Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04530/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 June 2017	**On 18 July 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

[A K]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Brown, Counsel, instructed by Kasar & Co Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is a remade decision following the identification of material errors of law in the decision of Judge of the First-tier Tribunal Boyd (FtJ), promulgated on 29 August 2014, and pursuant to a signed consent order sealed by the Court of Appeal on 7 April 2017 ordering that the matter be remitted to the Upper Tribunal to reconsider the appeal against the FtJ's decision.

2. The FtJ dismissed the Appellant's asylum appeal against a decision to remove him dated 3 July 2014 but allowed his appeal on article 8 grounds. Both parties appealed this decision to the Upper Tribunal, the Appellant on the basis that the FtJ materially erred in law in his assessment of the Appellant's protection claim, the Respondent on the basis that the FtJ erred in law in his article 8 assessment.

3. The matter came before Deputy Judge of the Upper Tribunal Monson on 26 June 2015. In a decision promulgated on 13 July 2015 the Deputy Judge dismissed the asylum ground of appeal concluding that the FtJ had not materially erred in law in making adverse credibility findings based on evidence relating to the asylum claim of the Appellant's brother, which had not been before the First-tier Tribunal. The Deputy Judge allowed the Respondent's appeal finding that the FtJ materially erred in his approach to article 8. The Deputy Judge reserved his decision and did not canvass with the parties the possible outcomes should a material error be identified in respect of the Respondent's appeal. Having determined that the First-tier Tribunal materially erred in law the Deputy Judge proceeded, without a further hearing, to assess and then dismiss the article 8 appeal.

4. The Appellant sought permission to appeal to the Court of Appeal. Although refused permission by the Upper Tribunal, and then by the Court of Appeal on the papers, on 2 December 2016 Lady Justice Black granted permission to appeal on all grounds following a renewed oral hearing and the matter was remitted to the Upper Tribunal by consent.

5. At the remitted hearing on 11 May 2017 there was significant agreement between the parties in respect of the basis of the consent order and the scope of the remittal to the Upper Tribunal. Having heard submissions from both representatives, and having regard to the reasons given by the Court of Appeal in the accompany note to the consent order, I found that the FtJ materially erred in law in making adverse credibility findings based partially on details of the Appellant's brother's asylum claim and appeal without having a sufficient evidential basis before him to support those adverse findings. I additionally found that the FtJ materially erred in law by failing to give adequate reasons for rejecting the Appellant's claim in respect of his age and relying solely, and without any explanation other than it was 'Merton compliant', on the local authority age assessment. There was no dispute that the FtJ materially erred in its article 8 assessment.

The Appellant's claim

6. The Appellant claims he was born on 11 November 1997, although an age assessment undertaken by Kent Social Services determined that his date of birth was 11 November 1995. The Appellant's father co-owned a currency exchange business with (HAG) and the Appellant's brother, (AK) also worked there. The

shop was located in a market in Lashkarga City, in Helmand Province. Towards the end of 2006 their father was asked by Taliban members, who visited the shop, to transfer a large amount of money to Dubai. The Appellant's father refused and was later abducted by the Taliban from the family house. The Taliban threatened to kill him unless the Appellant's brother transferred the funds. AK reported the abduction to the Afghan police on the advice of HAG. In their investigation the police attended the family home shortly after the Taliban returned. A firefight ensued. The Appellant's father was killed along with some members of the Taliban and some police officers. The Appellant and his brother fled. The Appellant and AK feared the Taliban would seek revenge for the death of their members, and that the police would target them in the mistaken belief that they were part of a plan to lure the police to an ambush. AK made his way to the UK and claimed asylum on 26 November 2006. The Appellant stayed with HAG for almost 3 years and they moved home several times because of visits from the Taliban. AK's asylum application was refused and an appeal and reconsideration against that appeal dismissed in 2008 and he was returned to Afghanistan in 2011. 3 years or so after the firefight incident the Appellant left Afghanistan (around November 2009) and made his way to the UK where he claimed asylum on 6 January 2010. He was placed with foster carers in Tunbridge Wells, Kent.

7. In refusing the Appellant's asylum claim the Respondent noted that his brother's asylum claim had been dismissed and that AK's account had not been accepted as credible by a First-tier Tribunal Judge. The Respondent noted inconsistencies between AK's account and that of the Appellant. These included inconsistencies in respect of the manner in which they each escaped from the family house, inconsistencies as to what happened when the Taliban returned to the house, whether the Appellant remained with his brother at the Iranian border for 2 weeks following the firefight incident, and the Appellant's failure to mention in his interview and initial statement that his village had been bombed the same night as the firefight. The Respondent did not find it plausible that the police would blame the Appellant's brother in the mistaken belief that he set a trap for their ambush. The Respondent considered that the Appellant would be able to access sufficient protection from the authorities and that he could, in any event, avail himself of the internal relocation alternative. The Respondent additionally noted that the Appellant could contact the Refugee Action Choices Scheme which could provide financial support to him should he decide to voluntary return to Afghanistan. The Respondent considered whether returning the Appellant to Afghanistan would cause a breach of articles 2 and 3 ECHR and whether he was entitled to Humanitarian Protection under the Qualification Directive (Dir 2004/83/EC) but concluded that there would be no breach. The Respondent finally considered whether the Appellant's removal would breach article 8 but found that he did not meet the requirements of Appendix FM or paragraph 276ADE of the immigration rules. In so concluding the Respondent was not satisfied that the education undertaken by the Appellant in the UK and

his length of residence were sufficient to outweigh the public interest in his removal.

Documentary evidence

8. There were two bundles of documents provided by the Respondent. The Respondent's 1st bundle included, *inter alia*, Reasons For Refusal Letters dated 30 June 2010, 4 February 2011 and 3 July 2014, statements from the Appellant dated 19 January 2010 and 23 April 2013, a copy of the Appellant's asylum interview conducted on 9 February 2010, the age assessment conducted by Kent County Council dated 26 January 2010, statements from [TB] and [PB] (the Appellant's foster carers), a letter from a number of teachers including Dr Daniel Kennedy (who taught the Appellant English throughout his GCSE studies), a letter from Gillian Martin, Independent Reviewing Officer at Kent County Council dated 25 March 2013, a letter from Sally Salter, designated LAC teacher at the Bennett Memorial Diocesan School dated 26 February 2013, a letter from Bart Gumbrell, senior practitioner and registered social worker with Barnardos dated 27 February 2013, and a letter from the Rev Rachel Knapp, dated 26 February 2013. Also included was a letter from the British Red Cross dated 18 October 2013 indicating that enquiries had begun on the Appellant's case. The Respondent provided a supplementary bundle consisting of the refusal letter, dated 19 January 2007, in respect of AK's asylum claim, and the decisions of Immigration Judges R G Walters and Parker, promulgated on 19 March 2007 and 23 January 2008 respectively, dismissing AK's asylum appeals. The supplementary bundle also included a refusal to grant permission to appeal to the Asylum and Immigration Tribunal (AIT) in respect of the decision of Judge Parker.

9. The Appellant's bundle of documents included, *inter alia*, a further witness statement from the Appellant dated 22 June 2017, further witness statements from [TB] and [PB], dated 23 June 2017 and 24 June 2017 respectively, a statement from [AB] (the daughter of [TB] and [PB]) dated 23 June 2017, a statement from Bart Gumbrell dated 23 June 2017, a statement from [MR] (the husband of [AB]) dated 26 July 2014, the statement of [AN] (the sister of [TB]) dated 29 July 2014, a further statement from Sally Salter dated 17 July 2014, a number of photographs showing the Appellant with the [B family] on several occasions including Christmas, photos of the Appellant with friends from school and playing cricket, photos of the Appellant at college, a letter from the British Red Cross dated 23 May 2014 confirming that the Appellant's brother was removed to Kabul on 13 October 2011 and that the organisation was not able to initiate a trace in Afghanistan without further information on his current location. The bundle additionally included several certificates issued to the Appellant including certificates relating to ICT (information and communication technology) and Pearson Edexcel Functional skills in mathematics, Bronze certificates issued under the Duke of Edinburgh Award Scheme, and a Basic First Aid Certificate issued by St John's Ambulance. Also included were a number of letters in support including those from the Appellant's college tutor

(Pearl O'Keeffe), and a letter from Brian Gasking of the Linden Park Cricket Club dated 3 March 2012. The final section of the bundle consisted of a number of news articles, some public statements from Amnesty international, an Internal Displacement Monitoring Centre Global Report on internal displacement in Afghanistan dated May 2017, a European Asylum Support Office (EASO) Country Report on Afghanistan's security situation dated 21 January 2016, and the UNHCR Eligibility Guidelines stated on 19 April 2016. There were additionally articles relating to Helmand Province issued by the Institute for the Study of War and the Institute for War and Peace Reporting, and the Independent newspaper.

10. At the hearing Mr Clarke obtained a copy of the Appellant's statement dated 28 October 2010. I received helpful skeleton arguments from both Ms Brown and Mr Clarke and a number of authorities to which I will refer when appropriate.

The hearing

11. I maintained a detailed record of the evidence given in submissions made at the hearing. The following is a summary of that evidence. The Appellant adopted his statements. In examination in chief the Appellant stated that he had obtained a diploma (BTEC) at Level 3 and that he had two unconditional offers to undertake a BSc in Civil Engineering from the University of Kent and the University of East London, and two conditional offers from the University of Brighton and Kingston University. Although no documentary evidence was provided in support of these assertions the Appellant did produce on his mobile phone an email from UCAS confirming one of the unconditional offers, and Mr Clarke did not take issue with the Appellant's assertions in respect of his academic achievements and his offers from University. The Appellant completed his studies at college in June 2016 but was unable to commence his studies at University in September 2016 because of his immigration status. During his study of the Level 3 BTEC the Appellant learnt about buildings, health and safety, building sustainability, technologies within the construction industry, architecture, building regulations in the UK, civil engineering and project management.

12. The Appellant currently lived with another asylum seeker from Afghanistan. He was unable to work and spends his time playing sports and with friends from school and playing cricket. He also spends time with a friend from Afghanistan. He claimed he saw his former foster carers at weekends.

13. In cross-examination it was pointed out that in AK's asylum appeal he referred to the Appellant as being 8 years old when his father was killed and that this was inconsistent with the Appellant's 2017 statement where he said he was 10 years old at the time of his father's death. The Appellant confirmed that his father was abducted by the Taliban on the same day that the Taliban first visited his father's shop. He did not know why he said in his asylum interview that his

father had been abducted the following day. The Appellant confirmed that, on the evening of the firefight, the Taliban had already entered the house with his father and were talking to his brother and that AK told the Appellant to go to another room. The Appellant did not know why his brother stated that the fighting broke out outside his house without anyone having entered the house. The Appellant was asked about several apparent inconsistencies between his evidence and that of his brother including their descriptions of their escape from the family home and where they went immediately after their escape, and why AK said that they spent 2 weeks together at the Iranian border. HAG was able to hide the Appellant because he was younger than AK and, because of his youth, he would be able to stay in the house with females.

14. The Appellant explained that he was targeted by the Taliban who wanted to use him as a means of getting his brother. The Appellant explained, by way of example, that if he had been captured by the Taliban they would threaten to use him as a suicide bomber unless his brother gave himself up. The Appellant did not see his brother when he fled to HAG's house because, although the land was flat, there were trees and buildings and he was too scared. When it was put to the Appellant that his brother's evidence was that their father had been killed during aerial bombing but that the Appellant said their father was shot, the Appellant claimed that he used the Pashtu word 'fighting' rather than 'shot' and that the references to his father being shot should have been references to his father being killed during fighting.

15. The Appellant believed he would be recognised in Afghanistan because the Taliban have very strong connections and wherever he went in the country he will be asked about his background and his father's name. He believed the Taliban would have an adverse interest in him because they would want revenge for what his family did. The police would still be interested in him because they wanted to know where his brother was. In Afghanistan if one commits a crime then the authorities can take other family members in order to get to the criminal. The Appellant claimed he could not read or write in Pashtu and in order to get a job a person needs to read or understand Pashtu or Dari. The Appellant had not tried to locate HAG because he did not want to cause further problems for him with the Taliban. The Appellant was so frustrated that he forgot to give his brother his contact details when he eventually saw him in a detention centre very shortly before AK was removed to Afghanistan.

16. In response to questions from me the Appellant did not know why HAG did not give him his own contact details in Afghanistan. The Appellant claimed that the Taliban sought him a few times when he moved with HAG to a town called Grishk. The Taliban would come at midnight and knock on the door and the Appellant was immediately hidden inside a tandoor in the kitchen or hidden in carpets. The Taliban would not come inside the house because of their culture. They wouldn't care once there was fighting but, in the absence of fighting, they did not want people to think that they were being unhelpful. The Appellant also

confirmed that the Taliban came 2 or 3 times to look for him, again at midnight, when he and HAG moved to a town called Musa Qala. Throughout this time HAG continued to conduct his money transfer business from the market in Lashkarga City. This had not been destroyed in any bombing. The Taliban did not visit HAG at his shop because this was in an area controlled by the government and was full of money changers.

17. In re-examination the Appellant indicated that he might be targeted by the Taliban because they may think that he had given up his religion because he lived in a non-Muslim country and had become a kafir (an Arabic term meaning unbeliever). The Appellant's brother had apparently been living in Tunbridge Wells as well and at a mosque in Tunbridge Wells the Appellant met somebody who knew AK and who, 6 to 8 months later, informed the Appellant of AK's location. The Appellant still attended the mosque in Tunbridge Mills which was attended by many Afghans.

18. [TB] adopted her statements. In them she explains that, although the Appellant was rehoused 2014, he remains her de facto son. Over the years she came to think of him as another of her children and considered that his relationship with [PB] was akin to that of father and son. The family's relationship with the Appellant was closer than any they had with the other children they had fostered. Although she agreed that the Appellant was independent, bright and capable, she worried that people did not see his vulnerable side and she did not know how he would cope in Afghanistan. The Appellant was a scared little boy when he first arrived and had nightmares and trouble sleeping. [TB] placed the Appellant as being younger than 14 years old in her mind when he came to live with them. The Appellant is also a member of the extended family and is loved by all his aunts, uncles and grandparents. The Appellant was described as a genuinely decent person and a charming young man with a sense of humour that is becoming more "British".

19. In examination in chief [TB] was not sure where the Appellant had been offered places at university but believed it was somewhere in London. She knew he was going to study construction. In cross-examination [TB] "vaguely recalled" that HAG had looked after the Appellant for just under 3 years before he came to the United Kingdom. She did not know why no attempt had been made to trace HAG. In response to a query from me as to whether her family would be able to provide the Appellant with some funds to enable him to establish himself if removed to Afghanistan [TB] said that this had not been discussed. Two of her sons were working, she was working and her husband was working although he had recently taken a salary cut. She did not expect her sons to be able to give any financial support because they were saving for their own futures. The Appellant attended mosque at least once a week, he did not drink alcohol and there were lots of other Afghans at the mosque. She confirmed that the Appellant still spoke Pashtu but did not think that he wrote it well. She

confirmed that the Appellant was in good health. In re-examination she indicated that she would not visit Afghanistan because it was not safe.

20. [PB] adopted his statements. He thinks of the Appellant as his son and their relationship developed over 7 years. The Appellant remains a very devout Muslim but always joined in at dinners and parties. The Appellant was a genuinely good person and was always trying to help people, for example when he arranged to help an elderly couple to move their furniture. [PB] confirmed that the Appellant got on well with all members of the family and that Alex acted as his big sister. Their family would not be the same without the Appellant.

21. In examination in chief [PB] said he would not visit Afghanistan because it was a dangerous place. He did not know at which universities the Appellant had been accepted but believed that he was going to study construction. [PB] was not aware that HAG had looked after the Appellant for the 2 to 3 years prior to his leaving Afghanistan. [PB] had never heard that name. [PB] confirmed that his children living with him were aged 31, 30 and 21. On average the family sees the Appellant once every couple of months. When asked whether he would be able to assist the Appellant with a small amount of money to enable him to establish himself in Afghanistan [PB] said that the family would try to assist him and would try to help him as best they could. Three out of four of his children worked, his oldest worked in the brokerage firm Lloyds of London, his youngest was doing an apprenticeship, his middle son was looking for work and Alex was a journalist.

22. [AB] adopted her statement. The Appellant is like a son to her parents, and she regards him as a brother. It would be a real struggle to maintain their close bond if the Appellant was returned to Afghanistan. The family would also be very worried about his welfare. In examination in chief [AB] indicated that she would not visit Afghanistan if the Appellant was returned. She knew that he last attended a college in London but did not want to guess what course he studied and she did not know what he wanted to study at university. When they talked it was about religion and family. Her present relationship with the Appellant could not be replicated by remote forms of communication if he was returned to Afghanistan. When asked in cross examination whether she was prepared to assist in providing the Appellant with short-term funds in the event that he was removed [AB] indicated that she was expecting a baby and was not in a financial state to be able to assist much.

23. Bart Gumbrell adopted his statement and his letter. In examination in chief he indicated that he had been in regular contact with the [B family] and talked about the Appellant on a regular basis. In cross-examination he confirmed that the information he had to hand about the Appellant's lack of family in Afghanistan was obtained from foster meetings.

24. Both representatives relied on their skeleton arguments. Mr Clarke submitted that, whilst the Appellant's account and that of his brother did overlap, when the accounts were considered in detail there was significant inconsistencies. My attention was drawn to the various inconsistencies outlined in Mr Clarke's skeleton argument. Notwithstanding the Appellant's age when he arrived in this country his evidence was incredible. When approaching the determination in AK's asylum case I was invited to adopt the approach indicated in *AA (Somalia) v SSHD* [2007] EWCA Civ 1040. Notwithstanding the credibility issues, Mr Clarke submitted that the events described by the Appellant occurred 10 years ago, that the Appellant was not party to any of the dealings, and that it was not credible that the Taliban would use their resources to try and target him. The Appellant had never had any personal dealings with the police. Taking the case at its highest there was no risk to the Appellant.

25. Mr Clarke submitted that the background evidence provided in the Appellant's bundle, and in particular the EASO report, did not meet the high threshold necessary to demonstrate a breach of Article 15C of the Qualification Directive. Although there may be difficulties in the Appellant's former foster family providing long-term assistance they indicated that they would be able to assist in some way. I was reminded of the absence of any reference to HAG in the Appellant's interaction with the British Red Cross. The Appellant could also be entitled to funds under the Assisted Return Scheme but he would have to make a formal application. The educational qualifications obtained by the Appellant in the UK placed him in an advantageous position and he was unlikely to find himself destitute on return to Afghanistan. The Appellant would be able to establish a private life in Afghanistan given that he lived there for at least 12 years and given that he speaks Pashtu. Although the Appellant did enjoy a good relationship with his foster family the evidence given at the hearing was that they last ate together at Christmas and that the Appellant visits them once every 1 to 2 months. I was invited to take account of the fact that some members of the foster family did not know the identity of key actors in the Appellant's life in Afghanistan or the details of where he studied and what he wanted to study at university. There are said to be no emotional or financial dependency given that the Appellant was now an adult.

26. Ms Brown submitted that the Appellant's age was still important because this had a direct impact on the credibility of his evidence. I was reminded that he was around 9 or 10 years old when the incident with the Taliban and the authorities occurred and that events that are witnessed by a child may be perceived very differently by an adult. The reference at paragraph 9 of Judge Parker's decision to a letter written by AK's representatives stating that he was giving so much detail in his answers that the interviewing officer had to ask him to slow down suggested that there may have been issues with AK's interview. Although the Appellant was unable to give an explanation for some of the inconsistencies between his evidence and that of his brother this was not a reason to reject the Appellant's account. I was invited to find that the claims by

the brothers overlapped to a significant degree. I was referred to the background evidence indicating the level of insurgent activity in Helmand province in 2006, which was relevant when assessing the credibility of the accounts.

27. It was submitted that, in assessing risk on return, I had to look at what would happen if the Appellant were returned to Helmand province. It was highly likely that the Appellant would be asked about his identity, which would entail disclosing his father's identity. The Appellant's claim that the Taliban would target him because they would need to "save face" and ensure that people continued to be scared of them was credible and was similar in nature to a blood feud. Applying the UNHCR Eligibility Guidelines there was unlikely to be a sufficiency of protection available in Helmand province.

28. When assessing the availability of the internal relocation alternative Ms Brown submitted that the Appellant would be unable to rely on any support from HAG, even if he was found, because we know nothing of his current circumstances and HAG paid for the Appellant to leave Afghanistan because he was in fear of the Taliban himself. Ms Brown submitted that the skills and education obtained by the Appellant over 7½ years will mark him out as being different. Although Ms Brown accepted that there was no judicial authority indicating that someone who is perceived as having Western values would be at risk in Afghanistan she submitted that this was a relevant factor in determining internal flight. I was invited to find that the elements of the Appellant's private life were particularly strong such that they could outweigh the requirement to attach limited weight to a private life established in precarious circumstances under section 117B. I was invited to consider the renewed application of ZN (Afghanistan) [2014] EWCA Civ 735 which considered article 8 relationships with foster carers.

29. Having directed both representatives to provide further written submissions as to the applicable version of the immigration rules within 2 days, I reserved my decision.

The law

30. In a protection claim the burden rests on the Appellant to prove that he is at 'real risk' of persecution or ill-treatment sufficiently serious to amount to a breach of article 3 ECHR. This is a lower standard of proof. Where age is disputed in the context of an asylum appeal (in contrast to age assessments in judicial review proceedings), the burden is on the Appellant and the standard of proof is as laid down in *R v Secretary of State for the Home Department Ex parte Sivakumaran* [1988] AC 958 and *R (Karanakaran) v Secretary of State for the Home Department* [2000] EWCA Civ 11 (see *Rawofi (age assessment – standard of proof)* [2012] UKUT 00197 (IAC)). When assessing whether there is an interference with article 8 the burden rests on the Appellant and the standard of proof is the

balance of probabilities. Once an interference has been establish the Respondent must demonstrate that her decision is proportionate.

31. In assessing the Appellant's evidence I take account of his minority when the firefight is said to have occurred and when he entered the UK and underwent his screening and substantive asylum interviews. I have taken specific account of paragraph 351 of the immigration rules when assessing the Appellant's claim, and the Respondent's policy 'Processing Children's Asylum Claims', which indicates that in certain circumstances the benefit of the doubt will need to be applied more generously when dealing with a child, particularly where a child is unable to provide detail on a particular element of their claim. I have considered and applied the guidance provided in *KS (benefit of the doubt)* [2014] UKUT 00552 (IAC) when assessing the Appellant's credibility in respect of his age.

Findings and conclusions

The Appellant's age

32. The Appellant maintains that he was born on 5 November 1997, making him 19 years old. He has been aged assessed with a date of birth 5 November 1995, making him 21 years old. The Appellant has no documentation relating to his age or indeed his identity. He maintains that he once saw his brother making documents at their home which made him curious as to his age. His father told him that he was born on 5 November 1997.

33. The Appellant has not challenged, by way of judicial review proceedings, the decision by Kent County Council that his date of birth is 11 November 1995. In his statement dated 23 April 2013 the Appellant claims his previous solicitors failed to discuss with him the local authority's age assessment and that if he knew he could have challenged the decision he would have done so. No evidence has been provided in respect of the failure by the previous solicitors to discuss the age assessment with the Appellant. There is, for example, no evidence that the previous representatives have been asked to comment on their alleged failure (*HG (Conduct of previous solicitor - Procedure) Turkey* [2004] UKIAT 00066) and no late application seeking an extension of time to challenge the local authority's decision by way of judicial review has been made. Although the Appellant's brother confirmed his age to his foster parents I note that AK was found to be incredible by the First-tier Tribunal.

34. I have considered in detail the 19 page age assessment undertaken in 2010 by two social workers, both with considerable experience. Although the Appellant challenges the conclusions of the age assessment no issues were identified with the lawfulness of the age assessment itself. I remind myself that the mere fact that an age assessment was lawfully completed does not mean that the Appellant is the age decided by the age assessors, and I am not bound by the

findings of a Merton compliant age assessment. I must determine for myself whether the Appellant is the age he claims to be. The age assessment is nevertheless a relevant factor in my assessment.

35. The age assessment considered, in addition to the Appellant's educational background and health, his emotional and behavioural development, his family and social relationships, his social presentation and self-care skills. The report considered the Appellant's interaction with other children and with a number of other social workers. It is clear that a range of factors were considered by the age assessors.

36. The Appellant was put in a school in year 9 (ages 13 to 14) which was consistent with the age determined by Kent County Council. None of the letters from the school suggested that the Appellant's inclusion in year 9 was inappropriate, and the majority of letters from his teachers indicated that he was a mature individual.

37. Although [TB] was unclear of his age when the Appellant first came to stay with her, and that she placed him as younger than a 14-year-old in her mind, she has not provided any cogent explanation as to why she believed the Appellant was younger than 14. She claims, from personal observations, that Afghan boys look older than Caucasian boys but that the Appellant looked smaller, less developed and younger than her son Arthur who was 14 years old the time. There has however been no independent or objective evidence to support [TB]'s view that Afghan boys generally look older than Caucasian boys, and she has not provided any further details as to how Afghan boys general look older or details as to her experience with Afghan boys. This view, in any event, is based on physical appearance and demeanour, yet physical appearance is a notoriously unreliable basis for assessment of chronological age (*NA v LB of Croydon* [2009] EWHC 2357 (Admin)). Although she described the Appellant as being very unsettled and restless when he first arrived, and claimed that this was what one expected from a younger child of around 12 years old, his restlessness could be attributed to the difficult journey undertaken by the Appellant and his natural anxiety in being placed in an alien environment. I note that [TB] is a specialist teacher for the Specialist Teaching Service. Although no details have been provided of the nature of her teaching or the age range she teaches this may give her greater insight into the behaviour of children of a certain age, but there is no evidence that she has any first-hand knowledge of teaching individuals with the Appellant's background in Afghanistan. She has had the opportunity to observe the Appellant for far longer than the social workers who conducted the age assessment, and in a more informal setting, but I note that no other member of the [B family] has commented on the Appellant's age, and none of his teachers have suggested he is young by 2 years than the age ascribed to him.

38. Finally, albeit in the context of an age assessment judicial review, the Administrative Court in *MVN v LB Greenwich* [2015] EWHC 1942 observed that

it is permissible to have regard to credibility more generally when determining age, as long as the primary focus is not forgotten. I additionally remind myself that an adverse credibility finding with respect to the Appellant's asylum claim is not determinative of his claimed age, and vice versa[1].

39. It is therefore appropriate, before making a conclusive finding on the Appellant's age, to consider the credibility of his account. In so doing I bear in mind the guidance identified at [31] of this decision.

The Appellant's account

40. In *AA (Somalia)* [2007] EWCA Civ 1040 the Court of Appeal considered the approach that should be adopted when considering what weight to attach to a finding of fact in one person's asylum/human rights appeal when those findings are relevant in another person's subsequent asylum/human rights appeal. After a detailed consideration of authorities on the issue the Court of Appeal held, at [21], that, "*The second tribunal should have regard to the earlier decision but only as a starting point*." At [29] the Court stated, "*In cases where the parties are different, the second tribunal should have regard to the factual conclusions of the first tribunal but must evaluate the evidence and submissions as it would in any other case. If, having considered the factual conclusions of the first tribunal, the second tribunal rationally reaches different factual conclusions, then it is those conclusions which it must apply and not those of the first tribunal*."

41. I take as my starting point that the asylum claim of the Appellant's brother was refused and that his appeal was dismissed on the basis that he was not credible. I take those findings into account. I appreciate from the Appellant's most recent statement that he cannot explain why AZ gave only a vague explanation of how the money transfer business worked, that the Appellant did not know that the money may have been linked to drug production, or why the Taliban would want his father to transfer the money instead of another money exchanger. I accept that the last point is not something within the Appellant's realm of knowledge. It was submitted by Ms Brown that Judge Parker had engaged in an unwarranted degree of speculation in suggesting that the Taliban would only use trusted and sympathetic money exchanges to transfer large sums of money. I find that the conclusions of Judge Parker were reasonably open to her and that, whilst necessarily speculative, her conclusion was based on a logical premise. Having taken her findings into account I remind myself that I am in no way bound by the findings of Judge Parker.

42. Although Mr Clarke was unable to obtain AZ's statements or his interview record, the Upper Tribunal has now been provided with the Reasons For

[1] In *B v the Mayor and Burgesses of the London Borough of Merton* [2003] EWHC 1689 (Admin), Stanley-Burnton J (as he then was) indicated, "*A history that is accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin*."

Refusal Letter issued against him and, most significantly, the decision of Judge Parker. Ms Brown submitted that I should exercise very great caution in relying on any discrepancy between the Appellant's evidence and that recorded in Judge Parker's determination and that no evidence from AZ has yet been served. Ms Brown pointed out that AZ's representative made submissions concerning the interview record and argued that no weight should be attached to it in respect of AZ's allegedly vague evidence regarding the money transfer business. Judge Parker however explained that no issue had been raised with the accuracy of the AZ's interview record. I additionally note, based on the refusal of permission to appeal to the AIT, that no issue appears to have been raised with the accuracy of the evidence recorded by Judge Parker. Unlike Judge of the First-tier Tribunal Boyd and Deputy Upper Tribunal Judge Monson, both of whom were entirely reliant on factual assertions relating to AZ's claim contained in the Appellant's Refusal Letter, I have the benefit of Judge Parker's full decision. She heard oral evidence from AZ and recorded all his evidence. I have no reason to doubt the accuracy of the evidence as recorded by Judge Parker and Ms Brown was unable to identify any other reason for doubting the accuracy of Judge Parker's record of AZ's evidence. In these circumstances I am satisfied that Judge Parker's decision accurately reflects the evidence given by the Appellant's brother and that I can properly consider the evidence given by the Appellant against that given by AZ.

43. In comparing the Appellant's evidence with that given by his brother I have taken express account of the Appellant's age when the pivotal events are said to have occurred and that, in any event, is it natural for some inconsistencies to arise due to events being recounted from different perspectives and the significant passage of time. Even taking account of these factors I have found that the following inconsistencies between the Appellant's account and that of his brother undermine the reliability of their account.

44. In his asylum interview, which was conducted on the basis that he was a child, and with the presence of a support worker, the Appellant explained, at questions 17 to 21, that the Taliban first visited his father's shop one morning and an argument ensued following his refusal to transfer the money. The Appellant's father returned that evening to the family home and described what happened to the Appellant. His father then returned the next morning to his shop and, on the evening of that second day, at the family house, the Taliban kidnapped the Appellant's father. The Appellant's evidence in this regard was quite clear. The questions he was asked were put in straightforward terms and his answers was detailed and unambiguous. This evidence is consistent with the Appellant's statement dated 19 January 2010 where he described, at paragraph 8, that the Taliban came to the family home the day after they first visited the money exchange shop. It is also consistent with the Appellant's statement dated April 2013 when he confirmed that the Taliban came the next evening (see paragraph 13). This account of events is inconsistent with the evidence given by the Appellant's brother, as recorded in Judge Parker's determination, that their

father was abducted by the Taliban the very same day that the Taliban first visited the shop. Further, in his oral evidence the Appellant stated that his father was taken hostage on the same evening of the day that the Taliban first visited the money exchange shop, which is in stark contrast to his own written evidence. When asked to explain the inconsistencies not only between his evidence and that of AZ but within his own evidence, the Appellant was unable to do so. I take into account that the Appellant was a minor when he was interviewed and when his statement was taken in 2010. There is however nothing to indicate that the Appellant was asked any inappropriate question during his interview, and the interview record, as described above, indicates that the questions were clear and straightforward. Nor is there anything to indicate that the statement, presumably taken by the Appellant's legal representatives, was taken in rushed circumstances. Having taken full account of the Appellant's minority and the passage of time I am nevertheless satisfied that there is no reasonable explanation for this significant inconsistency. Given the significance and seriousness of the events as described by the Appellant I do not find it credible that he would make a mistake as to when the Taliban took his father hostage. I find this inconsistency significantly undermines the Appellant's credibility.

45. In her determination Judge Parker recorded the evidence from AZ to the effect that he heard gunfire outside the family house and, although he did not see the fighting, he "assumed" it was between the armed men and the authorities. This evidence sits in stark contrast to that given by the Appellant both in his 2017 statement and his oral evidence at the hearing. In his 2017 statement (at paragraph 10) the Appellant claimed there were 5 Taliban men in the room with his father and they were talking to his brother before the shooting commenced. In his oral evidence the Appellant confirmed that the Taliban were in the room and that they were talking to his brother and that he was sent to another room by his brother. There would have been no need for any 'assumption' by AK given that some of the Taliban were inside the property with the Appellant's father. This account is also inconsistent with the Appellant's evidence in his asylum interview, at question 45, where he was asked whether any of the Taliban actually entered the house and he answered, "*I didn't see that but when I looked I've seen the large door was open*." There is yet a further inconsistency in that the Appellant's brother learned that his father had been brought by the armed group to the village and had been killed in the bombing only when informed by HAG. Yet on the Appellant's account his brother would have been aware that their father was present at the house. These inconsistencies undermines the reliability of both accounts and the weight that I can attach to them.

46. It was AZ's evidence that their village was bombed by the authorities in an attempt to quell the fighting, and that the local villagers blamed AZ and his family for the atrocities caused by the bombing. In his asylum interview and his statement of January 2010 the Appellant made no mention of the village being bombed by (a possibly British) plane. This was only mentioned for the first time

in the Appellant's statement of 23 April 2013. In that statement the Appellant said he did not mention the bombing because he was not asked and because there were bombardments in his village on a daily basis. This explanation however sits uncomfortably with AZ's account. If the village was subject to daily bombings there would be no reason to believe that the bombing on that night was the result of the firefight, or that the Appellant's family would be blamed by the villagers for something that occurred very frequently. No evidence has been produced that there were bombings on this village or any other village on a daily basis. I do not accept that there would be bombings of such frequency as described by the Appellant. The use of aeroplanes to bomb positions is likely to be very expensive and a strain on military resources. Although the background evidence indicates that between 2004 and 2006 there was Taliban and other insurgent activities in Helmand province nothing in that background evidence suggests that the authorities reacted by the frequent or daily bombing of particular villages. I find that his omission of any reference to a bombing on the very same night as the firefight undermines the Appellant's account of those events.

47. In his asylum interview the Appellant stated that HAG informed him and his brother that their father had been shot in the fighting. This is consistent with the Appellant's January 2010 statement where, at paragraph 13, HAG informed him and his brother that their father had been hit in the shooting and died in his house. There was no suggestion that there had been any misunderstanding or error in interpretation either during the asylum interview or when the statement was taken. It was however AZ's evidence that he had been informed that their father had been killed as a result of the aerial bombing. At the hearing the Appellant suggested for the first time that he informed the Pashtu interpreters during his asylum interview and when his January 2010 statement was taken that his father had been killed during 'fighting' and that he had not said his father had been shot. There was however no independent evidence presented to me that the Pashtu word for 'fighting' could be confused with the word for 'shot'. The Appellant's asylum interview record and his January 2010 statement clearly recorded that HAG informed him that his father had been shot. This inconsistency between the accounts undermines their reliability.

48. It was AZ's evidence that he and the Appellant remained for 2 weeks together on the Iranian/Afghan border following the firefight at their home. The Appellant maintains that this did not occur and that he did not see his brother since they fled from opposite exits in their home. This inconsistency, without any apparent explanation, also undermines the reliability of both accounts.

49. Judge Parker recorded AZ as having said that he left via the back of the family compound when the firefight ensued. In his asylum interview the Appellant said that he escaped via the back door of the property and that his brother escaped through the 'large door'. When asked how many doors there were into the house the Appellant said there were 2. Later, in a drawing attached to his

statement of April 2013, the Appellant described his house as having a main gate, 4 rooms, a further guest room, a kitchen and 2 exits at the rear. In his 2013 statement the Appellant describes his house as a 'qala', like a fort, and that it had 2 doors or exits at the back. This however is inconsistent with his initial evidence that the property only had 2 doors in total. The Appellant was asked during his asylum interview on several occasions to describe how he and his brother escaped and he gave clear evidence that the property only had 2 doors, and that AZ escaped through the 'large door'. The Appellant's later evidence, that there was a main gate to the property and an additional two further exists is inconsistent with his earlier evidence.

50. In his asylum appeal AZ claimed he had spoken to HAG 3 to 4 months before the hearing (which would have been around September or October 2007). According to the Appellant's account he would have been living with HAG at this time. It is therefore almost inconceivable that HAG would not have informed AZ that the Appellant was residing with him, or informed the Appellant that he had spoken to his brother and indeed sent documents, including an arrest warrant, to AZ.

51. AZ was informed by HAG that it was dangerous for him to stay at his (HAG's) house and advised AZ to hide at [DK]'s home. Yet in his 2017 statement the Appellant said he did not know how or why AZ went to [DK]'s home. Given that the Appellant also ran to HAG's home and would naturally have been anxious about his family it is simply not plausible that HAG would not have informed the Appellant that his brother had gone to [DK]'s home, or the reason why he went. Moreover, if both the Appellant and his brother fled their compound when the fighting started and both went to HAG's house, it is very unlikely that they would not have seen one another.

52. There are further aspects of the Appellant's account, unconnected with that of his brother, that give rise to significant concerns relating to his credibility. In his oral evidence the Appellant explained that the Taliban did not search HAG's residence each time they came looking for him because it was contrary to Afghan culture. They would only do so in the event of war or conflict. I find this explanation to be wholly implausible. If the Taliban came to HAG's residence on several occasions in search of the Appellant it defies logic and common sense that they would not search inside the premises. The Taliban are a vicious terrorist organisation who have carried out a significant number of atrocities, including using children as suicide bombers. If they went to the effort of identifying where HAG was living, and if they believed that the Appellant was living with him, they would extensively search HAG's premises. I was not referred to any background evidence suggesting that the Taliban would not conduct a vigorous search of premises simply on the basis of cultural factors. The Appellant's explanation lacks any credibility and undermines his account of This assertion is, in any event, inconsistent with the Appellant's evidence as recorded at question 69 of his asylum interview where he stated that the Taliban

did in fact search the house when they lived in Grishk, and with his answer to question 84 where the Appellant said that the Taliban did go into the house in Musa Qalah and searched it.

53. There is a further internal inconsistency within the Appellants own evidence relating to the visits by the Taliban. In his asylum interview the Appellant stated that the Taliban only sought him in Grishk towards the last days of their stay there and he described a single incident when the Taliban came to HAG's house. In response to a clarification request from me the Appellant said that the Taliban came to look for him a few times when he lived in Grishk. In both his statement of January 2010 and his asylum interview the Appellant only spoke about the Taliban coming to look for him in Musa Qalah on one occasion. However in his oral evidence the Appellant stated that the Taliban came a few times, and then clarified that they came 2 or 3 times looking for him. These inconsistencies undermine the credibility of the Appellant's account of being searched for by the Taliban.

54. It is clear from the Appellant's evidence (and that of his brother) that HAG has the means of communicating outside Afghanistan. As part of his money transfer business HAG would need to communicate with associates in Dubai. The Appellant's brother, in his evidence, indicated that he spoke to HAG 3 to 4 months prior to his appeal hearing. The Appellant's evidence was that HAG continued to work at the same place (in the market in Lashkarga City, a government-controlled area) and that he was visited on occasions by the authorities searching for the Appellant. Given that HAG cared for the Appellant for nearly 3 years after the death of his father, and presumably paid for the Appellant's journey to the United kingdom, it is simply not plausible that HAG would fail to give the Appellant any means of contacting him, at the very least to ensure that he arrived in the UK safely. This undermines the Appellant's general credibility. I additionally note that in his asylum interview, at question 95, the Appellant said that both the Taliban and the police used to visit HAG at his shop continuously. This is inconsistent with the Appellant's oral evidence where he said that the Taliban did not visit HAG at his shop because the shop was in a government-controlled area.

55. I accept that there is overlap between the Appellant's account and that of his brother, and that the core of their accounts have the same premise. I accept, based on the backgrounds reports relating to Helmand Province, that the Taliban are active in Helmand province, and that between 2004 and 2006 the insurgency grew significantly. This does support the Appellant's account. I once again take account of the Appellant's minority when the alleged events occurred and the impact of the passage of time on his ability to recall events. I am nevertheless satisfied, for the reasons given above, that the Appellant has not given a truthful account of the events that brought him to the UK. I am not satisfied, even on the lower standard of proof, that the Appellant's father was ever approached by the Taliban and asked to transmit a large amount of money

to Dubai. Nor do I accept that he was ever abducted or threatened. It follows that I reject the Appellant's account of the firefight, his account of his father's death and his claim that the authorities and the Taliban continued to manifest an adverse interest in him.

56. Although in no way determinative of his claimed age, I find that my adverse credibility findings in respect of his protection claim are a factor going against the Appellant's claimed age. Having regard to my findings at [44] to [55] of this decision, and taking account of my adverse credibility findings 'in the round', I am not persuaded that the Appellant was born in 1997. I consequently find that his date of birth is 5 November 1995.

57. Having found the Appellant's account of being targeted by both the Taliban and the Afghan authorities to be incredible, I find that he would not face any risk of persecution or treatment breaching article 3 if returned to his home area of Afghanistan. The Appellant would be returned as a 21 year old man who has never come to the adverse attention of the authorities. Although I cannot make any finding as to whether his father is alive or dead (although I have rejected his account of his father's death), it is open to the Appellant to return to his home area where his family home was situated and where HAG last lived and worked. Even if he no longer has any network of support of any kind, he has attained valuable skills through his studies in the UK which he can deploy in seeking employment.

58. The Appellant contends that he would nevertheless be at risk because he would be perceived to be 'westernised' if removed to Helmand Province. He relies on the UNHCR 2016 Eligibility Guidelines for Afghanistan. This indicates that anti-government elements have reportedly target individuals who are perceived to have adopted values and/or appearances associated with Western countries, due to their imputed support for the Government and the international community. In her oral submissions Ms Brown indicated that the question of perceived westernisation was relevant to the reasonableness of internal relocation. She could not point to any judicial authority indicating that an individual would face a real risk of persecution on account of their perceived Western values or appearance alone. I am not satisfied, on the evidence before me, that, if returned, the Appellant would manifest any so-called Western values or would have a Western appearance sufficient to render him at risk of ill-treatment. On his own account the Appellant is a devout Muslim who attends mosque at least once a week. He does not drink any alcohol and eats only Halal food. There is nothing to indicate that he has foregone his religious or cultural heritage. Although he left Afghanistan as a minor he lived there until he was around 14 years old, which included the formative years of his life. He would therefore still be familiar with the culture and language, and has indicated that he has maintained friendships with other Afghan nationals in the UK (the Appellant indicated in his oral evidence that there were many Afghans at his local mosque and that he spent a lot of time with a particular Afghan friend, and

shares a room with another Afghan). Contrary to Ms Brown's submission I am not satisfied that the educational achievements attained by the Appellant in the UK would render him at risk of ill-treatment on the basis that he was perceived to have adopted a Western persona and Western values. Nothing in the background evidence indicates that achieving educational and vocational qualifications would render an individual as being westernised in the eyes of the Taliban.

59. Ms Brown did not actively pursue her arguments relating to the Appellant's entitlement to Humanitarian Protection, but nevertheless relied on her written submissions. My starting point is AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC). The material headnotes read,

> *(ii) Despite a rise in the number of civilian deaths and casualties and (particularly in the 2010-2011 period) an expansion of the geographical scope of the armed conflict in Afghanistan, the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.*
>
> *(iii) Nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may now be taken to include Ghazni but not to include Kabul), at such a level*

60. I have considered the further background country evidence contained in the Appellant's bundle, including the EASO report. Ms Brown did not draw my attention to any specific background document suggesting that the general security situation had deteriorated to such an extent that a civilian would face a real risk threatening their life or person merely by being returned to Afghanistan. In her skeleton argument she focused on the security situation in Kabul and gave an extract from the 'Internal Displacement Monitoring Centre (Norwegian Refugee Council) 2017 Global Report on Internal Displacement and a Radio Free Europe report relating to a bomb attack. I have considered this evidence and the EASO document and the UNHCR Eligibility Guidelines. The EASO report, which contains the most detailed analysis, indicates that from January to August 2015 126 Kabul civilians were killed and 717 were injured, out of a city of at least 3½ million people (although some estimates were as high as 7 million). I am not satisfied the evidence relied on by the Appellant discloses a deterioration from that considered in *AK* such as to entitle me to depart from that country guidance.

Article 8

61. In assessing the Appellant's Article 8 human rights claim I will first consider whether he meets the provisions of paragraph 276ADE(vi) of the immigration rules. An issue arose at the hearing as to which version of paragraph 276ADE was applicable. I invited the parties to provide written submissions on this point

within 2 days after the hearing. I received submissions from Ms Brown but no submissions from Mr Clarke. Ms Brown invited me to apply the unamended version of the immigration rules in existence at the date of the decision under appeal. The version of paragraph 276ADE in existence when the decision under appeal was made states:

> *The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:*
>
> *(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and*
>
> *…*
>
> *(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.*

62. This version was amended with effect on 28 July 2014. The amended version, so far as is material, states,

> *(vi) … is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.*

63. The Statement of Changes, HC 532, accompanying the amended version of paragraph 276ADE under the heading: "*Implementation*", states;

> *The changes set out in paragraphs 4 to 12 and 49 to 64 of this statement take effect on 28 July 2014 and apply to all applications to which paragraphs 276ADE to 276DH and Appendix FM apply (or can be applied by virtue of the Immigration Rules), and to any other ECHR Article 8 claims (save for those from foreign criminals), and which are decided on or after that date.*

64. I am satisfied, having regard to the terms of the Statement of Changes, that the earlier version still applies to this appeal as the underlying decision was decided prior to 28 July 2014 and the Appellant is not a foreign criminal.

65. In *Ogundimu (Article 8 – New Rules) Nigeria* [2013] UKUT 60 (IAC) the Upper Tribunal said this at [123]-[125]:

> *123. The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.*

> *124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the Appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the Appellant or any ties that could result in support to the Appellant in the event of his return there. Unsurprisingly, given the length of the Appellant's residence here, all of his ties are with the United Kingdom. Consequently the Appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.*
>
> *125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.*

66. The guidance in *Ogundimu* was approved by the Court of Appeal in *YM (Uganda) v Secretary of State for the Home Department* [2014] EWCA Civ 1292.

67. My assessment as to whether the Appellant has any ties with Afghanistan must take into account my factual findings in respect of his asylum claim. Having found that the Appellant fabricated the core of his account of events that caused him to leave Afghanistan I cannot be satisfied, on the balance of probabilities, that he is not in contact with HAG (or even that his father is dead). I do not find it credible that HAG, having looked after the Appellant for nearly 3 years, would not have given him his contact details, especially given that HAG continued to operate his money transfer business from the same location. Even if I am wrong in this assessment, and the Appellant does not have any contact details for HAG, there is nothing to prevent him from looking for HAG (or indeed his brother) on return to Afghanistan. I reiterate that the Appellant is not at risk of harm in his home area and that there is nothing to stop him returning to that part of Afghanistan with which he is familiar and where he is likely, on the balance of probabilities, to reacquaint himself with people he knew as a youngster.

68. Even if the Appellant has no contact with HAG, I am satisfied, applying the principles set out in *Ogundimu*, that the Appellant has not lost his ties with Afghanistan. He was 14 years old when he left the country. He would have spent the formative years of his life there. He would be familiar with the culture, the way of life and the spoken language. The evidence presented at the hearing indicates that the Appellant is an observant Muslim who frequently and regularly goes to a Mosque attended by many other Afghans. The Appellant indicated that he has many Afghan friends and lives with an Afghan. In these

circumstances I find that he continues to have a connection to life in Afghanistan amounting to ties that could result in support to him in the event of his return there.

69. I will now consider whether the Appellant's removal would result in a breach of Article 8 ECHR considered as a free-standing right outside the immigration rules. I note in the context of immigration control that there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8, and that the love and affection between an adult child and his parent will not of itself justify a finding of a family life. There has to be 'something more' (*Singh* v *Secretary of State for the Home Department* [2015] EWCA Civ. 630, which was considered in *Butt v Secretary of State for the Home Department* [2017] EWCA Civ 184, and *Rai v Entry Clearance officer, New Delhi* [2017] EWCA Civ 320). 'Family life' and 'private life' are composite rights, and even though the Appellant is not related by blood to the [B family], I assess his relationship with them by reference to the above authorities and *Kugathas* [2003] EWCA Civ 31 (see *ZN (Afghanistan)* [2014] EWCA Civ 735).

70. There is no doubt that the Appellant has established a strong private and family life in the United Kingdom, particularly with his former foster carers, the [B family], since his arrival as a 14 year old in January 2010. This was recognised in the letter from Kent County Council's Independent Reviewing Officer, Ms Gillian Martin, who described the Appellant having formed "a close attachment to [PB] and [TB] and their immediate family". Ms Martin noted that the Appellant had become very much involved within the local community by playing cricket for two local teams. He represented other unaccompanied minors when discussing his experiences in care at a recruiting day for a Barnardo's project. The Appellant had an excellent reputation at school and the teaching staff were always positive about his academic progress confirming that he was motivated, hard-working and enthusiastic as well as being polite and respectful to both staff and fellow students. The Appellant was described as being one of the most respectful, honest, sociable and considerate young men with whom Ms Martin had worked. The statements from some of the Appellant's former classmates and the letter from his former school describing him as a model student and an excellent role model for other young and disadvantaged students speaks of the positive contribution that he has made. I have duly taken this into account. Further evidence of the Appellant's achievements include a silver award presented by Kent County Council in September 2013 "In honour of outstanding performance and dedication", and a certificate indicating that the Appellant graduated with distinction from Bennett Memorial Diocesan School dated June 2013. The Appellant also has a certificate as part of his Duke of Edinburgh Bronze Award in respect of helping the elderly for 3 months.

71. The letter from Pearl O'Keeffe, dated 28 July 2014, the Appellant's course tutor at Lambeth College, indicated that he was a positive role model to his peers on

the BTEC level II construction course, that he always offered to help others in the class and was a well-respected member of the group. He was elected by the group to be a course representative in meetings with senior management and achieved a distinction for the course which enabled him to progress to the level III BTEC construction course.

72. The letter from the Rev Rachel Knapp, dated 26 February 2013, describes the Appellant's commitment and determination in integrating into his school and society in Britain and described him as being a great asset to the school and somebody who has ambitions to make a positive economic contribution to society. Daniel Kennedy indicated that the Appellant developed into a positive role model for his peers, that he benefited the school immensely through his commitment to mutual aspirations and the abiding contribution he made to the lives of his fellow students and those who taught him.

73. I have carefully considered the written and oral evidence given by members of the [B family]. I have no hesitation in accepting that the Appellant does enjoy a good relationship with his former foster carers. In their initial joint statement dated 24 April 2013 [TB] and [PB] described the Appellant as a "very independent young man", and in her statement dated 23 June 2017 [TB] agreed that the Appellant was "an independent, bright and capable young man" although she worried that people did not see his vulnerable side and she did not believe that he would be able to cope in Afghanistan. The fact remains however that the Appellant is not a blood relative of the [B family], he has not lived with the [B family] since 2014 and he is now over 21 years of age.

74. The oral evidence given at the hearing suggested that the relationships between the Appellant and the [B family] was not quite as strong as described in the statements. In particular [PB] indicated that the Appellant visited the family once every 2 months or so, a point not challenged by Ms Brown, which is at variance with the Appellant's evidence. It was also telling that the [B family] did not appear to have quite as much knowledge of the Appellant's background and circumstances as one would perhaps expect from an extremely close relationship. For example, [PB] had never heard of HAG with whom the Appellant lived for a period of almost 3 years prior to his arrival in the UK. I find it surprising that the [B family] would not know more about the close links that the Appellant had developed, on his account, in Afghanistan following the death of his father. Despite claiming to regard the Appellant as a brother [AB] did not know what course the Appellant studied at college or what he wanted to study at university. Whilst I have no hesitation in accepting that the Appellant does have a good relationship with the [B family] I am not satisfied, for the reasons given, that this relationship is quite as strong or close as advanced on the Appellant's behalf.

75. Although the [B family], quite understandably, indicated that they would be unwilling to visit the Appellant in Afghanistan, there was no cogent evidence to

indicate that contact would be completely severed. No evidence was provided as to the inability of the Appellant to maintain contact with the [B family], albeit by remote means. Whilst I appreciate that such communication could not replicate the nature of the relationship that the Appellant enjoys with the [B family], he has been living independently since 2014 and, on the basis of the evidence given at the hearing, only sees members of the [B family] once every month or so. Given the quality of his existing relationship with the [B family], and given that he is now an adult, the inability to have close personal contact does not, of itself, render the decision disproportionate.

76. The Appellant is in good health. There was no evidence that he suffers from any mental health condition. There is no psychological or psychiatric report suggesting that he is particularly vulnerable. The various statements from the [B family] and the other letters of support describe the Appellant as an independent young man who is conscientious and hard-working. He has a number of certificates in ICT and, although there was no documentary evidence in support, I accept that he has passed a Level III course in construction at a 6th form college and that he has been accepted at university to study construction/engineering. The Appellant also has a very good grasp of English and has qualifications in Pearson Edexcel Functional skills in mathematics. He has worked albeit for a very limited time in a pizza delivery company and has a qualification in basic First Aid. I find that the Appellant will be able to use the skills, knowledge and qualifications acquired during his residence in the UK to gain employment in Afghanistan. I note the evidence that his ability to read and write Pashtu is poor. I accept that this may cause him some initial difficulty, but, given his education achievements and clear intelligence and motivation, he is likely to make rapid progress in learning the written language. I am additionally satisfied that the Appellant would be entitled to apply for funds available under the Assisted Return Scheme. Moreover, although [PB] has taken a pay cut, and their children are saving for the future, I find, given that all but one of the [B family] children are in employment, that they would, cumulatively, be able to provide at least some funds to the Appellant to enable him to establish himself if removed.

77. Taking account of the specific factors identified in section 117B of the 2002 Act, I must have regard to the fact that the maintenance of effective immigration controls is in the public interest, and that I must attach little weight to the private life established by the Appellant when his immigration status has always been precarious. I specifically note the length of time that the Appellant has lived in the UK (almost 7½ years) and that for 4 of those years he was a minor. Following *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803 I regard as neutral factors the fact that the Appellant does speak a very good standard of English and that, if allowed to do so, he is likely to be able to obtain employment. Having holistic regard to all the factors detailed above, and weighing the positive contribution made by the Appellant to life in the UK, his relationship with the [B family], and the extent to which he has

integrated into English society, against the public interest in immigration control and the precariousness of his immigration status, I do not find the Appellant's removal would constitute a disproportionate interference with article 8.

Notice of Decision

The appeal is dismissed on asylum grounds
The appeal is dismissed on human rights grounds
The appeal is dismissed on Humanitarian Protection grounds

17 July 2017

Signed Date

Upper Tribunal Judge Blum