generally come at night to collect them, and return them in the morning. On one occasion when the Appellant was about 13, the Taliban were taking tea at the Appellant's house. The Appellant had refused to fetch a spitting dish for them, and one Taliban had stabbed him in the right thigh, requiring medical treatment. On an occasion in the early part of 2009, Afghan authorities attended at the home, confiscated the weapons, and beat and arrested his father. The Taliban attended at the family home later that night, and upon finding that the weapons had been confiscated by the state authorities, said that it must have been either the Appellant's father or the Appellant who had informed the authorities, and they threatened to come back. The Appellant, his mother and younger sister travelled to the Appellant's maternal uncle's house in Kabul (which the Appellant had visited several times before).

5 The Appellant therefore claimed to fear harm from the Taliban, on the grounds that they perceived the Appellant to have informed on them, and from the Afghan authorities, on the basis that the family had assisted the Taliban.

6 The Appellant appealed against the refusal of asylum to the FtT, that appeal being heard by Judge of the First-tier Tribunal Andrew. In a determination dated 29th of April 2010, the Judge dismissed the appeal. The Judge did not find the Appellant's account credible, for reasons including those discussed at paragraph 20(h), (i), (m), and (n) of her decisions, as discussed at para 30 of the present Judge's decision. Those reasons were, in summary:

(h) if the Taliban were in the Appellant's village 'day and night', there was no credible reason why they would return their weapons to the Appellant's parents' home during the day;

(i) it was more likely that the Taliban would need their weapons during the day than the night;

(m) the Appellant had given inconsistent evidence as to the presence of Taliban and Afghan government authorities in the village;

(n) the Appellant's evidence that the Afghan authorities went to his maternal uncle's house in Kabul looking for the Appellant's mother (or alternatively, looking for the Appellant's mother, and the Appellant, and his sister), was not credible; the Afghan authorities would have no reason to contact them, having confiscated the weapons and detained his father; this part of his account had been invented.

7 Judge Andrew also found at paragraph 22 of her decision: "I found on the evidence before me that the Appellant's mother and sister and uncle are currently residing in Afghanistan, in Kabul. I find that there is no evidence that the Appellant would be targeted by the Taliban or the authorities in Afghanistan."

8 No further appeal was brought against that decision.

9 On 4 March 2013, the Appellant made an application for further leave to remain in the UK. The evidence relied upon in support of that application is set out at paragraph 67 of the subsequent decision of the Respondent refusing further leave, dated 10 September 2014. It included a number of letters from the British Red Cross relating to the Appellant's attempts to trace his family, and evidence of the Appellant's private life in the UK.

10 The Respondent refused to vary the Appellant's leave in its decision of 10 September 2014.

11 The Appellant pursued his appeal to the first-tier Tribunal, his hearing coming before Judge Robertson at Sheldon Court on 21 April 2014. I note here the case as advanced by the Appellant at First tier. A skeleton argument relied upon by Miss Hobbs of Council appearing for the Appellant set out at paragraphs 1-8 the nature of the Appellant's original claim for protection, and the history of the appeal. At paragraph 9 it was argued that internal relocation to Kabul would be unduly harsh on the basis of various security incidents occurring there; because the Appellant had never lived there, had no links there, and had no relatives to return to. At paragraph 10 it was argued that the Appellant was not able to seek the protection of the state in Afghanistan due to the history of tribal and political instability as well as the frail security situation that exists there. Articles 2 and 3 ECHR were relied upon for the above reasons and at paragraph 12 onwards, submissions were made in relation to the Appellant's private life in the United Kingdom. At paragraph 18 an argument was advanced that under Article 15 (c) of the Qualification Directive the Appellant would face a real risk of serious harm if returned to Afghanistan as he would not be seen as an ordinary citizen, but one who is likely to have certain attributes and benefits of having lived in Europe, placing him at serious risk of harm.

12 In her decision of 1 May 2015 the Judge correctly directed herself that the earlier determination would represent the starting point in the assessment of the Appellant's claim (Devaseelan [2002] UKIAT 00702). The Judge noted at [29] the existence of a scarring report from a Dr Chandler in relation to the Appellant which

post-dated Judge Andrew's decision, and which stated that a scar to the Appellant's right thigh was highly consistent with a stab wound. The Judge directed herself that his task was to "reassess credibility on all the evidence in the round in light of this report and not simply to rely on the report as confirming that the Appellant's account was true" (paragraph 29). She noted that the report related to a single injury only, not a number of injuries, and that 'highly consist' category was defined as "... the lesion could have been caused by the trauma described, and there are few other possible causes."

13 At [30] the Judge gave her assessment of the credibility of the Appellant's account. At [30I] the Judge noted differences in the Appellant's account of the stabbing incident, as given in his first witness statement, second witness statement, and his account given the Dr Chandler; and held that in any event it was not plausible that the Appellant would openly defy a group of Taliban men when he was aware that they were dangerous.

14 At [30II] the Judge referred to the findings at paras 20(h) and (i) of Judge Andrew's decision regarding the plausibility of why the Taliban would need to leave their weapons at the Appellant's house during the day; acknowledged that there was some evidence to suggest that Taliban fought at night, but held that the evidence did not negate the finding of Judge Andrew that there was also likely to be fighting during the day.

15 At [30VI] the Judge referred to Judge Andrew's finding at her para 20(n) regarding discrepancies and implausibilities in the Appellant's account of the Afghan authorities visiting the material uncle's house in Kabul; noted that in evidence before her, the Appellant shifted his evidence during the hearing about that this matter, and held that there was nothing before her that would lead her to differ from the conclusion reached by Judge Andrew in relation to this inconsistency.

16 At [30VIII] the Judge referred to Judge Andrew's finding at her para 20(m) that the Appellant had given inconsistent evidence as to the presence of Taliban and Afghan government authorities in the village, and noted at her [30VIII] that nowhere within the Appellant's evidence before her had that inconsistency been addressed.

17 At [30X] the Judge noted discrepancies in the Appellant's evidence as to the time of day the Taliban would arrive at, and held that the Appellant's recent suggestion that this may have been caused by interpreting difficulties was an attempt to provide a plausible explanation for the discrepancy.

18 At [31] the Judge held:

> "On the evidence in the round, I find that the medical report is not sufficient in itself to significantly alter the conclusion that the Appellant's account lacks credibility. I find, to the lower standard of proof that the Appellant has not established that his account of the events that led up to his departure

from Afghanistan in fact occurred and he is therefore not entitled to a grant of asylum status."

19 At [32]-[38] the Judge considered submissions that the Respondent had failed to discharge her duty to the Appellant under regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 to attempt to trace his family. The Judge held at [36] that the original refusal letter ('RL1') dated 18 March 2010, by merely advising the Appellant that he could contact the Red Cross, failed to discharge the Respondent's duty to trace.

20 However, at [38] the Judge referred to the Respondent's statements at paragraph 45 and 46 of the refusal letter dated 10 September 2014 which are rather more detailed. It is there stated that: "The Home Office has been in contact with the British Embassy in Kabul ... but has been advised ... that they do not have the resources or geographical capability to carry out family tracing in the field..." Other logistical obstacles are there set out as to any proposed tracing efforts. The Judge held at [38] that :

> " 38 ...As to the evidence before me, there was nothing to suggest that the address given by the Appellant during his asylum interview would result in the Respondent being successfully able to trace the Appellant's family in the absence of an on the ground tracing service which would involve a visit to the Appellant's village. Whilst it is unclear what further information the appellant could have provided to the respondent (other than an email address or a telephone number), it is also unclear from Miss Hobbs' submissions whether she was suggesting that the address given by the appellant should have resulted in on the ground enquiries by the Respondent. I cannot go so far as to hold that the Respondent should have agents on the ground to attempt to trace the family members of each Afghan minor who enters the UK to claim asylum. Whilst I accept that the Appellant had provided details of his home address at his asylum interview, given the lack of credibility of the Appellant's account, I find that a causal link has not been established between the Respondent's failure to trace as set out in RL1 and the failure by the Appellant to substantiate his asylum claim. The initial failure to trace in RL1 did not impact adversely on the Appellant in terms of s. 55, as the Appellant was granted discretionary leave, and the failure to trace was in any event remedied as soon as the duty was clarified under DS.
>
> 39. On the evidence in the round, I find that the Appellant has also not reliably established that his family is not in Afghanistan, and particularly that his maternal uncle W, is not still in Kabul where he was when he made arrangements for the appellant to travel to the UK. ..."

21 At [41] the Judge noted that no oral argument had been made before her in relation to Article 15(c) of the Qualification Directive, but considered relevant Country

Guidance authority on the point, and held that the Appellant had not made out a case under Art 15(c).

22 At [42], the Judge found inadequate evidence to support any claim that the Appellant would be at risk of harm due to his pursuance of martial arts/as an athlete.

23 At [43]-[54] the Judge found that whilst the Appellant had established a private life in the UK, the interference with that private life by the proposed removal would not be disproportionate.

24 The Appellant's grounds of appeal to the Upper Tribunal were prepared by Ms Blair of Council, who did not appear before the First tier judge. The Appellant's 12 page grounds of appeal dated 14 May 2015 and the renewed grounds dated 11 June 2015 (following initial refusal of permission on 28 May 2015) are the same in content, but rather unhelpfully, the grounds have been renumbered and reordered, and the paragraph numbering changed. I observed to Ms Blair at the hearing that this did not facilitate the Tribunal's better understanding of the Appellant's case. In any event the ordering of the grounds of appeal seems to me to make more logical sense in the original grounds of appeal dated 14 May 2015.

25 It is to be noted also that whilst preparing for this hearing the Tribunal had cause to contact Ms Blair's instructing solicitors, because within the Tribunal file, the copy of the renewed grounds of appeal dated 11 of June 2015 appeared to contain only every other page. This does not appear to be a copying error by Field House internal administration; one can see from the fax data of the top of the renewed grounds of appeal at the time that the application was filed with the Tribunal that only every other page of the grounds was sent. Without delving into the matter any further, it therefore seems curious that Upper Tribunal Judge Eshun did not raise this problem when she was considering the renewed application, on which she granted permission on 27 July 2015. It is to be assumed that she had regard to the earlier grounds of 14 May 2015. Permission was granted generally.

26 A full copy of the renewed grounds of appeal were provided to me by the Appellant's instructing solicitors the day before the hearing. Together with that document I was provided with a skeleton argument prepared by Ms Blair dated 14 December 2015, some 8 pages long, and, extraordinarily, a document entitled "Appendix 1 to skeleton argument for the Appellant", another 8 pages long.

27 What can be said about all these documents is that they are extraordinarily prolix and have done little to assist the Tribunal in a clear understanding of the Appellant's case. It is also to be observed that in some respects they seek to raise legal issues which were not raised before the First tier Tribunal.

28 At the hearing, I heard oral submissions from both parties. Given that the content of the renewed grounds does not materially differ from the initial grounds, and, in my

view, the earlier grounds are better ordered, I shall address those grounds. They raise the following issues.

29 Ground one: "Failure to approach asylum claim as evidence from an adult remembering events that took place as a child"

30 The ground appears to argue that in applying Devaseelan, and treating the first decision as the relevant starting point for the present Tribunal's decision on credibility, the Judge failed to take into account changes in the subjective evidence of the Appellant (including the scarring report) and that the law as to assessment of credibility of minors had moved on considerably since the time of the first decision.

31 The Appellant here asserts that since the hearing of 2010, paragraph 351 of the immigration rules had been introduced to the rules, which refers to account being taken of an applicant's maturity when assessing credibility. However, this is patently false. Paragraph 351 of the immigration rules has been present in the immigration rules since HC395 was introduced on 1 October 1994. I indicated to Ms Blair that I found it difficult to understand how she could have made such a clear assertion of law which was so manifestly incorrect. She had no explanation and did not pursue the point.

32 Paragraphs 3(b) and 3(c) of the grounds refer to AA (unattended children) Afghanistan CG [2012] UKUT 00016 and KS (benefit of the doubt) [2014] UKUT 552 (IAC), however no argument is advanced in the grounds which demonstrates that any proposition of law contained within either decision is a novel proposition, or represented a change in the law since the first tier decided the Appellant's appeal in 2010. Guidance as to the liberal application of the benefit of the doubt to minors has been a feature of refugee law since the publication of the UNHCR Handbook in 1979 (see paras 213 to 219 thereof). In any event, I note that the head note of KS (not quoted within the grounds) provides at paragraph 3 that:

> " Correctly viewed, therefore, TBOD (the benefit of the doubt) adds nothing of substance to the lower standard of proof, which as construed by the Court of Appeal in Karanakaran v Secretary of State for the Home Department [2000] 3 All ER 449, affords a "positive role for uncertainty".

33 Again, there is nothing within the Appellant's grounds of appeal which establishes that there is any material change in the law as to the approach of evidence being given by minors as the law presently stands, compared with the law as it stood at 2010, or that either judge misapplied that law.

34 Paragraph 3(d) of the grounds of appeal criticises both Judge Andrew in her decision of 11 May 2010, and Judge Robertson in her decision of 1 May 2015, for failing to make specific reference to the Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult or Sensitive Appellant Guidance, arguing that paragraph 15 of such guidance required judges to refer to it. I find that Judge Andrew could not have referred to such guidance in her decision, given that the

guidance was published only on 28 October 2010, and its contents refers to other publications of May 2010, which defeats the Appellant's associated point at paragraph 5 of the grounds of appeal. Again, I find it difficult to understand how Ms Blair can make such a positive assertion as to a Judge's alleged failure to refer to guidance, when that guidance had not been published at the time of that Judge's decision. Any positive assertion that a different approach should be taken to a witness's evidence because the law has changed since the last time that such evidence was considered, must be properly researched, and accurate. Neither is the case here.

35 Further, paragraph 15 of the guidance does not oblige judges to make specific reference to the guidance *per se*. I find that Judge Robertson took account of the Appellant's age at the time that he had given his earlier evidence, at her para [30X], and there is no specific finding in the Judge's decision that the Appellant was vulnerable. There is further no suggestion that such guidance was brought to the Judge's attention at the First tier hearing in April 2015, by which time, in any event, the Appellant was not a child, but rather, a 19 ½ year old martial arts expert.

36 There is nothing in the remainder of paragraphs 4 to 6 of ground one of the grounds of appeal which remotely starts to establish an error of law in the First tier's decision.

37 Ground 2 of the Appellant's grounds of appeal is entitled "Failure to consider relevant factors – not considering the Refugee Convention or Articles 2 and 3 in relation to fresh protection claim". The grounds assert that the Appellant relied upon both his original protection claim (based on imputed political opinion) and his *fresh* protection claim (which was said to be based on the deteriorating security situation in his home area and the persecution he would face as a returnee perceived as westernised, particularly as a westernised sports person). It was argued that whilst the Judge had considered the Appellant's original protection claim in relation to the Refugee Convention and Articles 2 and 3ECHR, and had considered whether Art 15(c) of the Qualification Directive applied, the Judge had erred in failing to provide any reasons for failing to consider the Appellant's *fresh* claim under the Refugee Convention and Articles 2 and 3ECHR. It was said that the test for Article 15(c) was different from the test for recognition as a refugee or under Articles 2 or 3 ECHR.

38 Indeed it is. As per AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC) headnote 4:

> "...the binding Luxembourg case law of Elgafaji [2009] EUECJ C-465/07 (as well as the binding domestic authority of QD (Iraq) [2009] EWCA Civ 620) makes it plain that Article 15(c) can be satisfied without there being such a level of risk as is required for Article 3 in cases of generalised violence (having regard to the high threshold identified in NA v United Kingdom [2008] ECHR 616). The difference appears to involve the fact that, as the CJEU found at [33] of Elgafaji, Article 15(c) covers a "more general risk of

> harm" than does Article 3 of the ECHR; that Article 15(c) includes types of harm that are less severe than those encompassed by Article 3; and that the language indicating a requirement of exceptionality is invoked for different purposes in NA v United Kingdom and Elgafaji respectively."

39 Therefore Art 15(c) encompasses not only serious harm as defined under the Refugee Convention and Article 3 ECHR, but lesser forms of harm as well. Therefore, the Judge, having rejected at [41] and [42] (without complaint from the Appellant) the Appellant's claim under Art 15(c) of the Qualification Directive, must also be taken to have rejected the Appellant's claim for fear harm because of his westernised outlook under the Refugee Convention and Articles 2 and 3 as well. The Appellant's ground is fundamentally misconceived.

40 Ground three is entitled "Error of law on internal relocation" and argues that at [39], the Judge errs in law by failing properly to consider the test for internal relocation, and failing to consider whether internal relocation from the Appellant's home province of Wardak to Kabul would be unreasonable or unduly harsh.

41 It is to be recalled that at [31] the Judge held that the Appellant had not established that his account of events that led up to his departure from Afghanistan had in fact occurred. Further, Judge Andrews had held at her para 22 that the Appellant's mother and sister and uncle were currently residing in Afghanistan, in Kabul, and Judge Robertson held at [39] that the Appellant had not established that his family was not in Afghanistan, and particularly that his maternal uncle was not still in Kabul (as to which, see further below).

42 Further, whilst the Judge acknowledges at [39] 'background evidence of increased insurgent activity in the Wardak province,' and the Judge then considers the potential of the Appellant to live in Kabul, there is no specific finding that the Appellant would, as a result of such activity, face serious harm under the Refugee Convention and /or Articles 2 or 3 ECHR, or indeed under harm under Article 15(c) of the Qualification Directive in Wardak province. Insofar as the Appellant proceeds on the basis that there is such a finding, he is wrong.

43 The grounds of appeal do not allege any error of law by reason of a failure to make a relevant finding of risk in Wardak province by reason of insurgent activity, and Ms Blair did not draw to my attention any country information which tended to suggest that the situation in Wardak at the time of the Judge's decision crossed the threshold into Article 15(c) risk.

44 I therefore find that in the absence of any reliable account having been given as to a risk of harm existing for the Appellant in Wardak province, and in the absence of any finding that an Art 15(c) risk arose for him in that area, there was no reason for the Judge to consider potential internal flight for the Appellant, then aged 19 ½, to Kabul in any event.

45 Ground four of the grounds is entitled "Conclusion on ties to birth family founded on no evidence". The grounds take issue with the Judge's conclusion at [39]. I provide the paragraph in full here:

> "On the evidence in the round, I find that the Appellant has also not reliably established that his family is not in Afghanistan, and particularly that his maternal uncle W, is not still in Kabul where he was when he made arrangements for the Appellant to travel to the UK. In the circumstances, whilst there is background evidence of increased insurgent activity in the Wardak province, the point of return to the Appellant will be Kabul from whence his uncle can take charge of him. Given that his uncle arranged for him to leave the UK, there is nothing before me to suggest that he will not facilitate his return and contact with his own family. On my findings, he is not a child, he is not an orphan, and he will not be unattended on return to Afghanistan."

46 The Appellant's ground suggests that the Judge errs in law by making a finding unsupported by any evidence, and that the Judge has failed to have adequate regard to witness evidence (including evidence from the Appellant's supporting witnesses) that the Appellant has not been in touch with his family since being in the UK.

47 I do not find that the Appellant has made out a claim that the Judge has failed to take relevant evidence into account. At [25] the Judge states that for the avoidance of doubt, in reaching her decision, she has considered all documentary and oral evidence before him, even if not specifically referred to in the decision, and the Judge makes his finding at [39] 'on the evidence in the round'. Further, at [34] the Judge considered the Appellant's own efforts to trace his family:

> "As to the evidential weight to be given to the letters from the Red Cross, I note that the details given by the Appellant of his family in Afghanistan in his SI (Screening interview) .. are that his family composed S (his mother), I (his father) and M (his sister). His maternal uncles name was given as W. The correspondence relates to tracing enquiries made in respect of IN (the father) and PS. No evidence was given as to who PS was. Further more, there was no evidence before me as to what information was supplied to the Red Cross to enable them to carry out their tracing enquiries in the absence of which it is difficult to assess whether the correct information was provided. The letters from the Red Cross in themselves are not reliable evidence that concerted efforts have been made by the Appellant to trace his family. This conclusion is underlined by the disclaimer in all the letters from the Red Cross. I would note that whilst the Appellant's foster carer, Ms CW, stated that she had tried to help him trace his family through the Red Cross, again no detail was provided as to what steps were taken or what information was provided to them."

48 It is therefore clear that the Judge felt that there were limitations on the weight which could be attached to the Appellant's evidence as to his own efforts to trace his family. The Appellant had been disbelieved, both in 2010, and in 2015, regarding the substance of his claim for protection. The above passage, referring directly to the evidence of the Appellant's former foster carer, also undermines the Appellant's assertion that such evidence was not taken into account.

49 In the circumstances, I find that the Judge was under no obligation in law to provide any further reasoning for her apparent conclusion that the Appellant would be able to make contact with his uncle on return to Afghanistan.

50 From ground five of the original grounds of appeal, the Appellant moves on to questions relevant to Article 8 ECHR. Ground five is entitled "Fundamental misapplication of S.117B, Nationality, Immigration and Asylum Act 2002". The ground sets out the provisions of S.117, and argues that the judge had erred in law:

(a) in treating the maintenance of effective immigration control as a trump factor rather than a fact to be weighed as part of a rounded assessment,

(b) in treating the Appellant's period of lawful leave as precarious, and thus attaching little weight to that leave, and

(c) in treating the public interest factors set out in S.117B as comprehensive, whereas, it was submitted the public interest factors form a non exhaustive list, and the judge had erred in law in failing to consider other relevant public interest factors weighing in favour of the Appellant.

51 This ground contains a lengthy quote from AA (Afghanistan) [2012] UKUT 00016 (IAC) relevant to the issue that minor children should not be punished for the actions of adults, for example in the instant case, the Appellant's family decision to send the Appellant to the United Kingdom to claim asylum, having no other lawful reason to enter the UK. However, it seems to me that the Judge gave due weight to the length of time that the Appellant has been present in the United Kingdom, the ties that he has established in this country, and has not placed undue weight, in his assessment of the Appellant's private life in the United Kingdom, on the fact that the Appellant had entered as an asylum seeker, and had failed to establish any legitimate claim for protection under the refugee Convention. There is no material misdirection in law in that regard. Further, there is nothing whatever in the decision which indicates that the Judge treated maintenance of immigration control as a 'trump card'; the Judge clearly set out the various factors which tended to militating in favour of the Appellant with her decision.

52 The grounds also appear to argue that the Judge, although recognising the Appellant has been engaging in social activities in the UK, such as his help coaching younger children and adults in martial arts, misdirected herself in law in considering only the benefit to the Appellant in such activities, rather than the wider community benefit, when assessing the Appellant's private life, and that the

proportionality of the Appellant's proposed removal. However, I find that the judge adequately considers the Appellant's activities in the UK, both insofar as they benefited him, and the wider community, in paragraphs 45, 47, and 53 of the decision.

53 Ground 5(b) of the grounds of appeal argues that the Judge erred in law in finding that little weight should be attached to the Appellant's private life developed whilst in the United Kingdom. The grounds argue at length that the limited leave to remain that the Appellant had previously been granted by way of discretionary leave, did not represent 'precarious' status in the UK. Such argument is contrary to the findings of the Upper Tribunal in the case of AM (s.117B) [2015] UKUT 260 (IAC) of 17 April 2015, promulgated some four weeks prior to the drafting of these grounds of appeal. Further, paragraph 54 of Alladin v [2014] EWCA Civ 1334, referred to in the Appellant's grounds of appeal, is not authority for the proposition that discretionary leave to remain held by a minor child is not to be treated as 'precarious leave'. Paragraph 54 of the judgement in that case merely contained summary of a submission made by the Secretary of State for the Home Department; the issue of 'precariousness' was not considered in the decision of the Court itself, from paragraph 57 onwards; and the issue under discussion was not the meaning of Part 5A NIAA 2002.

54 Ground 5(c) is entitled "Failure to consider other relevant public interest factors in the proportionality exercise." This ground of appeal seeks to raise an argument that the Appellant was entitled to a 'durable solution' in relation to his immigration status, given that he had previously been an unaccompanied asylum seeking child, and has been in the care of the local authority. It is significant to note that no arguments in relation to this issue of law were advanced to the First-tier Judge. I deal with these arguments fairly summarily. It is to be noted that although a letter from a social worker of Northamptonshire County Council dated 12th of February 2013 was before the Judge at Annex K of the Respondent's bundle, that document itself was more than two years out of date by the time of the appeal hearing before the present Judge. Further, Ms Blair confirmed that there was before the Judge no copy of any local authority 'pathway plan' as to the Appellant's best interests or as to his proposed further education or future well-being. The principal authority relevant to this issue of 'durable solutions' for former unaccompanied asylum seeking children is JS (Afghanistan) [2013] UKUT 00568 (IAC) which includes the passage, (partially) quoted in the grounds of appeal, that:

> "3. For an unaccompanied asylum seeking child, the best durable solution is to be reunited with his own family unless there are good reasons to the contrary. *Where reunification is not possible and there are no adequate reception facilities in the home country, an appropriate durable solution may be to grant discretionary leave during the remaining years of minority and then arrange a return to the country of origin.* Where the child is of a young age on arrival, cannot be reunited with his family and will spend many years in the host

> state during his minority a durable solution may need to be found in the host state." (Emphasis added)

55 The Appellant was 14 ½ at the time that he was granted limited leave, up to the age of 17 ½, at which time his position was to be reconsidered. That course of action seems to me to be consistent with that part of JS which is highlighted above.

56 Further, headnote paragraph 4 pf JS continues:

> " Where the appellant is no longer a minor, the duty on the Secretary of State under s.55 of the Borders, Immigration and Citizenship Act 1999 no longer arises but when making the assessment of whether removal would lead to a breach of article 8 all relevant factors must be taken into account including age, background, length of residence in the UK, family and general circumstances including any particular vulnerability and whether an appellant will have family or other adult support on return to his home country appropriate to his particular needs."

57 It seems to me that that was the task performed by the Judge in the present case. I also note the observations of the Upper Tribunal at paragraph 29 of JS:

> "It was not argued on behalf of the appellant that the fact that he is a former relevant child receiving assistance from the local authority meant for that reason alone that he could not be removed. In our judgment any such a contention would be unsustainable. The resolution of the appellant's immigration status depends not on whether he is in receipt of care under the provision of the Children Acts but on whether he is able to show an entitlement to remain in accordance with the law or the immigration rules."

58 I find that no error of law is made out on this 'durable solutions' ground.

59 Ground 6 alleges that the Judge erred in law in failing to take into account the Article 8 rights of the witnesses who gave evidence, in particular the Appellant's partner. It was argued that in considering the proportionality of any interference with rights under Article 8 ECHR, not only the Appellant's rights under Article 8 must be considered, but the Article 8 rights of any other person as well - and the Appellant cites Beoku Betts [2009] 1 AC 115.

60 It is to be noted that the Judge held that the relationship between the Appellant and his partner did not amount to family life, and there is no challenge to that finding. Nor is there any finding that the Appellant's relationship with any friend, former carer, or relative of such persons, amounted to family life. Any Article 8 rights of the Appellant or of others potentially affected by the Respondent's decision must therefore be private life rights.

61 I find that the Appellant's argument is misconceived. Beoku Betts concerned the Article 8 *family life* enjoyed between an appellant and others - "normally a spouse or minor children, with whom that family life is enjoyed" (para 4). Their Lordships approved the proposition that in relation to family life, there is only one family life.

62 The corollary, in relation to private life, is that it is particular to the individual. No one person's private life is the same as another's. The Appellant's private life is not the same the private lives of his friends. The grounds on which the Appellant may resist his removal are that the decision is unlawful under s.6 Human Right Act 1998. I find that in relation to private life issues, that requires the consideration of *his* private life only, not those of others. The authority of Beoku Betts is not authority for the proposition advanced.

63 In any event, I find that the Judge did not leave out of account the potential effect of the decision on the Appellant's friends; see [53]. The Appellant's suggestion that the Judge erred in law in failing to consider whether the Appellant's partner would be required to travel to Afghanistan to be with him is misconceived; in the light of the finding that no family life existed between them, no such consideration was required.

64 To the extent that the Appellant's skeleton argument raises any discreet argument not contained within the Appellant's grounds of appeal, I decline to consider such arguments, on the grounds that permission was not sought or granted on those grounds. Further, 'Appendix One' to the Appellant's skeleton argument is a discursive discussion on the law as to 'durable solutions'. It has the appearance of an academic article or seminar paper. It makes no reference to the facts of the present Appellant's appeal or any to the legal issues raised in his particular appeal. Placing a court header at the top of its front page does not make it relevant to the present appeal, and, other than to determine the nature of the document, which I note was not referred to in Ms Blair's oral submissions, I have ignored it.

65 I find that no material error of law exists within the Judge's decision. The grounds on which the appeal was brought were in several respects misplaced and misleading. The author should bear in mind the guidance in VHR (unmeritorious grounds) [2014] UKUT 367 (IAC) that appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.

Decision

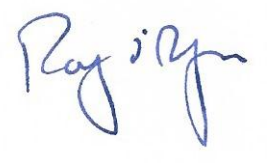
66 There being no material error of law in the Judge's decision, I do not set aside the decision.

67 The decision of the Judge is upheld.

68 The Appellant was granted anonymity throughout these proceedings at the case management hearing. No application was made to life the order, and I direct

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) that no report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court.

Signed: Date: 3.6.16



Deputy Upper Tribunal Judge O'Ryan