Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12135/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th August 2018	**On 10th October 2018**

Before

UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE SMITH

Between

D E
[ANONYMITY DIRECTION MADE]

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms G Capel, Counsel, instructed by Duncan Lewis for the Appellant
For the Respondent:	Mr E Tufan, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. 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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. The Appellant is a national of Afghanistan. He is now aged twenty years. He arrived in the UK in January 2012 when he was aged fourteen. He claimed asylum on 14 February 2012 which was refused on 16 July 2012, but he was granted discretionary leave to remain as an unaccompanied minor. He was given a right of appeal against the refusal of his asylum claim which he did not exercise. He then applied on 3 July 2015 for further leave to remain. He appeals against the decision of the Respondent dated 12 November 2015 refusing him leave to remain.

2. The Appellant's appeal was refused by First-tier Tribunal Judge Isaacs in a decision promulgated on 16 February 2017. The Judge accepted that the Appellant's father had been killed by the Taliban. She also accepted that the Appellant would be at risk of persecution in his home area of Logar. Those findings were not challenged by the Respondent. However, the Judge went on to find that the Appellant could return to Kabul and that this would not breach his rights under either the Refugee Convention or the Human Rights Act 1998.

3. The Appellant appealed that decision to the Upper Tribunal with permission to appeal granted by First-tier Tribunal Judge Lambert. By a decision promulgated on 19 December 2017, a panel of this Tribunal consisting of The Honourable Lady Rae (sitting as an Upper Tribunal Judge) and Upper Tribunal Judge Lindsley found there to be an error of law in the First-tier Tribunal decision so far as concerned the findings in relation to return to Kabul. At [21] of the panel's decision, the errors of law are stated to be as follows:

> "[21] We find therefore that the First-tier Tribunal erred in law in failing to set out and apply the correct test for internal relocation and apply it to the substantial amount of evidence on this point. We also find that the same error occurred with respect to the failure to apply the full evidence before the First-tier Tribunal to the decision on paragraph 276ADE (1)(vi) of the Immigration Rules with respect to whether the Appellant would have very significant obstacles to integration in Afghanistan, and thus the appeal Article 8 ECHR.
> [22] We therefore set aside the decision of the First-tier Tribunal. We preserve however all of the findings up until and including paragraph 85 of the decision which are not infected with any errors.
> [23] We now need to remake these aspects of the appeal identified at paragraph 21 above. However, it is now appropriate to adjourn the remaking hearing until after the country guidance in AS on relocation to Kabul is promulgated. It is understood that this is likely to be available in January 2018, so the matter will be listed for a case management review hearing on the first available date before Upper Tribunal Judge Lindsley after 1st February 2018"

4. A copy of the panel's decision regarding the error of law is attached to this decision for ease of reference.

5. The appeal next came before Upper Tribunal Judge Dawson on 10 April 2018 for case management review. The Appellant sought a remittal of the appeal to the First-tier Tribunal which application was rejected. Directions were given for the filing of evidence.

6. We had before us a consolidated bundle of documents filed by the Appellant to which were added late in the day a number of additional documents, including the Appellant's most recent statement signed on 2 August 2018 which for some reason did not find its way into the bundle until the morning of the hearing. We also had to permit the Appellant a short adjournment on the morning of the hearing in order for Ms Capel to take instructions in relation to a medical report from Dr Bagga, a document not produced by the Appellant until that day. We admitted that document in evidence with no objection from the Respondent.

7. The late filing of evidence suggests a lack of preparedness by those acting for the Appellant which was also reflected in their failure to request an interpreter for the Appellant's oral evidence, a matter which is made expressly clear in the standard directions on the grant of permission. An adjournment in order to obtain an interpreter was avoided by the Appellant's agreement to give his evidence in English. We indicated that we would consent to that course but would stop the evidence if it appeared to us at any time that he was unable to understand and answer questions. It was not necessary to adjourn as the Appellant gave his evidence in English without any difficulty. He was able to understand and answer the questions articulately. Fortunately, therefore the lack of proper preparation on the part of the Appellant's solicitors did not prejudice the Tribunal's conduct of the hearing.

8. We refer to the evidence contained in the consolidated bundle hereafter as [AB/xx].

9. We record our equal dissatisfaction with the Respondent's failure to file his statement of case on time or indeed at all. We nonetheless permitted Mr Tufan to make oral submissions. He also produced on the day of the hearing the latest "Country Policy and Information Note" in relation to Afghanistan dated April 2018. Our attention was not drawn to any particular part of that Note and, having read it, we do not consider it necessary to refer to it. It refers to evidence already considered in the country guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) ("AS (Afghanistan") to which we refer further below.

THE APPELLANT'S CASE

10. We begin by re-stating the limited scope of the issues which we have to determine. We are not concerned with the Appellant's return to his home area in Logar province where he would be at risk of persecution. Although Ms Capel referred in her Amended Statement of Case to the possibility of return to Khost (where the Appellant formerly had some family members), she did so because the Respondent

raised this possibility in his decision letter in November 2015. However, the Respondent has not submitted before us that this would be an alternative place of relocation. We do not therefore need to consider whether this would be a reasonable alternative.

11. We note by reference to the errors of law set out in the passage cited at [3] above, that the only issues for us to determine are whether the Appellant can be expected to internally relocate within Afghanistan to Kabul and/or whether there are "very significant obstacles" to his integration there under paragraph 276ADE of the Immigration Rules ("the Rules"). Although Ms Capel did refer in her Amended Statement of Case to an issue whether Article 8 ECHR is breached more generally by the decision to remove, we observed in the course of submissions that, when the interference with the Appellant's private life is balanced against the public interest, it would be unlikely to outweigh that public interest unless the Appellant can show that his integration in Kabul is prevented by "very significant obstacles".

12. In brief summary, the Appellant's case is as follows.

13. The Appellant says that he does not any longer have contact with family members in Afghanistan and does not know where his mother and uncle are now living. As such, he says that he would be relocating to a part of Afghanistan where he has never lived without any family support network. He would also be returning to a country which he left when he was a young teenager and would have little familiarity with the culture there.

14. It is part of the Appellant's case, that, in finding employment and accommodation in the UK, he has been reliant on others for support and assistance and that, without such support in Afghanistan, he would not be able to find employment and accommodation in order to survive. We have evidence before us from a Ms A Tyrrell, an independent social worker as well as from a social worker from Suffolk County Council who had responsibility for the Appellant as a minor and from Mr Farid Mall, the director of the Afghan Paiwand Association ("Paiwand") and Ms Kate Duffy, a key worker for Paiwand, in relation to that support network.

15. The Appellant says that his problems in securing employment and accommodation would be exacerbated by his low level of education and illiteracy in the Pashtu languages and physical problems arising from a road traffic accident suffered in the UK in February 2018. In relation to the latter, we have a report from a Dr Bagga dated 13 June 2018 which was written for the purposes of litigation by the Appellant against the other driver involved in the accident.

16. The Appellant also says that he is not otherwise in good health. He points to mental health conditions which are dealt with in most detail by a psychiatric report of Dr Obuaya dated 27 June 2018 and GP records.

17. Finally, the Appellant also says that the security situation in Kabul has deteriorated and, as a civilian, he would not be safe there. He does not ask the Tribunal to depart from the country guidance given in AS (Afghanistan). It is not suggested that the level of risk is now such as to breach Article 15(c) of the Qualification Directive. Nonetheless, the Appellant relies on the latest report from the European Asylum Support Office ("EASO") dated 2018 as showing that the level of risk to civilians has increased and that this is a factor to which we must also have regard.

18. It is convenient at this juncture to mention that, at the start of the hearing, Judge Dawson read out a statement setting out his involvement with EASO in terms of providing training for courts and tribunals (as a trainer approved by EASO) and assisting with the creation of written guidance for the judiciary directly with EASO and indirectly for EASO through the auspices of the International Association of Refugee Law Judges (IARLJ) who have prepared additional judicial guidance. He is also on the Joint Monitoring Group of the IARLJ which oversees the creation of its training material. Judge Dawson confirmed however that he had not been involved in any of the work for EASO's information on countries of origin and is independent of EASO. As such, he did not perceive any conflict arising from his role. Neither party objected to his continuing involvement with this appeal in light of that declaration.

LEGAL FRAMEWORK

19. The country guidance in AS (Afghanistan) was concerned with whether and to what extent, internal relocation to Kabul would be "unduly harsh". There is therefore a significant overlap with the issue in that case and this appeal. The Tribunal in that case also received submissions in relation to the legal test concerning internal relocation which were more extensive than those before us. Rather than rehearse those arguments again by reference to earlier case-law, it is convenient simply to set out the Tribunal's reasoning and conclusions about the test as follows:

> "[14] By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
>
> [15] Article 8 of the Qualification Directive provides as follows:
>
> 1. *As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.*
>
> 2. *In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.*
>
> 3. *Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.*

[16] The Immigration Rules provide in Rule 339O(i):

(i) *The Secretary of State will not make:*

(a) *a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or*

(b) *a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.*

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

[17] From the above, a person is not a refugee if they can reasonably be expected to live in another part of their home country where they would not have a well-founded fear of persecution. In such circumstances, a person has the option of internal relocation, also known as an internal flight alternative. Once the issue of internal relocation has been raised there are two discrete questions to determine whether there is an option of internal relocation. First, does the person have a well-founded fear of persecution in the proposed place of relocation? If yes, then there is no internal relocation option and the person is a refugee. There is also no internal relocation option if the person would be subject to inhuman or degrading treatment within the meaning of Article 3 of the European Convention on Human Rights (the "ECHR") in the proposed place of relocation or if it would be in breach of Article 15(c) of the Qualification Directive. If not, then secondly there must be an assessment of whether in all the circumstances, it would be reasonable or not unduly harsh to expect the person to relocate to that place.

…..

[18] Lord Bingham summarised the approach to reasonableness in Januzi v Secretary of State for the Home Department [2006] 2 AC 426, at [21]:

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so… There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls… All must depend on a fair assessment of the relevant facts."

[19] Further, at [47], Lord Hope stated the position as follows:

"The question where the issue of internal relocation is raised can, then, be defined quite simply … it is whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words "unduly harsh" set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there."

[20] The test was considered further by the House of Lords in AH (Sudan) v Secretary of State for the Home Department [2008] 1 AC 678, upon which we had detailed

submissions from the parties as to the scope of the test of reasonableness of internal relocation…...

[21] First, Lord Bingham, having referred to his own judgement at [21] of Januzi, (set out above), went on to say at [5]:

"Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the rule could be more simply or clearly expressed. It is, or should be, evident that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, giving priority to, consideration of the applicant's way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not estimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure general levelling-up of living standards around the world, desirable though of course that is."

[22] Baroness Hale confirmed at [20] that the House was all agreed that the correct approach was that set out by Lord Bingham in Januzi and further endorsed the following submission from the United Nations High Commissioner for Refugees (UNHCR) of the correct approach:

"The correct approach when considering the reasonableness of IRA [internal relocation alternative] is to assess all the circumstances of the individual's case holistically and with specific reference to the individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal life without undue hardship."

[23] The assessment must therefore consider the particular circumstances of the individual applicant in the context of conditions in the place of relocation. The test of reasonableness is one of great generality, excluding only a comparison with conditions in the host country in which protection has been sought, per Lord Bingham at [13] and Baroness Hale at [27].

[24] Secondly, the test of reasonableness is not analogous to, or to be equated with, the test under Article 3 of the ECHR, per Lord Bingham at [9] and Baroness Hale at [21-22 and 26]. If, however, conditions in the proposed place of relocation do breach Article 3 of the ECHR, internal relocation would automatically be unreasonable without more.

[25] Thirdly, the correct comparator by which to judge reasonableness is not against the conditions for the worst of the worst in that country. Put another way, it is not a consideration of whether a person's circumstances will be worse than the circumstances of anyone else in that country, per Baroness Hale at [27-28].

….

[37] When assessing the reasonableness of internal relocation, the language used in Januzi and AH (Sudan) is of standards or conditions generally prevailing in the home country and of whether a person can live a relatively normal life. There is of course no single standard or set of conditions which apply throughout a country, but a range of examples of 'normal' or conditions which are experienced

> either in particular parts of the country, or throughout it by groups of people. One can envisage for example, that there will almost inevitably in any country in the world be differences between standards generally prevailing in urban as opposed to rural areas, and between the capital or large cities and other areas. That is not to say that because the majority of the population live in, for example a rural area, the conditions in urban areas could not said to be normal or include conditions generally prevailing in the home country. We consider that Lord Brown's reference to a significant minority of the population is expanding on what is contained in the speeches of Lord Bingham and Baroness Hale, and is simply a way of expressing what is, in practice, required to identify standards or conditions generally prevailing in the home country, reflecting that there is not a single standard or set of conditions which apply to a simple numerical majority of the population throughout the entire geographical territory of a country.
>
> ….
>
> [40] The final principle that therefore flows from AH (Sudan) is that when considering the standards or conditions prevailing generally in the country of nationality, it is not necessary to establish that a majority of the population live in those particular conditions, but only that a significant minority suffer equivalent hardship to that likely to be suffered by the applicant on relocation. What follows is then a personalised assessment of whether the applicant would be as well able to bear it as most or whether those conditions are in any event unreasonable, for example because they involve crime, destitution, prostitution and the like. There is no requirement for a specific numerical, geographical or other qualification on what is a significant minority of the population…."

20. The Tribunal in AS (Afghanistan) went on to point out at [44] of the decision that there is no burden of proof on either party in relation to the overall issue of whether it is reasonable for a person to internally relocate.

21. The Tribunal in AS (Afghanistan) was not tasked with considering whether there would be "very significant obstacles" to the appellant's relocation to Kabul ([251]). We therefore asked the parties whether and to what extent there is an overlap or difference between the test in relation to internal relocation and that of whether there are "very significant obstacles" to integration.

22. As Ms Capel pointed out, it was not clear from the error of law decision that this was an issue which was expected to arise in this case. Further, whilst she submitted that the two tests are not coterminous, she nonetheless said that the factors which are relevant to this appeal are the same whichever test is applied.

23. That submission however does not necessarily answer the question whether our determination of the internal relocation issue would also be determinative of the "very significant obstacles" issue. We therefore turn to consider the test in relation to the latter. The main judgment relating to this issue is that of the Court of Appeal in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 where Sales LJ (as he then was) explained the test in the following way:

> "[14] In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

24. We accept, as Ms Capel pointed out, that Kamara is a case concerned with criminal deportation and the question of whether "very significant obstacles" to integration exist in an appellant's home country is in that context part of a wider evaluation. However, we do not consider that the principles relating to integration in a person's home country are by reason of that distinction any different. The question is whether a person is able to carry on daily life in that country without any significant impediment. That involves consideration of both the situation in that home country and the personal characteristics of the individual appellant in the same way as does an evaluation of whether a person can be expected to internally relocate to avoid persecution in the context of the Refugee Convention.

25. That still does not though answer the question whether the test in relation to "very significant obstacles" is one which is higher, lower or the same as the question whether a person can internally relocate.

26. As is evident from the citations taken from Januzi and AH (Sudan) in the extract from AS (Afghanistan) at [19] above, the concept of "undue harshness" or "undue difficulty" are equated with whether it would be "unreasonable to expect [an appellant] to move [to the area of relocation]".

27. We have regard to the Supreme Court's judgment in Agyarko and Ikuga v Secretary of State for the Home Department [2017] UKSC 11. We recognise that the judgment in that case relates to a different provision of the Rules and is concerned with "insurmountable obstacles" and not "very significant obstacles". There is however an overlap between the two evident from what is there said. As is pointed out at [43] of the judgment, it is clear from Strasbourg jurisprudence that the test is intended to be a "stringent one" involving "major impediments".

28. We also take into account that the issue of whether there are "very significant obstacles" is part of the analysis whether it is proportionate to remove a person based on interference with the right to respect for his private life under Article 8 ECHR. Article 8 is a qualified right and the interference with the right to respect for a person's private life is to be balanced against the public interest. That contrasts

with the principle of protection under the Refugee Convention which is absolute and from which no derogation is permitted (save in relation to exclusion clauses which do not apply here). The balance inherent in Article 8 suggests to us that the interference required to outweigh the public interest is higher than the test which the Appellant has to satisfy to show that it would be unduly harsh to remove him for the purposes of the Refugee Convention.

29. As such, if there is a difference between the two tests, in our view that is reflected in a higher threshold applying to whether there are "very significant obstacles" under paragraph 276ADE (1)(vi) of the Rules by reference to the threshold for a breach of Article 8 ECHR than that which applies to whether a person can be expected to internally relocate for the purposes of the Refugee Convention. For that reason, when we come to discuss our conclusions in relation to this case, we begin with the internal relocation test as, if the Appellant is unable to meet that test, we consider it unlikely that he could meet the higher threshold which we consider applies under paragraph 276ADE of the Rules.

30. Finally, in this section, we set out for convenience the country guidance taken from AS (Afghanistan) which applies to our consideration of internal relocation to Kabul:

> "*Internal relocation to Kabul*
>
> (ii) *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.*
>
> (iii) *However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.*
>
> (iv) *A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.*
>
> (v) *Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh."*

31. We also take into account what is said in AK (Article 15(c) Afghanistan CG [2012] UKUT 00163 (IAC) (which country guidance is expressly maintained in AS (Afghanistan)):

> *(iv) Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing "safety" and reasonableness") not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.*

EVIDENCE

Contact with family members in Afghanistan

32. We begin by recording Mr Tufan's submission that we should view with some scepticism, the Appellant's evidence that he has no contact with family in Afghanistan. Mr Tufan reminded us of the country guidance in HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC) as follows:

> "…[3] Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are uncontactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return."

33. The Appellant says that he has no contact with his relatives in Afghanistan (assuming they are in Afghanistan). Those are his mother and his paternal uncle. His father is dead. He also has two older sisters who he presumes are still in Afghanistan. He has two younger brothers, [N] and [M]. [N] is said to be in the UK and [M] in France.

34. The Appellant gave evidence that he made contact with [N] by chance in Harrow about one year ago. He told Ms Tyrell (the independent social worker) that [N] has been granted asylum in the UK. We do not accept that assertion. Mr Tufan confirmed that the Home Office has no record of a [NE] having claimed or been granted asylum. When the Appellant changed his position in oral evidence to suggest that this is because [N] has been using a different identity and calls himself [SE], Mr Tufan also confirmed that there is no individual of that name having claimed asylum. It is of course possible that [N] is not even using his own surname which might explain the lack of any record. However, we do not have evidence from [N] and for present purposes, therefore, we do not accept that [N] has been recognised as a refugee. He is younger than the Appellant though and may have been granted leave for that reason.

35. Whilst the coincidence of the Appellant having met his brother by chance at a meeting in Harrow might, as Mr Tufan submitted, appear somewhat far-fetched, we have no real reason to doubt the Appellant's evidence in this regard. The Appellant has no good reason to fabricate this part of his evidence.

36. We do not know why [N] has refused his cooperation with the Appellant's claim. The Appellant was not able to tell us. It appears from the Appellant's evidence that [N] may have been less than truthful with the authorities, certainly in relation to his identity. However, [N]'s reasons for not providing evidence are not relevant to the issues we have to determine. As a matter of fact, we have no evidence from him which we can consider. We accept the Appellant's evidence that [N] is unwilling to

provide him with information including about the whereabouts of the Appellant's family.

37. We do not though accept in the same way, the Appellant's evidence about what he knows from his conversations with [M]. Although the way in which the Appellant has managed to contact and converse with [M] was a little difficult to follow, we are prepared to accept that the Appellant is in contact with [M] and has spoken to him. Again, he has no real reason to fabricate this evidence. It is also consistent with what the Appellant said about trying to bring [M] to the UK as his brother (although so far he has failed due to his own status).

38. The Appellant said that he has been unable to obtain information from [M] about his family in Afghanistan because [M] is young and gets very upset when the Appellant tries to raise this and therefore the Appellant says that he has stopped asking. We consider it more likely that a young person would welcome the opportunity to talk to a close family member about his family, having undergone what was probably a traumatic journey to Europe.

39. We note however that the Appellant says that [M] was in a madrassa before he came to Europe and it is therefore quite possible that [M] does not know either where the rest of the family are in Afghanistan, if indeed that is where they are.

40. We do not accept the Appellant's explanation for not seeking to contact his family via the Red Cross. He says that he is fearful of the Taliban or others finding out if enquiries are made. The Red Cross is a reputable international organisation with a great deal of experience in tracing people abroad in conflict situations and would be aware of the need for caution when making enquiries.

41. However, whilst not accepting that explanation, we accept that there is no evidence to suggest that the Appellant has in fact contacted the Red Cross in order to trace his family members. As such, we accept that the Appellant has not in fact made contact in that way.

42. We turn to consider what the Appellant says about when he last made contact with his family. In his first statement, he says this:

> "[3] I have one older sister who is married [BJ] and older sister still living at home [KA], I have two younger brothers aged about 8-9 yrs and 5-6 yrs.
>
> [4] I haven't seen my father for a long time. He is dead. My other family consists of a paternal uncle who lives in my village and 4 maternal uncles who live in Khost province.
>
> ….
>
> [7] Before I started my journey I travelled to Pakistan with my paternal uncle and my mother to arrange my travel with an agent. When I left for my journey my mother and my uncle returned to Afghanistan.
>
> [8] During the third month of my journey I became aware that my family travelled to Pakistan to spend the winter there as it was very cold in Afghanistan. I called home

> during my journey and my mother told me that they were going. I believe they are still there."

43. Mr Tufan made much of what is said in particular at [8] of that statement as suggesting that the Appellant was in contact with his mother and uncle whilst they were still in Afghanistan and that the "still there" related therefore to Afghanistan and not Pakistan. He submitted that the Appellant therefore knows how to make contact with his family who are still in Afghanistan and his evidence that the phone is now not contactable or that the Appellant has not tried to call the home phone should be treated as not credible.

44. We accept that what is said at [8] might be read as suggesting that when the Appellant made contact during his journey, his mother and uncle were still in Afghanistan, in particular the use of the words "that they were going" which suggests a future move, we nonetheless accept the Appellant's evidence that this contact was made when the Appellant's mother and uncle had already moved to Pakistan and that, therefore, he believed at that time that they were still in Pakistan. The use of the word "travelled" (past tense) suggests as much. The use of the word "home" might perhaps suggest Afghanistan and not Pakistan but the Appellant's evidence is that he departed to Europe from Pakistan. Equally, he may simply have been referring to "home" in the context of the family with who he was making contact. We do not therefore read this as any confirmation that the Appellant spoke to his mother and uncle when they were still in Afghanistan or that he knows how to contact them there.

45. In any event, we accept the Appellant's evidence that when he referred to calling, he was not speaking about a landline but rather a mobile phone. We are prepared to accept that a war-torn country like Afghanistan is highly unlikely to have working land-based telephone networks, at least not in rural areas. As such, it is credible that the phone might later have stopped working whether the Appellant's family were in Afghanistan or Pakistan.

46. That the Appellant's mother and uncle were in Pakistan when the Appellant made contact is also consistent with the Appellant's evidence about his last contact with his mother, he says in January 2013. He says that, at this time, his mother had been told to leave Pakistan. That too is consistent with what he says about media reports at around that time indicating that the Pakistani authorities were returning refugees to Afghanistan (see [20] of his second statement). The fact that the Appellant was in contact with his mother in January 2013 does not though mean that he remains in contact and even if he assumes that his mother and uncle have returned to Afghanistan, that does not mean that he knows where they are in Afghanistan nor that he has the means of contacting them, particularly since it is accepted that he cannot physically relocate to his home area of Logar province.

47. We do not give weight to any suggestion that the Appellant's knowledge about his sisters' circumstances suggests that he has been in contact at a later date. As he said

when asked, he has merely assumed that his older sister who was unmarried when he left would have married since as that would be the cultural expectation.

48. Based on the above and for the reasons we have given, therefore, we accept that the Appellant is not currently in contact with his mother and uncle. His case is that he does not have the information in order to make contact. We accept that he may be able to obtain such information using the services of the Red Cross, but we accept that he has not asked that organisation to trace his family and he is not in fact in contact at the present time.

Independence Skills/Support Network in the UK

49. The Appellant was age assessed at the time of his arrival in the UK in January 2012. It was concluded that he was aged fourteen years. He was placed with a foster family for about twelve months in Ipswich and then with a different family in Wembley until he was aged sixteen years. Although it is said that the Appellant has continued contact with his foster carers, we were not referred to any evidence from those foster families nor does the Appellant refer to continuing support from that source.

50. In 2014, the Appellant was moved by the local authority into supported accommodation with six young men. He had access to a Key Worker for support.

51. When the Appellant became eighteen, the local authority informed the Appellant that they intended to cease to provide accommodation and financial support. In March 2017, the Appellant sought assistance from Suffolk County Council. They supported his return to Ipswich where he was accommodated at the YMCA. However, the Appellant felt isolated and returned to Harrow where he was street homeless for two weeks. Thereafter, he privately rented accommodation, sharing his room with a friend in order to afford the rent.

52. In December 2017, the Appellant had to leave that accommodation because his landlord increased the rent and he could no longer afford it. He was provided with temporary accommodation by Ipswich Leaving Care Team but again returned to London. He was again homeless for a period of about one month, although it appears, accommodated by friends until he was helped by Paiwand who provided him with semi-independent accommodation. The Appellant's rent is paid for by way of housing benefit.

53. The accommodation provided by Paiwand is due to cease in September 2018. We were told by Mr Mall of Paiwand, who gave oral evidence at the hearing, that, if needs be, Paiwand will put the Appellant in touch with a local housing organisation to find him somewhere to live. The Appellant said in his oral evidence that he intends to use this support to find alternative accommodation. We take note of the fact that, although the termination of his accommodation was fairly imminent at the date of the hearing, the Appellant had not taken any action to find alternative

accommodation and expected to be able to rely on his support network to find him somewhere else to live.

54. As Ms Capel confirmed when we asked her, the only evidence we have from the local authority is a letter said to be dated 4 June 2018 from Ms K Anderson who is the Appellant's "Leaving Care Personal Adviser". That speaks of providing the Appellant with some assistance by way of emergency housing and helping him to obtain housing benefit and other benefits. The letter goes on to say that Ms Anderson provides the Appellant with emotional support due to mental health concerns and with assistance with legal visits but confirms that the local authority no longer provides financial assistance. The letter provides little detail about the level of support provided and, since the Appellant has lived in the London area more recently than in the area of Suffolk County Council, we give that evidence little weight.

55. We have regard to the letter dated 13 December 2016 written by Ms K Duffy, a Mentoring Coordinator and then Wellbeing and Support Manager working for Paiwand. She had at the time known the Appellant since September 2014 and acted as his Key Worker.

56. Ms Duffy points to the Appellant's skills learnt during his time in the UK which have "aided him to live semi-independently". However, she says in the letter that the Appellant "regularly seeks advice and guidance from Key Workers when he needs help with decision making, personal organisation and paperwork". For that reason, Ms Duffy says, the Appellant continued to live in "Supported Accommodation" even though he was by then aged over eighteen years.

57. Ms Duffy concludes that "[a]lready at risk of financial difficulty, I am concerned that [DE] would not be able to manage employment, rent and sustenance without regular support and guidance. I would also be concerned about his mental health and wellbeing. [DE] has regularly expressed feeling lonely and low, which is why he is well suited to Supported Accommodation".

58. We received oral evidence from Mr Farid Mall of Paiwand. He has also provided a written statement dated 17 August 2018. Paiwand is a registered charity and relies on funding through various charitable donations. It has been in existence for sixteen years. Mr Mall confirmed that, as the Director, he was not necessarily the person with the closest relationship with the Appellant and did not have day-to-day contact with the Appellant. He has two other staff members who are support workers. One has just left and is being replaced. Those staff have to deal with the cases of about four hundred people per annum.

59. As Ms Capel pointed out in her submissions, one of the Paiwand workers is named Rafi. He is said by the Appellant to be one of the most important people in his circle ([AB/97]).

60. Mr Mall's evidence is that he knows all the young people whom Paiwand supports very well because he visits the houses and encourages them to take part in activities. It was therefore perhaps surprising that Mr Mall did not know whether the Appellant was working. He could say only that he "must be" because he was not receiving financial support from others (except by way of housing benefit).

61. Paiwand has also helped the Appellant in relation to his education. The Appellant says that he did not attend school in Afghanistan and, as a result, cannot read or write in Pashtu or Dari. We have no reason to question that evidence. However, he originally wanted to give evidence in Pashtu at the hearing before us, and it is therefore evident that he feels more comfortable speaking that language.

62. The Appellant also says that he cannot read or write in English. We find that more difficult to accept. Certainly, the Appellant's spoken English was proficient. When we asked him how he was able to understand certain documents, such as the medical report of Dr Bagga to which we refer below, which was sent to him by his personal injury solicitors for consideration and signature, he said that he took such documents to Paiwand. However, we observed that he appeared able to refer to part of that document when it was shown to him during questioning. We do not accept that he cannot read any English.

63. Mr Mall said that the Appellant was helped to enrol in college. He had also embarked on an apprenticeship programme in catering designed to help young people into work. However, the programme was not successful and the Appellant was not therefore able to complete it. Mr Mall was unable to confirm that the Appellant would be "fully employable".

64. Paiwand also helps the Appellant by way of advocacy and youth activities and workshops. Mr Mall says therefore that the Appellant has been helped with life skills support such as "learning how to cook, how to eat healthy, how to manage his finances, banking" and someone from Paiwand has attended medical and legal appointments with him.

65. Mr Mall explained that Paiwand offers two types of support. From 2014 to 2017, the Appellant should have received six hours support per week but, due to his needs, in fact received more than fifteen hours per week. Thereafter, because of his age, Paiwand was only able to offer minimum support of six hours per week. Mr Mall confirmed that this was the minimum and the lowest level which the organisation offers. However, as Ms Capel pointed out, six hours per week is still quite a high level of support. Mr Mall said that the Appellant still needs Paiwand's advocacy service and still needs to be accompanied to legal appointments.

66. Mr Mall himself has links with Afghanistan and has given evidence that the Appellant would "find it very difficult to survive in such an environment in Afghanistan". We give that evidence little weight however since Mr Mall has not been in Afghanistan since 2007 and his only knowledge of the current situation is

what he is told by teachers and staff with whom he associates who visit relatives still in Afghanistan. He therefore has no personal experience of the process of reintegration in the current situation and he readily accepted that he did not know what support might be available to the Appellant.

67. By far the most detailed evidence on this part of the Appellant's case comes in the form of two reports of Ms A Tyrell who is an independent social worker. Ms Capel confirmed that Ms Tyrell is not a social worker who has had responsibility for the Appellant at any time. The reports are written for the purposes of this appeal and are based on two meetings with the Appellant and review of other documents. The meetings were of two hours each.

68. The reports are dated 18 November 2017 and 23 June 2018. Since Ms Tyrell accepts that little has changed between the two reports, we focus our attention on the second report.

69. We give only limited weight to Ms Tyrell's opinion that the state of the Appellant's accommodation is indicative of a "lack of self-care abilities". The Appellant is aged twenty and sharing accommodation with four other men of the same age. It would not in our view be unusual for a household of males of that age not to pay much attention to domestic chores.

70. We also note what Ms Tyrell reports at [8.7] and [8.8] about the Appellant's income and outgoings. That the Appellant was able to provide Ms Tyrell with that information shows an understanding of financial planning. We do not accept Ms Tyrell's opinion that the Appellant working for "cash in hand" shows that the Appellant is "at risk of exploitation" particularly since the Appellant's own evidence is that the business concerned is that of a friend who offered him this work.

71. We do however take into account what Ms Tyrell says about the Appellant having run up debts, borrowing large sums of money from friends. Again, though, that may simply be a fact of life for a young person living in the London area with limited income. It does not in our view indicate any particular lack of independence skills.

72. We accept Ms Tyrell's evidence that the fact of the Appellant having moved from Ipswich back to London because he felt isolated indicates some dependency on his network of friends for support. We note though that the Appellant's friends are mainly in the Afghan community. As the Appellant himself says in his latest statement, there is a large Afghan community in Harrow and it is within that community that he has forged close friendships. He has been able to make use of those friendships in order to help himself, for example, by obtaining employment in a business owned by a friend.

73. Ms Tyrell also says that the Appellant has maintained contact with his former foster carers although we have no evidence to that effect from either them or the Appellant himself.

74. We also accept Ms Tyrell's evidence that the Appellant is dependent to some extent on local authority support and support from Paiwand. Ms Tyrell describes this in the following way:

> "In my view, the support provided by these two organisations is not dissimilar to the support that a parent might provide to a young adult moving to independence or developing their independent living skills. In the absence of available parental support in this area, I have concluded that [the Appellant] is reliant on this support for his material welfare".

We note however that, when asked about the importance which Ms Anderson has in the Appellant's life, Ms Tyrell points only to the local authority's duty and that it is Ms Anderson's job to provide and deliver this support. That indicates in our view that the local authority is providing only a basic level of support. In any event, Ms Anderson is in the Suffolk County Council area and the Appellant now lives in Harrow.

75. We do not need to deal with Ms Tyrell's views about the Appellant's vulnerability arising from his mental health condition because we have a fuller medical report written by an expert who is qualified to deal with this issue. We deal with that under a separate heading below.

76. In response to the question whether the Appellant is able to live independently without his current support network, Ms Tyrell concludes as follows:

> "14.6.1 My opinion on this issue is unchanged from that detailed in my report of 18/11/2017:
> 'From the information provided by DE, he has been unsuccessful in securing and maintaining suitable accommodation and is now at risk of homelessness. He has sought the assistance of Suffolk County Councils Care Leavers services to help resolve this issue.
> DE's current employment appears precarious, he reports he has no contract, no agreed hours and is paid 'cash in hand'.
> In relation to budgeting DE reported he has borrowed large sums of money from friends and is indebted to his friends. Additionally DE was given budgeting advice in relation to his current accommodation by Krista Anderson, Personal Advisor but did not take this on board and now finds himself in financial difficulties and unable to afford the rental on his current accommodation. This has been compounded by the landlord increasing the rent which demonstrates DE's vulnerability to exploitation and places him at risk of financial hardship and destitution. Fortunately he has access to support from the Local Authority due to The Children (Leaving Care) Act 2000 which recognises the vulnerability of Looked After Children and aims to address the inequalities and reduced opportunities that Looked After Children are at risk of in adulthood.'
> 14.6.2 Since my initial meeting with DE he has demonstrated an inability to secure suitable accommodation without the support of Suffolk County Council or the Paiwand Association and has relied on these organisations in order to meet his material needs.
> 14.6.3 In terms of his emotional needs, he has the support of his network of friends in the Harrow area of London though at present he has been referred for

professional support in this area and is awaiting professional intervention to further assess and promote his mental health and emotional wellbeing."

77. The Appellant's own evidence in relation to his "life skills" is that, although he has learnt from workshops in the UK, those skills are relevant to life in the UK and would not translate to the culture of Afghanistan. He says that if he tried to tell people how he lived in the UK, they would believe him to be westernised and to be acting contrary to Sharia law. The Appellant also says that unemployment is high in Afghanistan and he would not therefore be able to get a job.

78. We will come on to deal with the medical report of Dr Bagga below. However, the Appellant confirmed that, when he was involved in the road traffic accident which underlies that report, he was driving. He confirmed that he has a full driving licence. That too gives us cause to doubt that the Appellant is as illiterate as he claims to be, certainly in the English language. In order to pass a driving test in the UK, he would have had to undertake a written test. It is also indicative of the Appellant's ability to obtain skills for himself.

Medical Evidence

79. The Appellant relies on the psychiatric report of Dr Chiedo Obuaya MBBS BSc MRCPsych MBA dated 27 June 2018. Dr Obuaya met with the Appellant once on 4 May 2018.

80. Dr Obuaya diagnoses the Appellant as suffering from a "Mixed Anxiety & Depressive Disorder". The Appellant's symptoms in Dr Obuaya's view fall below the threshold for either a "Depressive Episode" or "Generalised Anxiety Disorder". In the alternative, Dr Obuaya says that the Appellant may be suffering from "a primary mood disorder such as a Depressive Episode or Recurrent Depressive Disorder".

81. Dr Obuaya notes that the Appellant suffered a head injury during a fall from a roof when he was a child to which is attributed regular headaches and vomiting which have continued throughout his life. He also notes that the Appellant suffered a road traffic accident in February 2018 to which the medical notes attribute the Appellant's asthma and chronic back and lower limb pain. However, in Dr Obuaya's view, the Appellant's depression and anxiety is attributable to his current uncertain immigration status. He does not appear to consider the possibility that this too was caused by the road traffic accident.

82. Dr Obuaya discounts a diagnosis of post-traumatic stress disorder.

83. In terms of medical treatment, Dr Obuaya advocates psychotherapy, in particular cognitive behavioural therapy ("CBT"). He suggests that medication is unlikely to be appropriate treatment, although that is the treatment which the Appellant has and continues to receive.

84. In response to a question about the impact on the Appellant's mental health of return to Afghanistan, Dr Obuaya says this:

> "[61] From a purely psychiatric viewpoint, given the diagnosis of a Mixed Anxiety & Depressive Disorder, a return to Afghanistan need not necessarily impact adversely to a significant degree on Mr DE's mental health or his capacity to remain safe. He would not, in my clinical opinion, require any different medication or other treatment from psychiatric services there if returned there.
>
> [62] Mr DE's prognosis should there not differ if returned to Afghanistan, assuming he receives treatment of the nature outlined above (ie psychotherapy) and he should be able to find work and conduct all his activities of daily living as a Mixed Anxiety & Depressive Disorder is not deemed to be severe of enduring mental illness.
>
> [63] I note that Mr DE has struggled to support himself financially, though this is not in my opinion as a direct result of any mental disorder and is more likely linked to his limited education. Nevertheless, without the professional support of the nature available to him, which itself has not been sufficient to stop him being vulnerable to possible financial exploitation, this is likely to be even more challenging in Afghanistan.
>
> [64] Mr DE may struggle to establish a new life for himself in Afghanistan if he continues to live in fear for his safety. He has expressed a fear of the Taleban and Da'esh there; this fear appeared to be genuine (though there is no 'test' to determine this). Therefore, any threat of forced return there may worsen his current psychological symptoms.
>
> [65] Whilst it is beyond my expertise to comment on what conditions Mr DE is likely to face in Afghanistan, were he to face significant adversity there, this could threaten his mental well-being. However, it is not possible to conclusively say if it would lead to a specific condition, such as depression, or what the likelihood of him developing more profound mental health problems would be. Were he to experience a depressive episode, for example, he may become very low in mood and socially withdrawn.
>
> [66] Furthermore, given the length of time he has been away from Afghanistan, Mr DE is likely to experience a return there as a stressful event. This in turn could act as a significant barrier to him accessing the mental health services there, assuming they are available to him and he requires access to them, in the event of suffering from a more severe depressive episode. However, the likelihood of this occurring cannot be estimated."

85. We consider Dr Obuaya's report to be a very fair and balanced one. He does not exaggerate his diagnosis and fairly concludes that the Appellant may be able to return to Afghanistan notwithstanding the mental health issues which he identifies. We give this report weight and in particular his conclusions about what might be the impact of return of the Appellant to Afghanistan. We note however that, as Dr Obuaya himself recognises at [65] of his report, he has no expert knowledge of conditions in Afghanistan. Dr Obuaya has also not considered the consequences for the Appellant's mental health if the difficulties and risks which the Appellant perceives may face him on return do not in fact materialise.

86. There is reference in the GP notes to the Appellant having self-harmed on 18 June 2018 when the Appellant presented with a cut to his left forearm due to cutting himself with a knife. The Appellant said that he did not recall having cut himself. There is no mention of this in Dr Obuaya's report. Although that report post-dates

the incident, Dr Obuaya met with the Appellant in May 2018 and it is possible therefore that he was not made aware of it. Dr Obuaya's opinion is that the Appellant did not exhibit any specific suicidal thoughts or intent.

87. As we indicated at [15] above, the Appellant has also produced a report from Dr A Bagga who is said to be a "GP Specialist". The Appellant and Ms Capel confirmed that this report was produced on the instruction of a firm of personal injury lawyers in order to obtain compensation for the Appellant's injuries following the road traffic accident. Ms Capel indicated on instructions that it is not clear whether the other driver has admitted liability for the accident but, in any event, the figure which the Appellant's lawyers have advised might be appropriate for his injuries is not high. This is not therefore relevant to the issues for us in the same way as it might have been if the Appellant had been about to receive substantial compensation which might assist him on return to Afghanistan.

88. Dr Bagga concludes that the Appellant is suffering from "Pain and Stiffness in the Thoraco-Lumbar Spine" which he assesses might resolve itself within twelve months from the accident (ie by February 2019).

89. The Appellant's back pain is said to be moderate but exacerbated by bending or lifting. The Appellant is also said to have ongoing moderate left leg pain and paraesthesia. He is said to have moderately reduced range of movement in the lower back. It is not expected that the injury will cause or accelerate any longer-term degeneration of the spine.

90. Dr Bagga also attributes certain psychological symptoms such as the Appellant's fear of travel to the accident but says that those should resolve themselves within ten months from the date of accident. It appears from the report that Dr Bagga was not made aware of past psychological illness. The examination was carried out after the date when the Appellant was examined by Dr Obuaya. Neither doctor appears to have been aware of the report of the other.

91. In terms of the impact of the accident on the Appellant's day to day activities, Dr Bagga concludes that the Appellant finds self-care and shopping more strenuous but should recover within five months from the injury. He also notes that the Appellant is still not able to go to the gym and his leisure activities are affected. Any sleep disturbance is similarly expected to resolve itself within five months from the date of the accident.

92. In terms of employment, Dr Bagga appears to have been told that the Appellant was not able to work at the date of examination and yet told Ms Tyrell at around the same time that he was working. It is said that the Appellant cannot drive on long journeys or lift heavy items.

93. The Appellant confirmed to us that he has not taken up the suggestion of either physiotherapy for his physical injuries or CBT therapy for his mental health issues.

We accept that this may involve referrals by the Appellant's GP if the treatment is to be accessed via the NHS rather than being privately paid for.

94. We consider to be overstated Ms Capel's submission that Dr Bagga's prognosis is conditional on the Appellant receiving physiotherapy. Although Dr Bagga recommends physiotherapy and says that eight sessions would be "appropriate", he does not go so far as to say that without that physiotherapy, the Appellant's physical symptoms would not be resolved.

95. We find that the effect of the road traffic accident is not such as to prevent the Appellant resuming normal activities including a range of employment after the periods stated in Dr Bagga's report for the Appellant's recovery from his injuries.

Security Situation in Kabul

96. As we have noted, the Appellant does not suggest that the Article 15(c) threshold is reached in this regard nor that there is sufficient evidence to cause us to depart from the Tribunal's decision in AS (Afghanistan).

97. The Appellant's Amended Statement of Case refers to the report of Dr Antonio Giustozzi prepared for this appeal in relation to the risks which the Appellant might face on return ([26] of the Amended Statement of Case). That report is dated 28 December 2016.

98. We do not find it necessary or appropriate to refer to that report, not due to any concern about Dr Giustozzi's expertise, but rather because the report is mainly concerned with return to the Appellant's home area with which we are not concerned and because the views expressed by Dr Giustozzi in relation to the relevant issues pre-date the consideration of his evidence alongside that of the other experts who provided reports to the Tribunal in AS (Afghanistan). As such, we are guided by what the Tribunal said in that case. We have referred to that guidance below.

99. We do though deal with one point made at [26] of the Amended Statement of Case namely the suggestion that there is a risk to the Appellant due to "westernisation". We do not consider that Dr Giustozzi's report supports that view. At [25] of his report, Dr Giustozzi points out that there are "tens of thousands of people who spent time in the west in Kabul". As such, the Appellant would not "stand out there" in order to attract the attention of the Taliban. He says that "[t]he Islamic State (daesh) does not have capacity for now to pursue individuals in Kabul". That is consistent with his conclusion at [39] that "[w]esternised attitudes are quite common in Kabul" and that the Appellant's "westernised attitude would only be a problem if he settled in rural areas or in the most conservative areas of the country, such as southern Afghan cities and some suburbs of Kabul itself, including however those populated by eastern Pashtuns like [DE] himself". Whilst we recognise that the last part of that sentence might suggest some risk, the Appellant is not obliged to relocate to the parts

of Kabul where such a risk might arise and would not be at risk in Kabul more generally.

100. Further and in any event, the Tribunal in AS (Afghanistan) considered the risk on account of Westernisation but concluded at [187] of the decision, that "[t]here is simply a lack of any cogent or consistent evidence of incidents of such harm on which it could be concluded that there was a real risk to a person who has spent time in the west being targeted for that reason, either because of appearance, perceived or actual attitudes of such a person". The Tribunal was prepared to accept only "at most" evidence of "a possible adverse social impact or suspicion affecting social and family interactions and evidence from a small number of fear based on 'Westernisation'"

101. Nor do we consider it necessary to refer to the other background material to which our attention is drawn at [26] of the Amended Statement of Case. The material in [AB/D41-369] pre-dates the guidance in AS (Afghanistan) and for the most part is material which was considered by the Tribunal in that appeal.

102. We have regard to the "New Country Background Material" included within the consolidated bundle. We have read that material and in particular the 2018 EASO reports to which Ms Capel makes specific reference. However, although she says that the reports refer to "a series of brutal attacks" in Kabul in early 2018, we do not discern that EASO suggests that there has been any significant change in the security situation. EASO refers at [2.1.1] of its May 2018 update on the security situation in Kabul to a "peak of attacks in January 2018". As the Tribunal pointed out in AS (Afghanistan), however, the evidence then showed that "Kabul province continued to record the highest number of civilian casualties, mainly in Kabul city…" ([105]). The Tribunal accepted that "the numbers of civilian casualties in Kabul are increasing year on year and from the information available to date from 2017 are at record levels" ([192]). Furthermore, in Afghanistan overall, the General Assembly Security Council report dated 6 June 2018 records that the total number of security incidents between February and May 2018 had decreased by 7% in comparison with the same period in 2017.

103. The Appellant says that he will be at risk on return from the Taliban or "Da'esh". We accept that his concerns are subjectively held. However, based on the Tribunal's conclusions at [173] to [201] of AS (Afghanistan), we do not accept that the Appellant is at risk from those quarters. There is no evidence that the Appellant is a high-profile target for the Taliban or any other group. His fears are related to the general security situation with which we have already dealt and as addressed in AS (Afghanistan). We do though take this subjective fear into account when reaching our conclusions, particularly given what is said by Dr Obuaya about the consequences for the Appellant's mental health of being put under stressful conditions. That evidence, though, has to be considered also in the context of whether the risks and difficulties which the Appellant fears are ones which are likely to materialise.

Appellant's Ability to Reintegrate in Kabul/ Support in Afghanistan

104. We have accepted at [48] above, that the Appellant would be relocating to Kabul with no current contact with family. Even if his family have returned to Afghanistan, there is no evidence to suggest where in Afghanistan they may have gone. We heard evidence from the Appellant that, even if he were able to make contact, his mother is not able to support him as she worked in the past only as a "tailor" doing work from home. He said that his paternal uncle would not be able to help him as he has his own family. We give that evidence little weight. The Appellant said that his travel to the UK was funded by his family. He said that he had to remain in Turkey for a number of months whilst his family raised further money to send him further on his journey ([19] of his witness statement dated 7 March 2012). It appears to us likely that the Appellant's travel to the UK would have been funded by his uncle; there is no other suggested source of funds. Similarly, we find it likely that his brothers [N] and [M] have also been helped to leave by a relative and that this is likely to be the Appellant's uncle.

105. However, that makes little difference to our findings since we accept that the Appellant is not in contact with that uncle and does not know how to contact him.

106. We take account however, of the findings of the Tribunal in AS (Afghanistan) as to the importance and formation of support networks. At [212] of the decision, the Tribunal pointed out that just because a person does not have a support network to which to return does not necessarily mean that one could not be formed after return. As the Tribunal observed "[n]etworks can be reactivated and established". That was based on evidence (for the appellant) that single men may form their own support network or join a network via another member of it, for example, via an employment relationship. We have already pointed to evidence that the Appellant has made connections with other Afghans in the Harrow area and has used such friendships to find at least one of his jobs. As is recorded at [212] of AS (Afghanistan), the view of the appellant's expert was that it was "inevitable" that a returnee would make contact with someone from a person's wider community or tribe.

107. In any event, the Tribunal concluded at [213] of the decision that "a support network is not essential, and that internal relocation is generally reasonable without one for a single male in good health".

108. As was pointed out to us, the Tribunal in AS (Afghanistan) observed at [227] of the decision that "there was little firm evidence of what support was in reality being provided to returnees..and that the position as at August 2017 was specifically unclear as to IOM's continuing involvement or not in the provision of the main packages of support." The Tribunal went on however to find that there is "sufficient evidence before us to establish that there is a basic level of support, referred to by some as a 'parachute package' which includes the offer of temporary accommodation, travel expenses and ether cash on return or support in-kind for

those with a plan to establish themselves in Kabul". That though was said to be sufficient only for four to six weeks.

109. In terms of the availability of employment, the evidence available to the Tribunal in AS (Afghanistan) was that there is "availability of lower skilled jobs which did not require specific skills, experience or connections, including day labouring or portering work and other occupations such as being a taxi driver." The documentary evidence also showed that there were "other low or unskilled labour such as jobs in the bazaars, in the construction industry and agricultural workers." ([223]).

110. Accommodation in Kabul is said in AS (Afghanistan) to be of poor standard with little access to basic amenities and with insanitary conditions ([220]). The Tribunal also records that a single male may have more limited access to accommodation because of the suspicion of a single man living near family groups ([217]). It is however recorded that there is evidence of single rooms being available and of single men sharing accommodation (as the Appellant has done in the UK).

111. Although there was some disagreement between the experts in AS (Afghanistan), the Tribunal there concluded that it was possible to obtain employment and accommodation without the need for references and therefore a support network is not necessary for that reason ([207]).

112. We do not give weight to the suggestion in the Amended Statement of Case that the Appellant is at risk of discrimination in relation to access to housing, employment and services because he is a "Kuchi". The UNHCR view on which this is premised dates back to 2016. There is no reference to this group as suffering any particular discrimination in, for example, the EASO report. In any event, we can find no factual support for the assertion that the Appellant's family are "Kuchi" in the Appellant's witness evidence nor in other evidence such as the report of Dr Giustozzi. The Amended Statement of Case does not cross-refer to any such evidence.

113. We have recorded the evidence of Dr Obuaya in terms of the Appellant's prognosis if returned to Kabul without appropriate medical support. The Tribunal in AS (Afghanistan) recorded that the evidence shows that there "is a basic package of healthcare in Afghanistan" but that "around a third of the total population have inadequate access to it with significant barriers and inequality of access" ([221]). However, healthcare is said to be better in Kabul and other urban areas and for men. We have already noted that the evidence before us suggests that, other than the prescribing of medication, the Appellant has not had treatment for either his mental or physical health concerns. We have not been provided with any evidence that the medication which the Appellant is taking for depression is not available in Afghanistan (or that a similar medication could not be obtained).

114. We do though have regard to the evidence before the Tribunal in AS (Afghanistan) at [141] to [143] of the decision to which Ms Capel drew our attention and which

records the poor state of provision of healthcare in Afghanistan and the high incidence of mental health problems in that country.

DISCUSSION AND CONCLUSIONS

115. This appeal presents particular challenges because the factors which are relevant to our consideration whether it would be unduly harsh for this Appellant to relocate to Kabul do not all point in the same direction. A careful evaluation of those factors is therefore required.

116. The Tribunal in AS (Afghanistan) concluded that a person with a support network is in a "more advantageous position on return" ([233]). We have accepted that the Appellant does not have a support network to Kabul to which he could return.

117. However, we also take into account the conclusions of the Tribunal in AS (Afghanistan) that such a support network is, first, not essential, particularly if the returnee is a single, healthy male and, second, will inevitably be re-established via wider connections, including via employment and from tribal or ethnic connections.

118. We have not accepted as made out Ms Capel's submission that the Appellant suffers from physical incapacity which will render it difficult for him to obtain particular types of employment. Although we accept that the Appellant did suffer some injuries in a road traffic accident the prognosis of Dr Bagga is that he will recover from those within at most twelve months (by February 2019). We did not receive any updated evidence that the Appellant continues to suffer symptoms from this accident. The GP notes we have seen do not suggest this to be the case.

119. It has been suggested that the Appellant is uneducated which will also limit his ability to find work on return to Kabul. We do not accept this to be the case. The Appellant presented as an articulate witness which was the more impressive when one considers that he gave evidence in a language which is not his first language. Although we accept that the Appellant was not educated previously in Afghanistan ([61]) and may well be unable to read and write in Pashtu or Dari, the Appellant has had some limited education in the UK and has learnt to speak English even if his ability to read and write it may be more limited ([62]). A command of English would in our view increase the Appellant's employment prospects if returned to Afghanistan. In any event, the evidence received in AS (Afghanistan) is that there is an availability of lower skilled jobs. We have already noted that the Appellant has learned to drive in the UK which may also assist him in finding employment.

120. We accept that, because the Appellant has no family or other support network to turn to immediately on return to Kabul, he would have to find his own job and accommodation.

121. The Appellant has shown himself able to find employment through his own efforts and support network of friends he has made in the UK. We have explained at [70]

why we do not accept Ms Tyrell's evidence that the sort of employment which the Appellant has found for himself shows him to be vulnerable to exploitation. There is no reason why the Appellant could not associate with other Afghans on return to Kabul and find employment in that way. We refer in particular to what we say about the findings made by the Tribunal in AS (Afghanistan) at [106] above. Single men may form their own support network or join another already established network.

122. Looking at the position immediately on return, the Appellant would be able to access temporary accommodation and some financial support which might be expected to last him four to six weeks ([108] above).

123. We have to consider, however, whether that level of support would be sufficient given the Appellant's reliance on support in the UK. As we have observed, the Appellant is able to understand such things as financial organisation. However, as the evidence shows, he has difficulty managing his finances and has been dependent on friends from whom he has borrowed large sums.

124. We have evidence that the Appellant has been largely reliant on support, particularly from Paiwand. Whilst the Appellant was a minor, he was supported by the local authority. The need for that sort of support for a child is to be expected. However, when that support was taken away from him, the evidence shows that he has struggled to obtain, in particular, accommodation. He was apparently able to obtain rented accommodation which he shared with another male when he returned to Harrow but, having been unable to afford the rent and having been evicted, he was then homeless for about one month until he was helped by Paiwand. Mr Mall's evidence is that the Appellant has continued to receive weekly support from that organisation with many daily activities. The Appellant has described one of the Paiwand workers, Ravi, as one of the most important persons in his circle.

125. We also take into account the Appellant's background before he came to the UK. The Appellant has never lived in Kabul previously. He comes from a rural area. He left Afghanistan when he was, at the oldest, thirteen years. In fact, he started his journey in Pakistan. Thus, he has never had the experience of finding a job or a home for himself in Afghanistan more widely let alone in Kabul. As such, he is likely to find the environment in Kabul even more alien than might be the case if he had come from that or another urban area in Afghanistan previously or had left after he had some experience of living on his own in that country.

126. The Appellant's reliance on the support of others and his lack of experience of coping on his own in Afghanistan (because of the young age at which he left that country) is relevant to what might be the impact on his mental health condition if he is returned to Kabul. Ultimately, it is the combination of these factors in this case which has persuaded us in the Appellant's favour.

127. We have given weight to Dr Obuaya's report. We have noted his balanced and fair diagnosis and that he has not exaggerated the prognosis in terms of the effect on the Appellant's mental health of return to Kabul.

128. We note what Dr Obuaya says about the need for continuing treatment. We accept that the evidence in AS (Afghanistan) shows that while there is some healthcare provision, particularly in Kabul, that is limited and there is a high incidence of mental health problems which are likely to lead to a greater pressure on the resources available. Equally, though, the Appellant is only receiving prescription medication for his condition in the UK. We have no evidence that he would be unable to obtain that in Kabul even if he had to pay for it.

129. We have not accepted that the Appellant's fear that he will be targeted by the Taliban or Da'esh is objectively well-founded ([103]). However, we have accepted that the Appellant is genuinely afraid for his safety in Kabul and Dr Obuaya's report supports that finding ([64] of the report). We are not here concerned with the issue of whether the Appellant is at real risk from the Taliban and Da'esh. We accept that the Appellant is not. However, that is a different question from the impact which the Appellant's own genuine fear has on his mental health if returned. Dr Obuaya says that, if the Appellant is forcibly returned with that genuine fear, then that "may worsen his current psychological symptoms".

130. Dr Obuaya also concludes that if the Appellant faces conditions which amount to "significant adversity", then this could threaten the Appellant's mental well-being. We have accepted that the Appellant will face return to Kabul with no contact with his family nor recourse to any established social network there. The evidence considered in AS (Afghanistan) suggests that there are employment opportunities available which the Appellant may be able to access and that, if he is able to find work, he may be able to use the network of contacts which he would make from such employment to obtain support in other areas such as accommodation. We have though accepted that the Appellant has needed support in the UK to cope with everyday life in much less challenging circumstances. Withdrawal of such support on return is likely to mean that the Appellant would find it even more difficult to cope with the conditions in Kabul.

131. In addition, Dr Obuaya points to the likely effect on the Appellant's mental health if he does suffer from a depressive episode on return. He concludes that if that were to occur, the Appellant "may become very low in mood and socially withdrawn". In our view that would be likely to exacerbate the Appellant's difficulties in dealing with the conditions he would face on return.

132. The conditions in Kabul, based on the evidence in AS (Afghanistan) can best be described as challenging. For a person in the Appellant's position, having regard to his mental state by virtue of his fear for his safety on return and his lack of ability to cope without support (even in the UK), we consider that he will face "significant adversity". The conditions will be of the kind which Dr Obuaya concludes as likely

to exacerbate the Appellant's mental health difficulties and therefore the Appellant's ability to cope. Ultimately, this will, as Dr Obuaya concludes, "threaten [the Appellant's] mental well-being".

133. In all the circumstances, and in light of the above factors, although the Appellant does not face a risk of persecution in Kabul (and it is not his case that he would), internal relocation would, for this appellant, be unduly harsh. Accordingly, his appeal succeeds.

Decision

We allow the Appellant's appeal.

Signed 

Dated: 5 October 2018

Upper Tribunal Judge Smith

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: /12135/2015

THE IMMIGRATION ACTS

Heard at Field House
On 12th December 2017

Determination Promulgated

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Before

HONOURABLE LADY RAE
SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE LINDSLEY

Between
DE
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STAET FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Capel, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Afghanistan born in January 1998, he is therefore 19 years old. He arrived in the UK in January 2012 when he was 14 years old, and claimed asylum the following month. His claim was refused in July 2012 but he

was granted discretionary leave to remain as an unaccompanied minor. He did not appeal the refusal of asylum. He made an in-time application for further leave to remain on asylum grounds on 3rd July 2015 which was refused on 11th November 2015. His appeal against the decision was dismissed by First-tier Tribunal Judge Isaacs in a determination promulgated on the 16th February 2017.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Lambert on 6th September 2017 on the basis that it was arguable that the First-tier judge had erred in law firstly in arguably failing to set out the legal test of reasonableness when making the decision that the appellant could internally relocate; and secondly in arguably having failed to consider the personal background and expert evidence regarding the deterioration in the situation in Kabul since the deciding of the country guidance decision in AK (Article 15(c) Afghanistan [2012] UKUT 163.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the grounds of appeal and oral submissions it is contended firstly that the First-tier Tribunal erred in law as it failed to direct itself to consider whether it would be unreasonable or unduly harsh with reference to the appellant's age, gender, experience, health, skills and family ties for him to have to internally relocate and live in Kabul having found that the appellant was at risk in his home area of Logar from the Taliban at paragraph 81 of the decision. It is accepted by the respondent that the correct test is not set out anywhere in the decision. There are findings that there would be no risk of persecution or of destitution in Kabul but whilst relevant these are not determinative of whether it would be reasonable for the appellant to relocate there.

5. Secondly it is argued that the First-tier Tribunal failed to take into account material relevant to the appellant's personal circumstances and the deterioration in the situation in Kabul in addressing this question. This material was set out in detail in the skeleton argument provided to the First-tier Tribunal identifying the key evidence, see particularly paragraphs 80 - 83 of that document, and it is clear from the decision itself at paragraph 68 that oral submissions were made on the issue too.

6. The key evidence regarding the appellant's inability to live independently in Afghanistan or elsewhere is the letter from Ms Kate Duffy (key worker at the Afghan Association Paiwand) dated 13th December 2016. There is no reference to this letter and it does not support the conclusion of the First-tier Tribunal at paragraphs 93 and 88 of the decision that the appellant had "in practical terms been living independently of daily help from adults" or that he is "living independently without any day-to-day involvement from adults". This letter does not stand alone as evidence of the appellant having particular personal challenges to relocating, there are also letters from Mr Fazil and Ms Beaton in the

respondent's bundle which provide evidence to support this too. So, contrary to what is said at paragraph 88 of the decision, evidence was presented to the First-tier Tribunal that the appellant had particular personal challenges in dealing with issues such as arranging accommodation.

7. The First-tier Tribunal found that it was: "open" to the appellant to "resume contact with his mother at paragraph 93 of the decision, but this conclusion fails to take into account the evidence, which is not disputed in the decision, that the appellant had had no contact with his mother since her expulsion from Pakistan back to Afghanistan in 2013; does not know where she is; and is afraid to use the Red Cross to trace her as this may put her at risk. There is no reasoning as to how in these circumstances contact with his mother would be made or how she would be able to assist the appellant in Kabul, or indeed how long it might be before the appellant was able to obtain any possible support from his mother.

8. Other personal factors which were relevant to whether the appellant could reasonably be expected to relocate are the fact that his family are from the marginalised Kuchi group (and are nomads); the fact that the appellant cannot read and write in an Afghan language; and the evidence of the appellant's westernisation, lack of knowledge of Kabul and long absence from Afghanistan. These factors are also not engaged with by the First-tier Tribunal. With respect to westernisation the evidence of Dr Guistozzi at paragraph 40 of his report was that this was problematic in certain suburbs of Kabul, even though this factor did not result in a real risk of serious harm, and this was therefore relevant to internal relocation as those suburbs were ones where this appellant might reasonably be expected to relocate to as they were ones where his fellow eastern Pashtuns live.

9. Documents which were not considered but went to the deterioration in circumstances in Kabul included the report of Dr Giustozzi; Refugee Support Network report of 6th April 2016, the RSN report, and the UNCHR eligibility guidelines, and the pertinent material in these documents is identified in detail at paragraph 40 of the skeleton argument provided for the hearing before us. In summary it is argued that the appellant would be returning to a city where the economic and security situation was significantly worse than when the guidance in AK was decided, and with significantly less humanitarian support than at the time this case was decided.

10. The guidance in AK is such that it was beholden on the First-tier Tribunal to have conducted an individual assessment as to whether relocation was reasonable, and also to have had reviewed the country situation. It is argued therefore that the First-tier Tribunal failed to follow AK in deciding the appeal by failing to have regard to the material set out above, and that in addition the material came, in very large part, into being after AK was decided so could have led to different conclusions than were reached in AK.

11. The First-tier Tribunal had therefore firstly failed to direct itself properly to the test for internal relocation; and secondly failed to refer to and engage with

relevant evidence and thus to provide adequate reasoning for the conclusion that the appellant was not entitled to succeed in his asylum appeal. The decision was not in accordance with Januzi [2006] UKHL 5 as there was a need to look at the personal circumstances of the appellant and this had not been done. The appellant was not arguing that the decision was unlawful as the appellant would not obtain the same support he receives in the UK. The errors with respect to internal relocation were repeated with respect to consideration of the appeal under paragraph 276ADE (1)(vi) of the Immigration Rules and Article 8 ECHR.

12. In the Rule 24 notice and in oral submissions from Mr Kotas the respondent argues that specific factors relating to the appellant were considered at paragraphs 87 to 89 and 93 of the decision, and it is clear that the reasonableness test was in the mind of the First-tier Tribunal Judge. In relation to the evidence submissions were recorded relating to the evidence, and it is not demonstrated how this should have led the First-tier Tribunal to deviate from AK.

13. In relation to the issue of westernisation Dr Guistozzi was not supportive of this being a relevant as a source of serious trouble unless the appelant were living in certain suburbs where eastern Pashtuns live. The idea that that the appellant was living semi independently was supported by the letter of 16th December 2016 from Ms Kate Duffy who used this phrase. It was clear therefore that this information had been considered when the First-tier Tribunal concluded that he could live "independently without any day-to-day involvement from adults" at paragraph 88 of the decision, and similarly at paragraph 93 of the decision. It was contended that it was accurate to say that there was no evidence of the appellant facing particular personal challenges, at paragraph 88.

14. Mr Kotas contended that the decision was in line with the decision of the House of Lords in Januzi at paragraph 47 whereby the standard of reasonableness must be measured by normal Afghan societal standards. When all factors were considered the conclusions at paragraphs 88 and 93 were rational and internal relocation to Kabul was not unreasonable.

Conclusions – Error of Law

15. The First-tier Tribunal conclude that the appellant would be at real risk of persecution if he were to be returned to his home area of Logar in Afghanistan, see paragraph 79 of the decision.

16. The question of whether the appellant can reasonably be expected to relocate or whether this would be unreasonable or unduly harsh is therefore determinative of his asylum appeal.

17. The finding of the First-tier Tribunal, made at paragraph 75 of the decision, that the appellant is 19 years old is not contested by any party. It is also not contested that the finding that the appellant is not at real risk of serious harm or persecution in Kabul is not properly made at paragraph 82 of the decision, or that there is not

a Article 15(c) risk of generalised violence in Kabul, as found at paragraph 83- 85 of the decision.

18. We find that the First-tier Tribunal has failed however to apply the unreasonableness/ unduly harsh test for internal relocation having established that the appellant was at risk in his home area. There is no evidence that the First-tier Tribunal considered this test at all having discounted a risk of persecution or Article 15(c) risk in Kabul, this was therefore an error of law.

19. The First-tier Tribunal considers only that there is no evidence that the appellant could not find and pay for his own accommodation or that he would be destitute in Kabul at paragraph 88 of the decision, and at paragraph 93 when looking at issues of integration, that he is young, fit, has received some education in the UK, would get a re-integration package and that he would be able to find his mother as she was not at risk from the Taliban. This was not sufficient to look at whether return to Kabul would be unreasonable or unduly harsh in the context of the personal and country of origin evidence before the judge set out in the appellant's skeleton argument before the First-tier Tribunal, particularly at paragraphs 80 to 83 of that document.

20. In so far as the decision states that there was no evidence that the appellant faces any particular personal challenges or that he was living a life independent of day to day help from adults this is not an accurate reflection of the evidence which is in fact that he needs regular help from adults with respect to decision-making and with important issues such as employment, rent and sustenance and lives, and despite being over the age of 18 years, is provided with supported accommodation. The finding that he could resume contact with his mother is also insufficiently reasoned, and there is a failing to explain how this contact would make his relocation to Kabul less harsh.

21. We find therefore that the First-tier Tribunal erred in law in failing to set out and apply the correct test for internal relocation and apply it to the substantial amount of evidence on this point. We also find that the same error occurred with respect to the failure to apply the full evidence before the First-tier Tribunal to the decision on paragraph 276ADE (1)(vi) of the Immigration Rules with respect to whether the appellant would have very significant obstacles to integration in Afghanistan, and thus the appeal Article 8 ECHR.

22. We therefore set aside the decision of the First-tier Tribunal. We preserve however all of the findings up until and including paragraph 85 of the decision which are not infected with any errors.

23. We now need to remake these aspects of the appeal identified at paragraph 21 above. However, it is appropriate to adjourn the remaking hearing until after the country guidance decision in AS on relocation to Kabul is promulgated. It is understood that this is likely to be available in January 2018, so the matter will be

listed for a case management review hearing on the first available date before Upper Tribunal Judge Lindsley after 1st February 2018.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. We set aside the decision and the findings from paragraphs 86 to 93 of the decision.

3. We adjourn the remaking hearing.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: *Fiona Lindsley* Date: 12th December 2017
Upper Tribunal Judge Lindsley