



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13283/2016

THE IMMIGRATION ACTS

Heard at: Field House
On 25th April 2017 and 13th June 2017

Decision & Reasons Promulgated
On 16th June 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

R M
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith of Counsel instructed by Islington Law Centre
For the Respondent: Mr K Norton (25th April) and Mr S Kotas, Senior HOPO's

DETERMINATION AND REASONS

1. The Appellant is a national of Afghanistan date of birth 30th May 2001. He appeals with permission¹ the decision of the First-tier Tribunal (Judge RG Walters) dated 10th February 2017 to dismiss his protection appeal.

Anonymity

2. The Appellant is a minor seeking international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the

¹ Permission was granted on the 3rd March 2017 by First-tier Tribunal Judge Colyer

Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Matters in Issue

3. The Appellant arrived in the United Kingdom on the 22nd April 2016. He was given leave to enter in order that he could join his elder brother, who had already been recognised as a refugee by the UK government. The Appellant had until that time been living in the ‘jungle’ in Calais.
4. The basis of the Appellant’s claim is that he is from Nangarhar province and left because of threatening behaviour towards his family from Daesh. Daesh took his father and elder brother sometime in 2015. It was intimated that the Appellant’s elder brother in the UK (‘A’) was considered to have “left Islam”. They said that they knew that the family had met up with A in Pakistan. His mother had been frightened by these events and so had arranged for the Appellant to come here. The remaining family are now in Peshawar, Pakistan. The Appellant does have a maternal uncle in Kabul, but it is not safe for him to live there because this uncle works for international organisations and is himself at risk.
5. The Respondent had rejected the claim on credibility grounds but had granted a short period of discretionary leave because of the Appellant’s young age. His age has never been in dispute. It is therefore accepted that at the date of the material events in Afghanistan the Appellant was 13; he was 14 on arrival and at the date of the First-tier Tribunal determination he was 15.
6. When the Appellant’s appeal came before the First-tier Tribunal both he and his elder brother ‘A’ gave live evidence. He relied on an expert report prepared by Dr Antonio Giustozzi who confirmed that the Appellant’s home village is in “one of the main areas of Daesh activity and is mostly under its control”. Dr Giustozzi considered the claim to be plausible, given that Daesh have a policy of maintaining a strict control over the local population, rely on spies to provide key information about suspect families and consider the Appellant’s tribe to be hostile to them.
7. The First-tier Tribunal did not believe the claim. It found, in summary, that the Appellant had been sent here by his family for socio-economic, rather than protection, reasons.

8. The grounds of appeal are that the First-tier Tribunal erred in the following material respects:
- (i) Rejecting without intelligible reason the expert evidence of Dr Giustozzi;
 - (ii) Making findings unsupported by reasons/failing to give sound reasons;
 - (iii) Failure to put matters to the witnesses;
 - (iv) Making the irrational finding that A was a “pathfinder” for the Appellant on a road to economic betterment;
9. The Respondent opposed the appeal. At the error of law hearing Mr Norton submitted that it was clear from the determination that the Tribunal had had regard to the report of Dr Giustozzi; it had however not been obliged to accept his evidence. The credibility of the claimed events was a matter for the Tribunal. It had been entitled to reject the evidence about the perceived risk in Nangarhar for the reasons given, and to have made the finding that it did about Kabul. The fact that the Appellant’s brother A had been found to be at risk in 2011 was not directly material, since time had moved on. At the resumed hearing Mr Kotas submitted that the Appellant was lying about the events that he had narrated, and that the appeal should be dismissed for want of credibility. I shall address the Respondent’s submissions on credibility in the re-making. I deal first with why the decision of the First-tier Tribunal fell to be dismissed.

Error of Law

10. I did not find the determination of the First-tier Tribunal easy to follow. At paragraph 8 the Tribunal directs itself to the appropriate standard of proof, that being the lower standard applicable in protection cases. At paragraphs 27 and 28 the determination makes reference to the Appellant’s age and to the applicable guidance on dealing with claims from children, noting that the benefit of the doubt should be “applied more liberally” in such cases. It is not apparent from what follows that the Tribunal followed its own direction.
11. I say this for the following reasons. First, the account given by the Appellant is a relatively straightforward one, with no obvious internal inconsistencies. No credit appears to have been given for that. The account of Daesh taking over the Appellant’s home area, subjecting the local population to their control and targeting perceived opponents is wholly supported by the country background evidence, in particular the expert evidence of Dr Giustozzi. No credit appears to have been given to that. The Appellant’s evidence was in large measure corroborated by that of his brother A, who had already been found to be a

credible witness and who was a recognised refugee. No credit appears to have been given for that.

12. Instead the Tribunal embarks on a review of the plausibility of the claim without making clear findings on the evidence. Having heard the submissions of the parties I am satisfied that each of the findings, such as they are, are flawed for legal error.
13. At paragraphs 35-36 the Tribunal appears to doubt that the family travelled to Pakistan as claimed in 2014 and 2015 because there was no evidence that they had sought the permission of Daesh to do so: this was a reference to Dr Giustozzi's evidence that the organisation seeks to maintain a tight control over the local population by, for instance, imposing travel restrictions. Whilst it is not at all clear what weight the Tribunal gave to that observation, it is a 'finding' that cannot stand, for the simple reason that it was not a point put to either the Appellant or his brother. Neither was asked whether permission was sought, or given. Mr Norton submitted that it was an "obvious" point arising from Dr Giustozzi's report and that they should have dealt with it. I struggle to see how these two young witnesses should have apprehended it to be obvious where neither the HOPO nor the Tribunal appeared to regard it as so at the hearing.
14. Paragraph 37-40 appears to reject (again it is unclear) without reason the evidence that Daesh became aware of the fact that A was living in the UK. Dr Giustozzi had commented on this evidence that it was plausible given that the family lived in a village, and that Daesh were likely to have informants in the local population. I hardly think one needs expert evidence on this point. There is nothing incredible or implausible in the suggestion that people in the neighbourhood would have known about A being here, and that this information would have filtered through to Daesh.
15. Paragraph 41 comments on the fact that Dr Giustozzi has not given any examples of Daesh targeting families because they have members abroad in non-Muslim countries. Although, again, no finding is given in conclusion, the suggestion left hanging is that the account is not supported by the background material. What that analysis omits to weigh in the balance is the fact that the same material - including Dr Giustozzi's commentary - indicates that Daesh use arbitrary and oppressive means of controlling the local population, that they are in control of the Appellant's home village and that they have a particular hostility towards his tribe. Those were all material factors capable of displacing the negative inference that the Tribunal appeared to draw from the absence of direct evidence on all fours with this account. It was an error of law to ignore them.
16. Paragraphs 43-44 are concerned with the safety or otherwise of Jalalabad. The Respondent had not, at least in the reasons for refusal letter, posited Jalalabad as a place of alternative relocation; given the terms of the Respondent's policy (as set out in the Country Information and Guidance) it would seem doubtful

that the HOPO took that line at the hearing. The Tribunal was however concerned with the objective evidence on the city because that is where the family initially fled in fear of the Taliban. Dr Giustozzi considered that Daesh had “some ability” to operate there, but it had not yet targeted individuals. Of this the Tribunal concluded, at paragraph 44:

“If that be the case, I did not find it believable that the Appellant’s family would risk sending him, aged 14, on the long and dangerous overland journey to the UK, as opposed to him relocating in Jalalabad with other family members”.

17. On first reading I did not understand this reasoning at all. The evidence of Dr Giustozzi is not rejected, but on the other hand it is not disputed that the Appellant did in fact make that journey described. Further reference is made to the perils of his journey [at paragraph 47], and [at 46] to the fact that Pakistan offered a “cheaper and safer” option than sending the Appellant all the way to Europe. It is only in paragraphs 47 and 48 that the point becomes clear: the fact that the family did not leave the Appellant in moderately safe Jalalabad, and instead chose to send here, indicates an ulterior motive:

“His family’s motives for sending him to the UK are, I find, because of a desire for him to be looked after and educated by the UK government.

The Appellant’s brother [A] has been a pathfinder. He arrived in the UK as a minor and went into foster care where he prospered. He did well academically and when he gave evidence said that he owns 60 per cent of a mobile phone shop”

18. Ms Smith strongly objected to this reasoning. I accept her submission that it was legally flawed. The global conclusion that both brothers had come here simply to obtain an education and foster care was irrational. First, there was no evidential basis for it. Second, it was made without taking the actual evidence into account. No regard has been had, for instance, to the fact that they are from a place formerly under control of Taliban militias, and now under the sway of Daesh, where the civilian population has been subject to widespread human rights abuses for over a decade. More significantly no regard has been had to the fact that A had been found by another Tribunal, in a decision never challenged, to have come here because he had protection needs.
19. For the reasons set out above I am satisfied that the First-tier Tribunal did err in law in its approach to the claimed risk in Nangarhar. Ms Smith submitted that it followed that the findings on internal flight to Kabul could not stand, since they were necessarily infected by the assumption that this was a child whose family had taken an economic, rather than a protection-based decision, to send him abroad. I accept that this must be the case but for the avoidance of doubt set these findings aside for discrete errors. The Tribunal finds that the Appellant could live with his uncle in Kabul. Whilst it appears to be accepted

that this man is an interpreter for organisations such as USAID (as found by the Tribunal which determined A's appeal) the Tribunal considers it reasonable that the Appellant live with him because there is no evidence that the Taliban have managed to attack him. This fails to weight in the balance a) the objective evidence that such interpreters *are* targets for terrorists, b) the evidence that only the immediate family of the interpreters are given protection and c) whether it would be reasonable to expect a child with clinically diagnosed mental health problems to live under those circumstances.

20. The decision of the First-tier Tribunal is set aside in its entirety.
21. The parties invited me to re-make the decision in the Upper Tribunal. No interpreter had been available at the hearing in April so the matter was reconvened before me on the 13th June 2017.

The Re-Making

22. I remind myself that the burden lies at all times on the Appellant. He must demonstrate there to be a real risk, or reasonable likelihood, that he would face persecution or serious harm in Afghanistan today. If there is a place where he can establish such a risk his claim will nevertheless fail if I am satisfied that there is a somewhere else in the country where he could reasonably be expected to live without a risk of harm.
23. Certain elements of the claim are settled. It is accepted that the Appellant is a child; at the date of the re-making he had just turned 16. It is accepted that he is from Afghanistan. It is accepted that he is the younger brother of A, who came here himself as a child in 2011. A now has indefinite leave to remain following a grant of refugee status. As far as policy is concerned I am guided by the Respondent's Country Policy and Information Notes (CPIN) 'Afghanistan: *Fear of anti-government elements (AGEs)*' Version 2.0, published in December 2016. This document is relied upon by Ms Smith in particular at [2.4.2] where it states that in areas under AGE control, there will be a failure of state protection. At [2.4.3] it states that even in Kabul and other districts controlled by the government the authorities will "usually be unable to offer effective protection given the structural weaknesses in the security forces and the justice system". I am asked to note that the only place of possible internal relocation suggested in the refusal letter is Kabul.
24. Mr Kotas forcefully submitted that the evidence of both the Appellant and his brother was false, and that the claim had been made up. I have kept his submissions in the forefront of my mind as I have assessed the evidence.

The Appellant's Evidence

25. The Appellant's 'screening interview' took place on the 20th May 2016. Because he was a child he was permitted to submit a written statement setting out the

details of his case. That is undated but was submitted under cover of letter dated the 13th June 2016 ('statement A'). He was then interviewed in detail about his asylum claim, on the 7th November 2016. Since then the Appellant has submitted two further statements, one dated the 21st December 2016 ('statement B') and one dated 19th May 2017, drafted to deal with matters that had only arisen in the First-tier Tribunal decision ('statement C'). The Appellant gave oral evidence before me. He was extensively cross-examined on behalf of the Respondent.

26. The Appellant states that he is from a village in a remote rural area of Nangarhar. It is called Bati Kot. Before coming to the UK he lived with his parents, sister and two brothers. Mr Kotas put it to him that in his screening interview it makes no mention of his sister. The Appellant was unable to explain why the record shows that. As far as he is concerned his sister was living there too. He attended primary school and learned the Qu'ran at the village mosque. He enjoyed playing cricket with his friends. In statement A [at 6] the Appellant explains that "life in Afghanistan for everyone including me is always full of fear". People were worried about landmines and other explosions. When he was a young child his father had been injured in an explosion, and now limps when he walks. His father is a farmer. The Appellant's elder brother R and he would help his father in the fields.
27. The Appellant states that the Taliban and Daesh have control over the area where he lives. He has seen those men with his own eyes. They have long straggly hair and wear black. They cover their heads with white cloths. They carry Kalashnikovs and rocket launchers. In statement B the Appellant explained why his family do not support these organisations. They burned schools, stopped girls from studying and slaughtered people. In cross examination Mr Kotas asked the Appellant if he had seen these things with his own eyes. The Appellant said that he had never seen anyone beheaded, but he had heard about such events from other people who had. He knew that they had burned the school in the village down because he had seen this himself. Mr Kotas questioned why he had not made this clear in his statement. The Appellant said that he did not know, perhaps he had not been asked about it as he was being asked now.
28. The Appellant states that as far back as he can remember the Taliban had been there, but more recently it was Daesh. Asked to explain the difference between these two groups he said that the Taliban want to fight the government; Daesh want to fight the people too. They hate everyone who is not one of them. He left because of Daesh.
29. In 2014 the Appellant's mother was very sick and they were told that she needed an operation. There was no hospital in their area and they were told that she would need to travel to Pakistan. The family all travelled with her. In statement C the Appellant addresses the question of how they left their home area. He has no idea whether his parents got permission in advance to travel: it did not occur to him to ask them. He just went with them. They went through a

checkpoint, and his father spoke with them. He does not know what his father said to them. They went for about one and half months and stayed with a relative who lives there. A came from the UK and saw them. The Appellant describes the visit as a "strange time": they were all happy to see A, but sad and worried about their mother because she was so sick. It was a "mixed time". When they went back to the village they told people that they had gone away for medical treatment. That was normal. He remembers his parents telling him, however, not to mention to anyone that they had seen A.

30. In 2015 they went back to Pakistan in order to meet up with A for Eid. They spent about two weeks with him there. They were very happy to spend time with him. A had brought gifts, including smartphones for the Appellant and R. The Appellant was excited and was thinking how cool it would be when he got home and could show his friends. No one else in the village had mobile phones like this and he wanted to show them how they work.
31. Shortly after they arrived back in the village however, Daesh came and detained the Appellant's father and R. The Appellant was out playing with friends at the time and so was not taken. The Appellant and his mother were very afraid. They knew that sometimes people are held to make relatives do things, and that prisoners are sometimes tortured or killed. His mother went to the police but they could not do anything. Mr Kotas asked the Appellant how his mother went to the police if Daesh were in control of the area. The Appellant said that the police stay in a base on the road, outside of the village. They said that they could not help. The Appellant's mother sought advice from her brother and brother-in-law. The Appellant's uncle made contact with an agent who arranged for him to go to Europe with an agent. He was taken first to Kabul, where he went by air to Tehran where he was met by an agent.
32. The journey was long and difficult. The Appellant passed through numerous countries. The journey from Tehran to the Turkish border was "horrible and very scary" and the Appellant does not like to talk about it: he was transported in the boot of a car and could barely breathe. When the Appellant was in the Jungle people told him that he would scream in his sleep: he has nightmares about that journey. He walked into Turkey, and was driven to the Bulgarian border. They were in a "big and frightening" forest and the Appellant was scared that there were wild animals in there. It took 5 days to cross that forest; the Appellant was hungry, thirsty and scared the entire time. At the Serbian border they surrendered themselves to the Serbian police who transported them to the German border. They couldn't cross there so they went via Austria and Italy. It was in this border hinterland that the Appellant managed to speak with A in London. A told him that he had spoken to their family and that their father and R had managed to get away from Daesh. A "did something with his phone" that enabled the Appellant to speak to his parents. They were in Jalalabad at that time. As far as the Appellant could understand it there had been a big air and land operation against Daesh so they had managed to escape. The Appellant was very happy to hear that they were safe. It felt better to know that they were alive. After that the journey was mostly by train. The Appellant

ended up in Calais. Life in the Jungle was “not good”. Eventually some lawyers came and persuaded the appellant to claim asylum. They said that they would be able to get his claim transferred to the UK so that he could be with A, and they did.

33. At the hearing the Appellant said that he was unable to remember exactly when he had received that call from A telling him that his father and brother were safe. He knew he was somewhere on the border with Austria and Italy but could not give a date. Mr Kotas put it to him that it was incredible that he could not remember the date that he received this important news. The Appellant said that he was unable to say. He just knows that he was somewhere in Europe.
34. The Appellant states that he cannot really remember the time when A left Afghanistan. He is not aware of the details of why A left and has never asked him why he came to the UK. In statement A the Appellant points out “in Afghanistan adults don’t discuss important issues with children or involve them in decision-making”. He maintained that position when pressed by Mr Kotas at hearing. He has never thought to ask his brother about why he left.
35. The Appellant has maintained contact with his family. His mother is doing better than before but is still ill. She is living in Peshawar and continuing to receive treatment at Lady Reading. They were living with his aunt but now they have rented a house there. He last spoke with them about four days before the hearing. The Appellant believes that his brother in R is also in Pakistan but has not had contact with him for some time. He has been told that after he left Afghanistan the family had moved briefly to Jalalabad, and then his parents had gone ahead to Pakistan, leaving his younger sister and brother with his paternal uncle who lives there. His brother was about ten at that time. Now he is 12 and is living with his parents in Peshawar.

Medical Evidence

36. I have been provided with a report by Dr Susan Storey, Consultant Child and Adolescent Psychiatrist. Dr Storey assessed the Appellant on the 19th March 2016 in Calais. In order to prepare her report, dated the 31st March 2016, she also interviewed A and was taken on a group tour of the Jungle. The report sets out the Appellant’s account of his experiences in Afghanistan and his journey to France. In her conclusions Dr Storey notes that unaccompanied minors are generally at an increased risk of developing mental health difficulties at some stage, due to the separation from their family and their migration experiences. In her assessment the Appellant meets the diagnostic criteria for moderate depressive disorder, adjustment disorder, and some of the criteria for post-traumatic stress disorder.

Brother A

37. Brother A came to the UK in 2011 when he was accepted to have been 17. He claimed asylum on the basis that he had a well-founded fear of the Taliban in

his home area of Nangarhar. His uncle worked as an interpreter for the Americans, and A had been targeted by virtue of his association with him. The Respondent had rejected the claim on credibility grounds and A appealed. In a decision dated 5th May 2011 Immigration Judge Cohen of the First-tier Tribunal allowed the appeal. Having heard A give evidence Judge Cohen found the account to be credible. He found as fact that A's uncle did work as an interpreter for the Americans and that A had been placed at risk as a result. Mr Kotas asked me to note that the Respondent had not attended that hearing, and so A had not been cross examined.

38. A has provided two witness statements in these proceedings. The first is dated the 21st December 2016 and the second the 5th June 2017. A gave oral evidence before me and was cross examined by Mr Kotas.
39. A came to the UK in 2011 and claimed asylum. He now has indefinite leave to remain. He states that he had initially lost contact with his family in Afghanistan – they did not then have phones or anything like that in the village – but the Red Cross found them and put them back in touch. He maintains regular contact with them today. He said that now social media has spread through Afghanistan and people are able to use facilities such as Skype. A explains that he is the eldest of four brothers. The next down is R who is about 20. Then there is the Appellant and their younger brother. Their sister is about 16. A confirms that his mother has been unwell for some time. She suffers from various complaints and has had a heart attack in the past. She continues to receive treatment at Lady Reading. Their father has sold land and A sends money when he is able to help pay for this treatment.
40. A recalls that in 2014 his mother became very unwell. She was taken to hospital in Pakistan and she spoke with him by telephone. She had suffered a heart attack and was very ill. She said that she wanted to see him again before she died; this was a heavy burden for A. He decided that he would try and travel to Pakistan. A managed to get there and see his family for the first time in 7 years. It was a difficult experience for A. Although he was overjoyed to see his family again there was now something of a gulf between them. He had grown up here and become westernised; they remained “traditional Afghan country people”.
41. A says that his family returned to Afghanistan shortly after he had returned to the UK. He stayed in touch via Skype. He knew that their lives were “not great” but they were just trying to get on. Seeing them made him want to reconnect to his roots, so the following year he arranged to meet with his family for Eid. They all travelled for a second time to Pakistan. They had a really good time together. A bought phones for his brothers as gifts because he wanted to give them something of his life.
42. A describes Bati Kot as a close knit community. Everybody knows everybody and it is hard to conceal things. The first time that they had gone to Pakistan his family had told everyone that they were in Pakistan for treatment because they did not think it a good idea to advertise the fact that their son was living in

England. They are not rich people – nobody is expected to do anything other than survive. The second time they went it was more difficult to hide. It was not usual for families to travel abroad for Eid. People would normally stay at home and slaughter an animal. People only really travelled abroad either for medical treatment like his mum, or to go to Mecca. Now he looks back on it A realises that giving his brothers western things like smartphones would have caused problems. It was not usual for people to have that sort of thing. It may have provoked jealousy in the village, or anti-western feeling.

43. About one week after they all returned from that Eid trip in September 2015 A received a call from his maternal uncle telling him that his father and brother R had been detained:

“He said I should call home. I immediately called my father’s mobile phone number, and my mum answered. Father usually left the phone at home because I was the only person who called the number, and there was little reception anywhere else. My mum told me that Daesh had taken [R] and my dad. She was crying and very upset. She said everyone that Daesh had taken before had been killed. They had raided a nearby village before. A man who lived in the UK had returned to Afghanistan to see his family was taken and he and his father were killed. My mum was crying and saying that [R] and my dad would be killed too. I tried to calm her down but I was very worried too.

I felt terrible that this had happened. I felt that I had caused this to happen to my dad and brother. I felt guilty that I had brought danger to them. I was shocked that this had happened. I never expected it. I would never have met my family if I had thought that it would cause so much trouble. Now I think that we had been a bit naïve, but at the time we just wanted to see each other so much that we hoped for the best”.

44. A states that his family were concerned for the Appellant’s safety. His uncles wanted to get him out of the village. The uncle in Kabul has some protection in his job, but his company would not extend that to other family members. This uncle has made it clear that he would not be able to take the Appellant in. They decided that he should be sent to Europe to join A.
45. A states that he followed the situation closely. At that time the situation with Daesh in Nangarhar had reached a critical point. People were growing tired of the violence and the brutality. They had started to do things like take unmarried girls and force them to marry them. A member of the Afghan parliament called Zahir Qadir spoke out against them. He was very vocal in challenging the government to do something about it. He said that if they did not, he would take his own forces and fight them. He captured some Daesh fighters and beheaded them. This was controversial and the government said that he should not have done this. Zahir Qadir questioned why he was being

criticised when Daesh were allowed to carry on. All of this provoked the Afghan army into actually engaging with Daesh. They launched a big offensive against them in Bati Kot, Achin and Kot. There were airstrikes and ground troops. A lot of Daesh fighters were killed. They released a lot of Daesh captives – that was how R and his father were released. A states that he follows Zahir Qadir on Facebook and that at one point he had even messaged him asking him to help find them but he had not replied.

46. After they were released A spoke with his father and R by telephone. They didn't discuss the details of what happened. That is their way. There's no point upsetting someone by telling them about something that they cannot change. R went to Pakistan some time after this. A has not been able to speak with him again. He tried to contact him but R does not answer. In his statement A explains that he and R do not get along so well. He believes that R blames him for what happened. A feels sorry for this, but does not know what he can do today to stop him being angry.
47. In cross examination Mr Kotas put it to A that his family would not have been able to travel to Pakistan from their home area because Daesh do not let people travel. A said that he was unable to comment about the specific way that Daesh operate since they only emerged after he left Afghanistan, but that he had spoken with his father about this matter. They just had to pass through checkpoints and explain where they were going. On all occasions they had reason to travel. His mother was obviously unwell, and in the case of September 2015 it would not have been unusual for people to travel out of the immediate vicinity of the village, since they would have been preparing for Eid, ie travelling to markets in the bigger towns etc.
48. A says that he and the Appellant are very close now. He knows that the Appellant has been badly affected by what has happened to him and he tried to give him love and affection as much as he can to show him that he is supported. The Appellant has been emotionally disturbed by what he has been through. He has nightmares and walks around in his sleep.

Other Evidence

49. The Appellant has produced several pieces of evidence relating to his mother and her illness. In his evidence A explained that these documents were all scanned and emailed to him using services provided by shops in the bazaar. In respect of the most recent documents, these were photographed on a smart phone and simply emailed as attached photos. I have been shown a letter from a Dr Quadratullah Qani who appears to be based in Afghanistan. His note is dated the 17th October 2016. He writes that the patient has several complaints including myocardial infraction and asthma, and that since Afghani hospitals do not have the facilities to deal with such diseases he has referred her for better diagnosis and treatment in Pakistan. Dr Quadratullah gives the patient's age as 55. I have three documents from Lady Reading Hospital in Peshawar.

The first is dated 19th December 2016 and is addressed to whom it may concern. It states that the patient is suffering from cardiac disease and requires surgery as soon as possible. She needs complete bed rest and extra care for her recovery. Her age is given as 50. Various prescriptions are appended to this document. The remaining two are invoices from February of this year indicating that the lady in question has now been admitted, and prescribed medicine, for the treatment of endometriosis. These record her age as 53 years.

50. At the hearing Ms Smith produced two monochrome print outs of what I was told were photographs taken of the boys' uncle's photographic identity cards. Again, these were obtained via smartphone photograph and email. The first was issued on the 25th August 2015. It describes him as a 'procurement consultant' in the 'GDPM' department. This was issued by the Ministry of Public Health. The second is dated 31st March 2017 and was issued by the Ministry of Agriculture to him as an employee of 'VEGA CBCMP II'. Ms Smith invited me to conduct an internet search on what those initials meant; she said that they relate to a USAID funded aid programme in the agriculture sector. They do indeed. I bear in mind that the Respondent has been given no opportunity to verify these documents.

Country Background Material

51. The Appellant's representatives have produced evidence relating to an attack launched by the American military against Daesh positions very close to Bati Kot in Nangarhar in December 2015. Mr Matthew Sam Wapples is a senior graphic designer with Independent Television News. He has produced a witness statement dated 22nd May 2017 to which there are appended several photographic exhibits. Mr Wapples' statement is a fairly detailed technical description of how he came to produce the photographs that he introduces. The point of the statement, and the photographs, is to illustrate how close Bati Kot is to the event known as the 'MOAB' assault by the American airforce. This stands for the 'mother of all bombs', the largest ever conventional weapon used in war. The reason that Mr Wapples' evidence was necessary was because ordinary maps of the area are not of sufficient magnification to show Bati Kot. He used various tools including the professional systems used by ITN to produce the maps, which show the strike to have hit approximately 25 miles away from the Appellant's village. A number of newspaper articles relating to that strike and its aftermath are also produced in the bundle. These indicate that approximately 160 Daesh fighters died in the assaults during December and that hundreds of local people were emboldened to take to the streets in protest at Daesh's beheadings and brutalisation of the people under their control. The MOAB was described by residents as having an effect like an earthquake.
52. Dr Giustozzi's report is dated the 20th December 2016. The Respondent challenges neither his objectivity nor his well-established expertise. The salient points of the report are as follows:

- Nangarhar province saw the strongest increase in violence of any province in Afghanistan during 2014. There are three insurgent groups active there: the Taliban, Daesh and Hizb-i-Islami
- Bati Kot is one of the main areas of Daesh activity and is under their control
- They are allied locally with Shinwari tribesmen, who are rivals to the Appellant's tribe
- Daesh carry out forced recruitment of non-combatant staff
- They maintain a strict control over the local population and operate spy networks in order to root out any potential opponents
- Those considered to be "collaborationists" with government/western interests are targeted by both Daesh and the Taliban. People are threatened, kidnapped and killed on the basis of such suspicions
- Daesh have some presence in Jalalabad, and now some presence in Kabul, ever since 150 members of the Haqqani network defected to them. They are mostly targeting Shi'a in the city and have not yet developed the capability to track down individuals. The Taliban have an established presence there
- If forced to relocate to Kabul the Appellant would most likely, because of his tribal origins, end up in the east of the city. This is where the Taliban are at the strongest. They have launched numerous successful attacks in the city, including the deployment of truck bombs
- There is not a sufficiency of protection for persons who are at risk from insurgent groups in Kabul
- Living in Kabul is challenging. Housing is expensive, unemployment is high and there is no benefit system. Children are exposed to various forms of exploitation including begging, street vending and sex work. The exposure to narcotics, abduction, trafficking, delinquency and infection with HIV/AIDS is "very clear"

My Findings

53. In his submissions Mr Kotas asked me to reject the account given as untrue. He submitted that such were the implausibilities in the evidence, he could not even accept that the Appellant was from Bati Kot, in the area now controlled by Daesh. I consider those submissions in turn.

54. The Respondent submits that the Appellant has given evidence inconsistent with the country background material, in two respects. First, the evidence that the family were able to leave the village to travel to Pakistan is inconsistent with the opinion of Dr Giustozzi that Daesh maintain tight control of the civilian population. I am not satisfied that there is any contradiction. Since this matter was raised by the First-tier Tribunal A has spoken with his parents who explained that they were allowed to pass through the checkpoints after giving reasons for their journey. That is not inconsistent with Dr Giustozzi's opinion. The second matter raised by Mr Kotas was why the family would elect to leave the two younger children in the care of an uncle in Jalalabad: it was Dr Giustozzi's evidence that Daesh have some presence in and around the city. Again, in the context of the evidence overall I cannot find this to be an inconsistency, or implausibility in the evidence. This is a poor farming family who fell under some suspicion because they had travelled out of the vicinity of Bati Kot on more than one occasion, and who were believed to have a relative abroad. It does not follow that Daesh would be so interested in pursuing them that they would track down two very young children in Jalalabad. No doubt a decision to leave young children behind is a difficult one, but it is one that many families facing forced migration make.
55. The Respondent submitted that the Appellant's evidence should be rejected as it was unsatisfactory. I am asked to find that he was vague in a number of respects, notably in his inability to give a date for the day that he received a call telling him that his father and brother had escaped from Daesh custody. This submission, and the force with which the issue was put in cross examination, bordered on the ridiculous. This is a child from rural Afghanistan, where dates and times mean little outside of identifying annual celebrations such as Eid. He had been, as set out in great detail in his statements and the report of Dr Storey, on a protracted and perilous journey which has left him with clinically diagnosable mental health issues. He was able to tell the Tribunal that he had been somewhere on the Austrian/Italian border, having failed to cross into Germany. He was in countryside so cannot say exactly where he was. He remembers the phone call very well but could not give a date for it. I can find nothing incredible, vague or implausible in that. I would be very surprised if he had been able to give a date. I note, in respect of the particular issue of when the escape took place, that the Appellant's representatives have produced unchallenged country background material to indicate that Daesh were under assault in Nangarhar in late 2015. The evidence of Mr Wapples about the 'MOAB' and the accompanying newspaper articles are all consistent with A's evidence that there was a concerted effort made by the Afghan government, local people, opposing militias such as that he describes, and the American airforce at that time. There were a number of things that the Appellant did not know, or could not speak to in any detail. That was wholly consistent with his age and culture.
56. The Respondent submitted that it was inherently implausible that Daesh would have been able to find out that A was in the UK in 2015 where they had not been able to do so before. I reject that submission. There are a number of

possibilities. They might have known all along, but been concerned with other matters. They might have known, and not cared, their sudden interest in potential troublemakers stemming from increased opposition in the area. Perhaps it was, as the Appellant suggests, a jealous local who noticed the boys returning from Pakistan with obviously western goods. There are many possibilities: it follows that the evidence cannot be said to be inherently incredible, ie so far fetched as to be incapable of belief.

57. Mr Kotas submitted that the Appellant had embellished his evidence. He had said in his statement that Daesh burned down schools, and in his oral evidence said that they had burned down a school in *his* village. This is considered by the Respondent to be an obvious example of the Appellant seeking to inflate the evidence. Perhaps it is, but since it does not appear to be in issue that Daesh do burn down schools, or that they are in control of Bati Kot, I find it difficult to see where that takes the Respondent's case.
58. Finally Mr Kotas described the Appellant's evidence that he had not, since he arrived in the UK, discussed family history with his brother as "patent nonsense". He identified this as "one of the most troublesome aspects of the evidence". I am unable to follow the logic. The Appellant knows that A left because of some problems arising with the Taliban, but says that he did not consider it appropriate to question A about these matters. I find that to be wholly credible evidence for several reasons. Firstly, it is consistent with the context of the case. These boys are from a region that has been in the grip of a violent civil war, or under the sway of oppressive regimes, for the best part of 4 decades. The reasons why these brothers have left do not need to be explained to each other. Secondly, it is consistent with the culture from which they come. The Appellant explained, in several places in his evidence, that in Pathan culture children are not expected to discuss such matters with adults, much less question them about it. In his evidence A spoke of how R did not tell him about his experiences at the hands of Daesh: "That is our way. There's no point upsetting someone by telling them about something that they cannot change". It is further consistent with the evidence of the Appellant, A and Dr Storey, that the Appellant has been emotionally disturbed by events in his past and would like to avoid discussing them if he can.
59. My assessment of the Appellant's evidence is that it has been both internally consistent and consonant with the country background material. He has been interviewed by immigration officers, assessed by a consultant psychiatrist, had his evidence taken by a solicitor and twice given evidence under cross examination. I can find no material discrepancies in any of the evidence that he has given. His evidence about his home area being under Daesh control was reflected in the country background material. Importantly that material also suggests that the organisation came under significant stress in that region in late 2015, which would accord both with the Appellant's family members being rounded up, and with them managing to escape.

60. The evidence itself was detailed and, contrary to Mr Kotas' suggestion, I found that it did have the 'ring of truth' about it. Small but telling details revealed this account from the perspective of a child: his mixed emotions at seeing his brother again in such difficult circumstances (in Pakistan in 2014), how excited he was to go home and show off his new iPhone to his friends (in 2015), how he feared being attacked by animals in the dark Bulgarian forest.
61. I place significant weight on the evidence of the Appellant.
62. The Appellant's evidence is supported to a great extent by that of his elder brother, A. A was found to be a witness of truth in respect of his own asylum appeal. It is true that the assessment of Judge Cohen does not bind me, but it is my starting point. I bear in mind that the Respondent did not attend that hearing and that A was not therefore cross examined. I bear in mind that he might well have told the truth then, but for whatever reason be lying today. Having taken all of that into account, I found A to be a persuasive, confident and credible witness. His written evidence was detailed. Under cross examination he gave his answers in an unhesitant manner. His evidence was consistent with that of his brother, and I attach significant weight to it.
63. The evidence of the brothers was supported by documentary evidence of their mother's illness. I have considered that medical evidence in the round with the remaining evidence, per Tanveer Ahmed. I note that none of these doctors appears to be able to agree about how old the patient might be but I attach no weight to that issue. As the Appellant and his brother explained, chronological age is not something that attracts much attention from where they are from. Their mother does not have a birth certificate. She would have been accompanied to any hospital appointments by a relative, and everyone might have had a different answer to the question. Whether she was 50, 53 or 54 at the time of these consultations matters not.
64. Having considered all of the evidence I am entirely satisfied that the burden of proof has been discharged. I accept that the Appellant is telling the truth.
65. I find as fact that the Appellant has a well-founded fear of persecution in his home area of Bati Kot from insurgent groups including Daesh. If returned to that area today he would be immediately vulnerable to detention and interrogation, as a person returning from the west, from a family who fled after Daesh showed an interest in them.
66. The Respondent submits that notwithstanding any risk that might exist in Nangarhar, the Appellant cannot qualify for refugee status because he can avail himself of an internal flight alternative. Mr Kotas did suggest at one point that this might include Jalalabad, but in light of the CPIN and the terms of the refusal letter, withdrew this submission and concentrated on Kabul. Apparently accepting that the Appellant would be at risk in Kabul if he were to be returned there as an unaccompanied minor, Mr Kotas submitted that there was no good reason why the Appellant would be unaccompanied if returned to the city. He

submitted first that the Appellant could live with his uncle, and if that were not possible, that the family could leave Pakistan and come and live in Kabul to be with him.

67. I consider first the possibility that the Appellant could live with his uncle. The maternal uncle has been living in Kabul for some time. The Appellant said that he had originally lived in the village, where he had interpreted for the American forces during the war, but had latterly been living in Kabul and working for various international aid organisations. Judge Cohen had found as fact in 2011 that this gentleman had been working as an interpreter. I have been shown scanned photographs of his photographic ID cards from 2015 and 2017 and I see no reason to reject the evidence of A and the Appellant that he is now working for USAID funded projects in the capital.
68. It has been the consistent evidence of the Appellant and his brother that their uncle will not, and cannot, take them in. That his job puts him at risk from insurgent attack is clear from the country background material: see for instance paragraphs 8.4.1 to 8.6.7 incl. of the current CPIN. He is at increased risk as someone who has worked for the American forces in the past, as someone who currently works in an American funded project under the auspices of the Afghan government. The consistent evidence (as far back as 2011) is that this uncle has a security detail provided as part of his job. It is the consistent evidence that this security will not extend beyond members of his immediate family, ie his wife and children. Ms Smith made the good point that this is hardly surprising: in the context of a country where people have large extended families it would seem very unlikely that international organisations or the Afghan government would pay for a possibly large number of cousins, nephews, nieces, brothers and sisters to receive protection. I note that when the family fled in late 2015 they did so leaving the two youngest children in Jalalabad with a different uncle. Given that the family went via Kabul (where the Appellant himself was put on a plane) that would tend to suggest that it was not an option for them to be left with this uncle in Kabul. Having considered all of the evidence I am satisfied that it would not be possible for the Appellant to live with his uncle. I am further satisfied that any association with this uncle, without the benefit of his security detail, would place the Appellant himself at risk, just as it did A in 2011.
69. Mr Kotas suggested that in the alternative, the family who are currently resident in Peshawar could give up the home that they have made there and return to Afghanistan to meet and live with the Appellant in Kabul. I am satisfied that this is not an option. I accept that the Appellant's mother has been unwell over a protracted period of time and that she must stay close to the Lady Reading hospital where she continues to receive treatment. I accept that the family have themselves been driven out of their homes by Daesh persecution and would be unwilling to return to Afghanistan in those circumstances. I accept that at the date of the appeal before me, they are not in Afghanistan, but settled and living in another country. In light of these facts I do not find the

suggestion that the UK return the Appellant to Kabul in the hope that the family will be there to meet him realistic or reasonable.

70. Having had regard to the evidence overall I am satisfied that there is no other place in Afghanistan where the Appellant could reasonably be expected to stay. He has only just turned 16. I cannot be satisfied that suitable arrangements have been made for his reception or care in Kabul, or that it would be safe or reasonable to expect him to live there alone: LQ (age: immutable characteristic) Afghanistan [2008] UKAIT 00005, DS (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 30, KA (Afghanistan) v Secretary of State for the Home Department [2012] EWCA Civ 1014, AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) applied.
71. It follows that the appeal must be allowed on protection grounds.

Decisions

72. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside.
73. I re-make the decision in the appeal as follows:
- “The appeal is allowed on asylum grounds.
- The Appellant is not entitled to humanitarian protection because he is a refugee”.
74. There is a direction for anonymity.

Upper Tribunal Judge Bruce
15th June 2017