Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/33982/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th of December 2017	**On 22nd of December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR ATIQULLAH JABARKHAIL
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Bustani of Counsel
For the Respondent: Mr P Deller, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Afghanistan born on 3rd of August 1997. He appeals against a decision of Judge of the First-tier Tribunal Scott-Baker sitting at Taylor House on 21st of December 2016 in which she dismissed the Appellant's appeal against a decision of the Respondent dated 28th of October 2015. That decision was to refuse to grant leave to remain in the United Kingdom. The Appellant claimed that his removal would breach this country's obligations under the Refugee Convention and Articles 2, 3 and 8 of the Human Rights Convention as his life would be in danger if returned. He relied upon a request from the Afghan Minister for Repatriation and Refugees who had asked for returns to be ceased for the time being. The Appellant entered the United Kingdom in 2012 and was granted discretionary leave to remain as an unaccompanied child valid until 3rd of February 2015.

The Appellant's Case

2. The Appellant's claim was set out by the Judge at paragraph 21 of her determination: "The Appellant claimed that his father had been a security guard for Abdul Haq and his father had been killed when burglars came to Abdul Haq's family home in Pakistan and killed the Appellant's father and Abdul Haq's wife and son. His mother told him that the nephews blamed his father for what had happened to Abdul Haq's family and that those nephews – Haji Abdul Zahir Kadir, Haji Jamal Kadir and Nasratullah - now hold positions in the Afghan government. Abdul Haq's nephew had a property in Isarak and people in his village had said that these men would return and harm him as they believe that his father had brought harm to their family. He once received a letter from Abdul Haq's family approximately 2 years earlier but his mother could not read it but it said that his father had committed a crime and they would take revenge for him. He had also received threats from the Taliban because his father had links with Abdul Haq".

The Decision at First Instance

3. The Judge heard oral evidence from the Appellant and his uncle Mr Jabarkhel who had lived in United Kingdom since 2002. She also had supporting evidence from Sophie Kitchener a character witness, a letter from Melina Alexander at the Appellant's college, a letter from the Appellant's GP and a letter from Meg Futton who worked with the Red Cross in Maidstone who had been asked to trace the Appellant's family. The Judge also had an expert report from Dr Giustozzi who stated the Appellant could relocate to Kabul in order to lessen the threat deriving from the Taliban but that Kabul was not immune from Taliban activities. The police would not be able to protect the Appellant from the Taliban and even less so from the Arsalai family.

4. The Home Office Presenting Officer argued that even if the Appellant's father had been killed there was no basis to conclude that the family of Abdul Haq would seek revenge. It seemed illogical to hold a grudge for so long. There was no risk to the Appellant's uncle who had returned on at least four occasions to Afghanistan. This was important because at the time that he was seeking to demonstrate that it was not safe to be in Afghanistan he had returned and fathered children which undermined the uncle's evidence. The uncle would not have made the trips if there was any risk to himself and if there had been no risk to him then there would be no risk to the Appellant. The uncle's wife was living in Jalalabad when Kabul would have been much safer for her. There was a reasonable degree of protection for the Appellant in Kabul and Jalalabad would also be safe for the Appellant. It was not accepted that he had lost touch with his family. The Respondent had requested information about the Appellant's family in 2012 but this had not been provided. The Respondent's overall submission was that the Appellant was not a credible witness.

5. For the Appellant counsel argued that the Appellant was credible. There was a blood feud between two families and the Appellant's evidence should be seen within the context of Dr Giustozzi's report.

6. At paragraphs 51 to 66, taking up some 2 ½ pages of her 15-page determination, the Judge gave her reasons for rejecting the Appellant's claim for international protection. She described the evidence of the Appellant's uncle Mr Jabarkhel as "extremely vague and he could add nothing to the claim that his brother-in-law had been the bodyguard for Abdul Haq and that he had died in the circumstances described in 1999. It would be expected that as the Appellant's uncle had been living in Afghanistan at the time of the Appellant's father's death that the witness would have been able to provide some details to the claim but none were forthcoming".

7. The Judge found that the report from Dr Giustozzi was based on an acceptance of the credibility of the Appellant but at paragraph 56 she said that the Appellant's claim was not credible. If the Appellant's father had been killed in 1999 it was not plausible that the Haq family would have waited for 11 years before approaching the Appellant's mother through a letter. Nor was it credible that the Appellant's uncle was unable to give some evidence concerning the Appellant's father and his family after this claimed incident.

8. The Appellant's uncle returned to visit his wife and family in Jalalabad which was 4 to 5 hours journey or 70 km from the Appellant's home area of Isarek. If the Taliban attempted to forcibly recruit the Appellant that would be traumatic but the Appellant would not be obliged to return to his home area as the Respondent intended to remove the Appellant to Kabul. The Judge cited the 2012 Upper Tribunal authority of **AK [2012] UKUT 163** in which the Upper Tribunal held that there was little evidence of significant numbers of the urban poor and internally displaced persons population in Kabul suffering destitution or an inability to survive at subsistence levels. Return and reintegration packages for UK returnees to Kabul should not be exaggerated but did place returnees in a better position than other persons.

9. The Appellant was on medication but it had not been established the Appellant was currently undergoing counselling. The medication and dosage did not indicate that the Appellant's level of anxiety and depression had reached the threshold where were removal would engage either Article 3 or Article 8 upon return. As an explanation for the Appellant's depression the GP had placed some reliance on the fact that the Appellant was transitioning into a new culture and return to his home country would remove this concern. The Appellant had no family living in Kabul on his account but there was nothing to indicate he would be considered as vulnerable on return. He had family living in Afghanistan although his mother had not been traced. His aunt and her family lived in Jalalabad and the uncle made regular visits to Afghanistan to visit the uncle's family at which time he could also visit the Appellant.

10. The Appellant was now of the age of majority and in no different position to other young men who are returned to Kabul having been granted a period of refuge in the United Kingdom. The Appellant would not be at risk from the Taliban as the evidence was that the Taliban's enquiries were more general and they were not specifically targeting the Appellant. He would not be at risk from the family of Abdul Haq as that claim was not considered credible by the Judge for the reasons she gave. Dr Giustozzi had ruled out any risk to the Appellant from being considered as

westernised as the Appellant would be able to avoid areas where that danger might arise. She dismissed the appeal.

The Onward Appeal

11. The Appellant appealed against this decision in two sets of grounds one dated 30th of March 2017 prepared by counsel who had appeared at first instance and the 2nd dated 12th of July 2017 by different counsel (who did not appear before me). In the first set of grounds it was argued the Judge had not made any findings of fact and it was not clear what parts of the Appellant's case were accepted. At paragraph 3 the grounds complained that the Judge disposed of the case "by agreeing with the Home Office refusal letter." The Judge had medical evidence and the evidence of Ms Futton about the tracing of the Appellant's family which lent weight to the credibility of the Appellant's claim that his family had disappeared and that he had sought medical help because of his time in Afghanistan.

12. The lengthy 2nd set of grounds of appeal which ran to 4 pages argued that the Judge had failed to reach adequate or any findings regarding the core of the Appellant's claim that his father had been a bodyguard for Abdul Haq and his father and Abdul Haq's wife and son had been killed in 1999, although the grounds appeared to concede that there was a lack of sufficient detail from the Appellant's uncle. The Judge had failed to engage with the expert evidence of Dr Giustozzi that the Arsalai family of Abdul Haq would want to extract further revenge from the Appellant's family and they would target post puberty male members of the family such as the Appellant. There was no time limit to the validity of the feud. No adequate reasons were given for finding the Taliban were not specifically targeting the Appellant.

13. The grounds argued that the Judge's assessment of the lack of risk to the uncle failed to engage with the evidence that while the uncle's wife continued to live in Jalalabad she had to move around and the uncle travelled to Afghanistan for 15 days or a month maximum. The finding that the Appellant would be at risk of ill-treatment in his home village was inconsistent with the Judge's earlier findings. Dr Giustozzi had given his opinion that the Taliban entertained good relations with the Arsalai family and thus the Taliban had the means to track down individuals in Afghanistan. Relocation to Kabul was not reasonable as no account had been taken of the factors relied upon by the Appellant. He was a young man of nearly 20 with no recent experience of living in Afghanistan. Kabul was not immune from Taliban activities as Dr Giustozzi pointed out and adverse attitudes towards westernisation were quite common in Kabul. Ms Futton of the Red Cross had stated that Kabul was very dangerous.

14. There were very significant obstacles to the Appellant's reintegration into Afghanistan and he should have succeeded under paragraph 276 ADE of the Immigration Rules. The Judge had not explained how the interference with the Appellant's private life was proportionate. No adequate account was taken of the Appellant's value to the community as a model student or that he had arrived in the United Kingdom as a child and spent his adolescence lawfully in this country. The

grounds cited the Supreme Court decision of **Hesham Ali [2016] UKSC 60** that it made a difference whether the person who had come to this country had come during their childhood or as an adult. The Judge had failed to take account of the depth of the Appellant's integration into UK society. No account of been taken of the impact of the decision on his foster parents and friends.

15. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Birrell on 17th of October 2017. In granting permission to appeal she noted that it was asserted that the Judge had erred in the assessment of the core of the Appellant's claim in relation to the Haq family and the risk from the Taliban. Further the grounds argued that the determination was inadequately reasoned and failed to engage with the expert evidence of Dr Giustozzi. The Judge's assessment of internal relocation was inadequate and failed to engage with the expert evidence. The assessment of Article 8 was inadequate. The grounds disclosed arguable errors of law.

16. In response to the grant of permission the Respondent wrote to the Upper Tribunal on 3rd of November 2017 that she opposed the Appellant's appeal. The Judge had directed herself appropriately. She had extensively digested the expert report of Dr Giustozzi at paragraphs 39 to 45 of the determination. She had considered the Appellant's account and rejected it for being vague and contradicting background evidence. It was implausible that the Appellant's attackers would wait for 11 years to harm the Appellant when there were older members of the Appellant's family. The expert report was based on accepting the account given by the Appellant at face value. Given the Judge had found significant issues with the Appellant's account it was open to the Judge to find the Appellant would not be at risk upon return.

The Hearing Before Me

17. At the hearing before me counsel relied on the two sets of grounds arguing that the determination was flawed in both its assessment of the need for protection and the issue of proportionality under Article 8. There were no findings as to the core facts of the case such as whether the man that the Appellant's father had worked for Abdul Haq, existed and whether his wife and son were killed. The findings on credibility were seriously flawed as they failed to take into account the expert evidence. The Judge's finding that the Haq family would not wait for 11 years ignored the expert evidence that blood feuds would only be executed on post puberty males. It was not therefore that the Appellant was not targeted between the ages of 2 and 13.

18. There was an issue under Article 15 C of the Qualification Directive in relation to the safety of persons returned to Kabul. The situation there was fluid. The Judge had abundant background evidence to demonstrate that but had failed to consider it. A proportionality exercise in relation to the Article claim 8 was absent. There was little regard paid to the life the Appellant had with his foster family. There was a distinction between someone who came here as an adult and someone like the Appellant who had come here as a child. The Appellant was fluent in English and would contribute to the economy.

19. In response, the Presenting Officer stated that there was considerable merit to the challenge to the determination. There were no safe credibility findings which were at the heart of the case. We did not know if it was true if the Appellant's father had been killed. It was not certain what evidence the Judge rejected. The argument as to safe relocation to Kabul was flawed. **AK** was a 2012 country guidance case. There was material on file which went to the situation at the moment. I asked the Presenting Officer to clarify whether the Respondent was now resiling from the submissions made to the Judge at first instance and summarised by her in the determination (see [4] above). The Presenting Officer replied that at the hearing at first instance the Respondent's position was qualified by an even if. The factual matrix needed to be established before risk of persecution could be decided. However, the Respondent was not conceding the appeal or prepared to grant the Appellant leave to remain. It was a matter for the Tribunal to decide whether the Judge's determination contained a material error of law.

20. In conclusion counsel for the Appellant argued that she agreed with the Respondent that clear findings had not been made on the facts of the case. The Appellant was not just any young man being returned to Kabul. I queried why it was considered dangerous for the Appellant to return to Afghanistan but not apparently for the Appellant's uncle (who had given evidence to the Judge about his trips to Afghanistan). Counsel argued that the vendetta with the Arsalai family was only aimed at the Appellant's immediate family and therefore did not include the uncle. I asked whether there was any evidence in the objective material or otherwise to show that the vendetta would be limited in such a way but counsel said she did not have any such evidence.

Findings

21. This is essentially a reasons based challenge to a determination. The first set of grounds of appeal argued that the Judge did not make clear what parts of the Appellant's case were accepted such as where the Appellant came from in Afghanistan. This ground overlooked paragraph 57 of the determination which referred to the Appellant's home area of Isarek. The grounds also complained that the Judge had made no findings on the events said to have occurred in 1999 when the Appellant was 2 years old namely the death of the Appellant's father and the wife and son of Abdul Haq. The difficulty with this argument is that it was not clear where the evidence of this incident in 1999 had come from. The Appellant had told the Respondent of this incident but by definition could not have been speaking from his own personal knowledge since he was only 2 years old at the time. As might be expected the Appellant did not know when the incident now put at 1999 was said to have occurred. The Appellant on his case was repeating what he was told of events by his mother who had since disappeared. He was young at the time and it would not be surprising if he recalled matters incorrectly given that he himself had not experienced them. He would not be in a position to know whether what his mother was telling him was true.

22. The problem which the Judge had to deal with was that the adult member of the Appellant's family who was called to give supporting evidence gave evidence that was undermined and did not confirm the 1999 incident in circumstances where he could reasonably be expected to have done if the events had taken place, see [6] above. The Judge pointed out at paragraph 33 that the uncle's evidence was inconsistent. The uncle had said he did not know how his sister had managed for money after the Appellant's father had been killed even though he the witness had been in Afghanistan for 3 years after the 1999 incident (until leaving in 2002) and had lived in the same village. This was evidence which it was reasonable to expect would be produced in a straightforward way to the Tribunal but it was not produced.

23. The death of the Appellant's father in some form of burglary was a catastrophic event if true which the uncle's sister had to deal with for at least the 3 years prior to the uncle leaving Afghanistan. Yet the uncle was quite unable to say how his sister had managed during that period seriously undermining, as the Judge found, the uncle's evidence that any incident had in fact occurred in 1999. Further the uncle could reasonably have been expected to add something to the evidence that the Appellant's father was employed by the Haq family which the Appellant claimed was at the core of the asylum appeal. In the three years the uncle remained in Afghanistan in the same village as the Appellant's mother he had discovered nothing of relevance to this issue. As the Judge pointed out despite being in a position to know, the uncle was quite unable to help the Tribunal with evidence about what was said to be the core of the claim. The grounds appeared to accept that the uncle's evidence was lacking but did not suggest a plausible reason why that should be so. In these circumstances, it was a matter for the Judge what weight she wished to give to the evidence that was put before her.

24. She was urged by the Presenting Officer at the hearing that the uncle's evidence could not be relied upon as a statement of risk because the uncle was travelling backwards and forwards between the United Kingdom and Afghanistan. I note in this respect that the 2nd grounds of appeal acknowledged the uncle's travel to Afghanistan but stated that he would travel out for one month maximum. Making several trips to Afghanistan for a period of up to a month at a time is not in my view a minimal stay in that country but rather a more substantial one. If the Taliban, elements of the Afghan government or the Arsalai family had some ill will towards the Appellant's family it is difficult to see why the uncle would be able to make such extended trips in safety. The argument that the uncle was somehow exempt from the family feud makes no sense at all. No evidence was produced to the Judge at first instance to indicate that the feud would be so limited, and that was certainly not the evidence of the uncle who is quoted by the Judge at paragraph 33 saying he too would be at risk from Abdul Haq as was his sister (the Appellant's mother thus not a male member of the family) but he had no option but to return to Afghanistan to see his family.

25. It was clearly a core part of the Respondent's opposition to the appeal that the lack of risk to the Appellant's uncle undermined the Appellant's claim to be at risk. The Appellant himself had not apparently suffered any harm he was reporting what he

had been told. It was for the Appellant to establish his case to the appropriate standard of proof and this evidence fell short of doing that. The stark contrast between what the Appellant claimed his other had told him and what a family member who could be expected to know what happened but in the event did not, inevitably undermined the value of the second hand evidence the Appellant was giving.

26. The Judge was concerned that if the Appellant's father had been killed in 1999 the Haq family would not have waited for 11 years before approaching the Appellant's mother through a letter. That assertion by the Judge at paragraph 56 was criticised by the Appellant's representatives as being in conflict with the report of Dr Giustozzi that only post puberty males would be targeted. From 1999 onwards whilst the Appellant was still a child he would not have been included in the feud. The difficulty for the Appellant is that that does not explain who was at risk from 1999 onwards. Evidently not the Appellant's uncle because he has been able to return to Afghanistan on a number of occasions.

27. The Judge was aware of that part of Dr Giustozzi's report which deals with the age at which vendettas are applied, see paragraph 39 of the determination. Indeed, the Judge analysed the report of Dr Giustozzi at some length and the complaints made in the 2nd set of grounds particularly, that the Judge had not engaged with Dr Giustozzi's report is completely without foundation. Nor can it be said that the Judge arrived at a view on the Appellant's credibility and then rejected the expert report. As I have indicated she went through the report carefully and in some detail before giving her credibility findings. She acknowledged parts of the report and relied upon them, such as Dr Giustozzi's comments on the risk from westernisation and his remarks about forcible recruitment.

28. The Appellant's case on the risk from the Taliban was undermined by the uncle's lack of knowledge. At paragraph 24 of the determination he is quoted as saying that his family had received threats from the Taliban as he believed they knew of the Appellant's father's link with Abdul Haq. The grounds of onward appeal argue that the Taliban now have good relations with the family of Abdul Haq and are considering an alliance with them. Abdul Haq himself was said to have lived in Jalalabad where the uncle's family continued to reside without incident.

29. The Appellant continued to protest that he was a year younger than the age assessment had revealed him to be. The Appellant had arrived in United Kingdom at the age of 15. The Red Cross had been asked to trace the Appellant's mother but the evidence of Ms Futton accepted by the Judge at paragraph 38 did not indicate that they had been able to establish the Appellant's mother had disappeared but rather that they been unable to make enquiries because of the general country conditions in Afghanistan. It was not accurate for the grounds of appeal to say that there was evidence before the Judge to confirm that the Appellant's family had disappeared. What there was before the Judge was evidence that the Appellant had family in Afghanistan namely his uncle's family who lived in an area Jalalabad that was

perhaps even more dangerous than Kabul particularly given the apparent presence in that city of Abdul Haq himself.

30. Nor do I accept the criticism that the Judge was inconsistent in finding a risk to the Appellant if he returned to his home area but not a risk if he returned to Kabul. The findings were based on two quite separate assessments. The problem for the Appellant if he returned to his home area was not that he would be caught up in a feud with the family of Abdul Haq but that he might be the subject of an attempt to forcibly recruit him into the Taliban as a male in the area not because he was specifically targetted. The risk to the Appellant in his home area was not an acceptance by the Judge that the Appellant was at risk from the family of Abdul Haq. The point about the safety of Kabul was that in Kabul the Appellant would not be at risk from forcible recruitment by the Taliban.

31. It was further argued that the Judge was wrong in her assessment that there was no risk as such to the Appellant in Kabul by reason of Article 15C general country conditions. The Judge was entitled to follow country guidance on this issue. There continues to be an insurgency in Afghanistan and clashes between the Afghan government and Allied forces on the one hand and the Taliban on the other. In order for the Appellant to be at risk in Kabul he would need to establish a personal profile that would put him at risk. The Judge's finding was that the Appellant did not have such a personal profile because she did not accept that the Appellant was at risk from a feud with the family of Abdul Haq. There was no reason why the Taliban would focus on the Appellant, the Judge describing the risk as a generalised one, that is faced by anyone in Afghanistan.

32. If the country guidance were to change and it was decided that there was nowhere safe in Afghanistan to return individuals then the position might be different but that was not the position in law at the date of the hearing at first instance nor is it the position now at the date of the hearing before me. Although the Presenting Officer raised a concern at the treatment of the Article 15C claim by the Judge that concern did not extend as far as conceding that there was an Article 15C risk in Kabul.Had the Respondent accepted that such a risk existed she would no doubt have granted the Appellant international protection. The Respondent's concern is not that the Judge was wrong to say that there was no Article 15C risk but to say the Judge should have said more about it in the determination. That of itself does not indicate a material error of law.

33. The Presenting Officer before me argued that there was force in the Appellant's submissions that the Judge had inadequately given her reasons for dismissing the appeal. There is an irony here. At paragraph 3 of the first set of grounds of appeal drawn by counsel who had appeared at first instance it was argued that the Judge had disposed of the case by agreeing with the Home Office refusal letter. If therefore it is being said by the Respondent that the Judge gave inadequate reasons and the submission of counsel who appeared at first instance is correct that the Judge was merely repeating the reasons given in the refusal letter then the Respondent's reasons for refusal letter was inadequate. The correct disposal of this case would then be for

the Respondent to withdraw her decision and grant this Appellant the leave to remain requested. However, when I queried this the Presenting Officer indicated that that was not the Respondent's position and they did not propose to give this Appellant leave. The Respondent's position in this case is somewhat muddled.

34. In fact, I do not agree that the Judge has merely agreed with the Home Office refusal letter. It is correct that the Respondent did not consider it plausible that the Haq family would not have sought revenge sooner given that Abdul Haq's brother was the governor of Nangarhar province a point also relied upon by the Judge. However, the Respondent at the time of writing the refusal letter could not have known of the inconsistencies in the uncle's evidence which were later relied upon by the Judge. This indicates that the Judge formed her own view on the merits of the case.

35. One point which does appear in the refusal letter which connects with the point about the delay by the Haq family in pursuing the Appellant was that the Appellant had told the Respondent in interview that the Taliban had not pursued his family earlier because they were not strong in his area at that time (see paragraph 31 of the refusal letter) when in fact the Taliban were in power in Afghanistan until 2001. This evidence was somewhat ambiguous. It was open to the Judge to decide what evidence was relevant and what was not. If, as here, she did not rely on something which appeared in the refusal letter as a reason for refusing the claim, that further undermines the argument made in the grounds of appeal that the Judge simply followed what the Respondent had said.

36. The grounds also complained about the Judge's treatment of Article 8. She was said to have overlooked the Appellant's relationship with his foster family and that he was a model student. In fact, she mentioned both those points. The Judge dealt with the ability of the Appellant to re-establish himself in Afghanistan. She noted at paragraph 71 that the Appellant could speak Pashto and that he had family in Afghanistan. The Appellant had sought medical treatment as the first set of grounds claimed but as the Judge pointed out the medical evidence was that it was because the appellant was having problems adjusting to life in the west, problems which would go away on return to Afghanistan. The evidence put before the Judge did not support the claim made in the first set of grounds that the Appellant had sought medical attention because of his experiences in Afghanistan. If the Appellant wishes to put further evidence before the Respondent that is a matter for him but the Judge could only decide the case on what was in front of her. The Judge concluded that there were not very significant obstacles to the Appellant's integration into Afghanistan. That was a decision that was open to her on the evidence which included the existence of family in Afghanistan and the grounds are a mere disagreement with that conclusion. The Judge accepted that the Appellant had developed a private life in this country and noted his close ties with his foster parents, that he had had to avail himself of medical facilities in this country and had been a model student. These factors were taken into account but the weight to be given to them was a matter for the Judge.

37. The 2nd set of grounds of onward appeal merely repeat the remarks made by the Judge on these aspects of the Article 8 claim and then argue that the Judge has given

inadequate reasons for her findings. The point is that that the Judge was weighing all of the evidence in the balance both for and against the Appellant and was setting that evidence out before arriving at her conclusions. Again, the grounds are a mere disagreement with the result they do not indicate a material error of law. The Judge noted the Appellant had been a diligent student and had seemingly settled well into the United Kingdom but the decision to remove him was not disproportionate. As the Appellant had failed to establish the required international protection there were no circumstances such that his appeal should be allowed under Article 8. This is to be expected. If the Appellant could not succeed under the Immigration Rules and/or his claim for asylum there would be great weight to be placed on the Respondent's side of the scales.

38. The Appellant had come to the United Kingdom at the age of 15 but he was 20 by the time of the hearing and able to return to his country and make a contribution to it using perhaps the skills he has acquired in this country. Had he come to this country at an earlier age than 15 there might have been more force in the **Hesham Ali** argument but by the time of the hearing he was an adult. The **Hesham Ali** argument which is of questionable relevance does not seem to have been raised before the Judge who cannot reasonably be criticised for not dealing with it.

39. Although many criticisms were made of this determination they were unfounded ones. On closer examination and a fair not selective reading of the determination as a whole it can be seen that the Judge gave cogent reasons for her findings that the Appellant's claim to be involved in a blood feud was not credible, that he could return to Kabul and could rely on support from his family in doing so. The lengthy grounds of onward appeal are an attempt to find an error where none exists. The Judge rejected any claim that the Appellant might be at risk upon return to Afghanistan by reason of his westernised attitude relying on the expert report of Dr Giustozzi who said that would only be a problem if the Appellant settled in rural or conservative areas of the country including some suburbs of Kabul. The 2nd set of grounds of appeal argue that inadequate reasons were given for finding that the Appellant would be able to avoid conservative areas but no positive case has been advanced that the Appellant would need to go to such a conservative area or particularly would want to. Nor is it demonstrated why avoiding an area where there might be a Taliban or other malign influence is of itself such hardship that it engages the need for international protection.

40. Notwithstanding some of the comments made to me by the Presenting Officer in submissions since the appeal itself was not conceded by the Respondent the position remains that I must analyse the determination to establish whether there is any material error of law which vitiates the determination. For the reasons which I have given at some length above I do not find there is any such material error of law and I reject the submissions made to me that there are such errors. I therefore dismiss the Appellant's appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 15th of December 2017

…….
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 15th of December 2017

…….
Judge Woodcraft
Deputy Upper Tribunal Judge