



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02258/2016

THE IMMIGRATION ACTS

Heard at Field House
On 2 July 2018

Decision & Reasons Promulgated
On 3 August 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EO

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Mr J Rendle of Counsel, instructed by Wai Leung Solicitors

DECISION AND REASONS

1. EO is a national of Afghanistan, age assessed as born in 1998, who appealed against the Secretary of State's decision to refuse his protection and human rights claim dated 23 February 2016. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with EO as the Appellant and the Secretary of State as the Respondent.
2. The Appellant's appeal was allowed by First-tier Tribunal Judge Blake in a decision promulgated on 19 September 2016 on all grounds, from which the Respondent was granted permission to appeal to the Upper Tribunal. In a decision promulgated on 31 May 2017 (annexed to this decision), I found an error of law in the First-tier Tribunal's decision in respect of the protection claim, specifically on the issue of whether the Appellant could internally relocate to Kabul. In doing so, the credibility findings in relation to the Appellant and the finding that he would be at risk on

return to his home area in Afghanistan were preserved, as set out in paragraphs 82 to 89 (first sentence) of the decision of First-tier Tribunal Judge Blake, as follows:

“82. Having had the benefit of hearing and seeing the Appellant give his evidence, I found him to be an honest and credible witness.

83. I took into account the assessment of his age for the purposes of my decision. I found that the Appellant’s date of birth was that as assessed, namely 1 February 1998. I concluded therefore at the time of the hearing he was 18 years of age.

84. I considered the Appellant’s claim to his father’s land having been taken by his father’s elder brother. I accepted that this account was in keeping with the objective evidence.

85. I further accepted that there was evidence of Taliban activity and problems in the Laghman area.

86. I concluded the Appellant’s account was in keeping with the objective evidence. I accepted the Appellant’s uncle had been a Taliban member if not a commander and that an ultimatum had been delivered to the Appellant’s father.

87. I accepted that this would have been an ultimatum to deliver up his son or they would forcibly take him. I found this again was in keeping with the objective evidence and not lacking in credibility.

88. I considered therefore that the Appellant would be returned to a hostile area where there was Taliban activity. I accepted he would be likely to be forcibly recruited into the Taliban if not as a fighter then as a suicide bomber.

89. I found that the Appellant’s account was in keeping with the objective material.”

3. There was no real dispute between the parties as to the Appellant’s background and circumstances in addition to the above findings of fact. He is a single, adult male, aged 20, from Laghman province in Afghanistan, who is in good health. He continues to speak Pashto but has been learning English during the three years or so he has been in the United Kingdom and has studied English at a local centre and college. The Appellant has not been in formal employment either in Afghanistan or in the United Kingdom but did sometimes help his father out on the land in Afghanistan. He does not have any specific qualifications from the United Kingdom.
4. The Appellant has not been in touch with his family or anyone else in Afghanistan since coming to the United Kingdom. He has a sister in Kabul who lives there with her husband but the Appellant does not know where and he has never been to Kabul. If he is able to contact his sister, she would not be able to provide him with anything other than very temporary support for a night or two for cultural reasons.
5. The resumed hearing of this appeal was adjourned on a number of occasions pending the country guidance decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) which was directly relevant to the issue in this appeal. The parties accepted that AS was relevant to the present appeal and there was no suggestion that there were any grounds to depart from the guidance contained therein. In summary, the guidance in AS is as follows:

Risk on return to Kabul from the Taliban

- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in 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 many 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.*

6. At the oral hearing, Mr Jarvis, on behalf of the Respondent relied specifically on the country guidance in AS and submitted on that basis that it would be reasonable and not unduly harsh for the Appellant to internally relocate to Kabul. He was a single adult male in good health who would be able to establish himself and a livelihood on return, establishing a new network there. There was nothing to suggest that the Appellant was not physically able to obtain work doing manual labour and may be able to obtain at least some familial or tribal support which may assist him.
7. Mr Rendle accepted that on the face of it, AS provided little assistance to the Appellant although a case by case consideration was required. He submitted that given the finding on the general security situation in Kabul being no better or worse than elsewhere in Afghanistan, then as the Appellant would be at risk on return to his home area, he would be at risk in Kabul as well.
8. It was further submitted that the Appellant had been found to be credible by the First-tier Tribunal and there was evidence that his uncle had general influence and power in his local area. The Appellant's case is that he would be found relatively quickly in Kabul for this reason. He would be returning to Kabul without effective family support and there was some evidence of difficulties for people travelling from the airport into Kabul.
9. Prior to the promulgation of the decision in AS, the Appellant had submitted further evidence including a report by Mr Jawad Hassan Zadeh which did not take into account or consider any of the findings contained therein. Only limited reliance was

therefore placed on that report and primarily as to it being customary for Pashtuns to identify others on return. I have attached very little weight to the report given that it predates the country guidance in AS, in which detailed consideration was given to a much broader range of evidence than is sourced in the expert report.

10. Although it has been found that the Appellant would be at risk from his uncle/the Taliban in his home area, there is nothing to suggest that he is of any particular interest for the Taliban generally or more widely than from his family member or in his local home area. The Appellant has no particular profile or interest to the Taliban and in accordance with the guidance in AS and absent any other risk factors, is not at real risk of persecution from the Taliban in Kabul for the reasons set out in AS. There is therefore the option of internal relocation to Kabul and the issue is whether it is reasonable for him to internally relocate there.
11. The Appellant is in good health and there is nothing to suggest he would not be able to access livelihood opportunities in Kabul for manual labour, even without any particular work experience or qualifications and would face no language barriers on return. He is a young adult with no particular vulnerability on return and it would be possible for him to re-establish himself even without any specific connections or support network in Kabul, taking his claim at its highest that he is not in contact with his sister and even if he could establish contact, she would not be able to provide anything other than very short-term support. I do not find that there is anything about the particular circumstances of this Appellant to depart from the general position found in AS that it would not be unreasonable or unduly harsh for him to internally relocate to Kabul. None have been suggested in the course of this appeal.
12. The suggestion on behalf of the Appellant that as the general security situation is similar in Kabul to other parts of the country, he would be at risk on return there as he is in his home area was misplaced. Paragraph 199 of AS relied upon in this regard specifically deals with the general security situation faced by civilians in Kabul and more widely in Afghanistan. It is not dealing with risk from the Taliban in Kabul generally nor as compared to other areas and in the present case, that is the reason why the Appellant was found to be at risk in his home area, not because of an Article 15(c) risk. In any event, the findings in paragraph 199 can not be read in the way suggested by Mr Rendle consistently with the overall findings in AS that in general it will be not unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul. If he was right, there would never be an option of internal relocation to Kabul to a person at risk in their home area.
13. For these reasons, I find that it is not unreasonable or unduly harsh for the Appellant to internally relocate to Kabul and his appeal must therefore be dismissed on asylum grounds. The remainder of his claim stands or falls with this finding and no separate submissions were advanced on humanitarian protection grounds, nor pursuant to Articles 2, 3 or 8 of the European Convention on Human Rights. For completeness, I do not find that the Appellant has established that he is entitled to humanitarian protection, nor that his removal would breach Articles 2, 3 or 8 of the European Convention on Human Rights.

Notice of Decision

For the reasons set out in the decision promulgated on 31 May 2018, the making of the decision of the First-tier Tribunal did involve the making of a material error of law and as such it was necessary to set aside the decision.

The appeal is remade in the following terms. The Appellant's appeal is dismissed on all grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.



Signed
Upper Tribunal Judge Jackson

Date 30th July 2018

ANNEX - Error of law decision



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02258/2016

THE IMMIGRATION ACTS

Heard at Field House
On 18th May 2017

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EO

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: Mr J Abdurahman of Counsel

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Blake promulgated on 13 September 2016, in which the EO's appeal against the decision to refuse his protection and human rights claim dated 23 February 2016 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with EO as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Afghanistan, who claims to have been born on 1 February 2000 but his age has been assessed as having a date of birth of 1 February 1998. The Appellant was encountered by the police leaving the back of a lorry in Ashford on 7 July 2015 and subsequently made a claim for asylum. The basis of his claim was that his paternal uncle worked for the Taliban, as well as four of his cousins and that his uncle put pressure on the Appellant and his father for him to join the Taliban. This pressure included taking some of the Appellant's father's land by force and threats.
3. The Respondent refused the application on 23 February 2016. In the course of that decision, consideration was given to the Appellant's claimed age and the age assessment carried out by Kent Social Services which assessed his date of birth to be 1 February 1998 and therefore that he was 18 years old the time of decision. Consideration was however given to the fact that the Appellant was a minor at the date he made his claim and when he underwent his asylum interviews. As to the substance of the claim, the Respondent refused the asylum claim as he did not accept that the Appellant's uncle was a senior commander or man of influence within the Taliban, nor that he was making any plans to forcibly recruit the Appellant for the Taliban. In addition, the Appellant claimed that his father contacted the police about the matter who had shown a willingness to assist in the dispute. The Respondent considered that there was a sufficiency of protection available for the Appellant in Afghanistan and that there was an option of internal relocation available to him. The Respondent refused the claim on humanitarian protection grounds and under Articles 2 and 3 of the European Convention on Human Rights for essentially the same reasons and in addition, refused the Article 3 claim on the basis that there was not such a level of indiscriminate violence in Afghanistan that the Appellant would be at risk solely because of his presence there.
4. The Respondent also refused to grant the Appellant leave to remain on the basis of private and/or family life as he did not meet the requirements set out in Appendix FM or paragraph 276 ADE of the Immigration Rules and there were no exceptional circumstances to warrant a grant of leave to remain outside of the Immigration Rules.
5. The Respondent gave separate consideration to the best interests of the Appellant as a child under section 55 of the Borders's Citizenship and Immigration Act 2009 with a view that it would be appropriate for the Appellant to reside in Afghanistan with his family. Further separate consideration was given to the positive duty on the Respondent to trace family members of unaccompanied asylum seeking children in accordance with the decision in **KA (Afghanistan) & Ors v Secretary of State for the Home Department [2012] EWCA Civ 1014**, but it was noted the family tracing is not currently available in Afghanistan in the absence of a postal address, email address and/or telephone number for family member.
6. Judge Blake allowed the appeal on 19 September 2016 on all grounds. He found the the Appellant to be a credible witness whose account was in keeping with objective evidence as to Taliban activity and problems in his home area. It was accepted that

the Appellant's uncle had been a Taliban member even if not a commander and that he delivered an ultimatum to the Appellant's father in relation to his forcible recruitment into the Taliban as either a fighter or a suicide bomber. It was found that the Appellant would be unlikely to receive any support from his family on return to Afghanistan, that there was a Taliban presence in and around Kabul and internal relocation was not open to the Appellant in this case. It was further found that there would not be a sufficiency of protection to the Appellant in Afghanistan. In these circumstances the appeal was also allowed under Articles 2, 3 and 8 of the European Convention on Human Rights as well.

The appeal

7. The Secretary of State appeals on two linked grounds, that the First-tier Tribunal had failed to take into account the relevant country guidance in cases of **HN & SA (Afghanistan) v Secretary of State for the Home Department** [2016] EWCA Civ 123, **AK (Article 15(c)) Afghanistan CG** [2012] UKUT 163 and **HK and others (minors - indiscriminate violence - forced recruitment by the Taliban - contact with family members) Afghanistan CG** [2010] UKUT 378 and had failed to give any reasons for departing from these cases and/or failed to give reasons as to why the Appellant could not safely relocate to Kabul.
8. Permission to appeal was granted by Judge Baker on 30 March 2017 on all grounds.
9. At the hearing, the Home Office Presenting Officer relied on the written grounds of appeal and submitted that there has simply been an inadequate assessment of internal relocation in accordance with relevant country guidance authority. The Court of Appeal in **HN & SA** upheld the country guidance case of **AK** which concluded in paragraph 253, on the same facts as in the present case, that it would not be unduly harsh for that appellant to return to Kabul. The Appellant in the present case is an 18-year-old healthy man who could internally relocate to Kabul even without family support.
10. In addition, the First-tier Tribunal did not consider the country guidance in **HK** that when considering whether there is a real risk of forced recruitment by the Taliban in Kabul, evidence would be required to show that it is a real risk for the particular child concerned and not a mere possibility. In this case, it is to be remembered that the Appellant is no longer a child.
11. In response, Counsel for the Appellant submitted that the First-tier Tribunal was entitled to consider the Appellant's age, vulnerability and lack of family support as reasons for finding that it would be unduly harsh for him to relocate to Kabul where there is a Taliban presence and continuing threat from them as found in **AA (unattended children) Afghanistan CG** [2012] UKUT 00016 (IAC). He was entitled to take into account the Secretary of State's failure to carry out her tracing duties and although the Appellant was now 18 years old, there is no bright line such that the threat of forced recruitment from the Taliban would end on a person's 18th birthday, as held by the Court of Appeal in **KA (Afghanistan) & others v Secretary of State for the Home Department** [2012] EWCA Civ 1014.

12. Overall, it was submitted that the decision of the First-tier Tribunal fell within the range of country guidance cases available on Afghanistan such that the decision was within their scope and there was no material error of law to fail to refer specifically to AK or HK.

Findings and reasons

13. The sole issue in this appeal is whether the consideration by the First-tier Tribunal of whether the Appellant could internally relocate Kabul contains any material error of law. There is no challenge to the findings that the Appellant would be at risk on return in his home area in Afghanistan on the basis that it was likely that he would be forcibly recruited into the Taliban. The starting point are the findings made by Judge Blake on this issue, the totality of which are as follows:

“89. ... I did not find that internal relocation would be open to the Appellant on the facts.

90. I noted the Secretary of State had not discharged her duty to trace the Appellant’s family. I found that if he was returned he would be unlikely to receive any support from his family and that they would not be able to assist him.

91. I did not find the fact that the police attended on the initial complaint was an indication that there would be able to provide a sufficiency of protection to the appellant. I noted the objective material was forced recruitment of children was carried on unabated in Afghanistan. I also noted that the Appellant came from a high-risk area.

92. I did not find in the circumstances that the Appellant would be able to return to his home area or to relocate. I noted from the objective evidence materials that there was a Taliban presence in and around Kabul.”

14. On their face, these findings amount to reasoning that the Appellant could not internally relocate to Kabul due to the Taliban presence there and the lack of family support on return. These reasons are self-evidently very brief and other than the reference to objective evidence showing a Taliban presence in and around Kabul, there is no reference to any other country guidance or background evidence as to the current situation in Kabul or whether internal relocation there would be unduly harsh for this Appellant. The appeal on the basis that the First-tier Tribunal has failed to give adequate reasons regarding internal relocation to Kabul has clear merit for these reasons.
15. There is no reference elsewhere in the decision of the First-tier Tribunal to any of the relevant country guidance decisions in relation to Afghanistan nor of any authority on the test to be applied for internal relocation. There is nothing to suggest that Judge Blake directed himself in accordance with such material or considered it at all.
16. In accordance with the relevant Practice Direction (paragraphs 12.2 and 12.4), a country guidance determination shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later country guidance

determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authority in any subsequent appeal so far as it relates to the country guidance issue in question and depends upon the same or similar evidence. Any failure to follow and applicable country guidance case or to show why does not apply to a particular appeal is likely to be regarded as an error of law. A Tribunal may depart from a country guidance case if there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case or further issues are raised, in which case suitable findings must be made on the evidence that is now available.

17. There are a number of potentially relevant country guidance cases for the purposes of this appeal, the relevant findings of which are set out as follows.
18. In **AK**, as approved by the Court of Appeal in **HN & SA**, the Upper Tribunal sets out findings, inter-alia, on levels of indiscriminate violence and viable internal relocation alternatives. So far as relevant, in paragraph 243 of the decision, the findings made as to internal relocation to Kabul as follows:

*“As regards Kabul city, we have already discussed the situation in that city and we cannot see that for the purposes of deciding either refugee eligibility or subsidiary protection eligibility (and we are only formally tasked with deciding the latter) that conditions in that city make relocation there in general unreasonable, whether considered under Article 15(c) or under 15(b) or 15(a). We emphasise the words “in general” because it is plain from Article 8(2) and our domestic case law on internal relocation (see **AH (Sudan)** in particular) that in every case there needs to be an enquiry into the applicant’s individual circumstances; and what those circumstances are will very often depend on the nature of the specific findings made about the credibility of the appellant in respect of such matters as whether they have family ties in Kabul. But here our premise concerns an appellant with no specific risk characteristics and someone found to have an uncle in Kabul: ... To summarise our conclusion, whilst when assessing a claim 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 living there, these considerations will not in general make return to Kabul unsafe or unreasonable.”*

19. The Upper Tribunal’s findings in **AK** in relation to that appellant were, even if considered as a single young male returning on his own without any family support, that he would be able to live in Kabul in safety without undue hardship. It was noted that a person would also start from an advantageous position of being able to benefit from a returns package.
20. Counsel for the Appellant submitted that it would be wrong to rely on the conclusions about the reasonableness of return to Kabul for **AK** set out immediately above given that they do not form part of the overall guidance given in the case and are premised upon a person with different characteristics than the Appellant in this appeal, in particular, AK was a person with no specific risk characteristics and who had an uncle in Kabul. Given the findings of the Upper Tribunal in **AK** were made on the basis that internal relocation to Kabul was safe even if AK had no family support, there is very little difference, if any between the findings for AK and this

Appellant. No specific risk characteristics have been identified or found by the First-tier Tribunal for the Appellant in the current case - the findings are that he would be at risk in his home area of forced recruitment into the Taliban, primarily by his uncle or, potentially more generally as an unaccompanied child, albeit as at the date of hearing, the Appellant was an adult.

21. In the alternative, Counsel for the Appellant submitted that Judge Blake was entitled to rely on updated evidence about the safety of internal relocation to Kabul such that the guidance in AK above, if applicable to this Appellant at all, no longer applied. However, it is unclear what updated evidence or findings are relied upon in this regard. If it is a reference to the objective evidence of Taliban presence in and around Kabul which is referred to in paragraph 92 of the decision, this falls far short of fresh credible evidence such that departure from the findings in AK could not be justified in accordance with the Practice Direction. AK is relevant, binding country guidance for the purposes of the present appeal and should have been followed by the First-tier Tribunal in determining whether the Appellant could internally relocate to Kabul.
22. Specifically in relation to the forced recruitment by the Taliban of minors, guidance is given by the Upper Tribunal in HK that although forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility.
23. In AA, the Upper Tribunal found that the position in HK remained as to whether children were disproportionately affected by the consequences of armed conflict in Afghanistan but added that “unattached children returned to Afghanistan, dependent upon their individual circumstances and the location to which they are returned, may be exposed to risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. Such risks will have to be taken into account when addressing the question of whether a return is in the child’s best interests, a primary consideration when determining a claim to humanitarian protection.” This need for an individual assessment is consistent with AK.
24. Counsel for the Appellant relies on AA as a case which on its facts is almost identical to the present Appellant’s appeal, including the fact that he had just turned 18. I do not accept that the facts in AA are almost identical to the present case, given that there were additional specific risk characteristics in that case, including that AA would be perceived as a traitor and was involved in a blood feud following the death of his brother. His fear of persecution was based on anti-Taliban political opinion, actual or imputed, by reason of his family membership. Those elements are simply not present in this Appellant’s case and are significant differences such that the outcome in AA’s appeal is not directly applicable to the Appellant in this appeal.
25. On the latter point as to age, the fact that AA had recently attained the age of majority, did not, in the circumstances of his case, affect his entitlement to

recognition as a refugee. It is common ground that there is no bright line rule on a person's 18th birthday, as confirmed in KA where it was found that risks of arelevant kind to a child would not necessarily cease on that day. The Court of Appeal noted that persecution is not respectful of birthdays and apparent or assumed ages are more important than chronological age. In the present case, the Respondent submits that even so, there has to be some consideration that the Appellant relied in his submissions on case law about risks on return as a child, but in fact he would be returning as a young adult.

26. For these reasons, I find that the First-tier Tribunal made a material error of law in determining the issue of whether the Appellant could internally relocate to Kabul without any regard to relevant country guidance; failed to recognise in accordance with AK that in general a return to Kabul would not be unreasonable and further, that he failed to undertake a sufficient enquiry or make findings as to the Appellant's individual circumstances on return to Kabul, as a young adult, save for a finding that he would have no family support on return. In accordance with AK, that cannot of itself make return to Kabul unreasonable or unsafe. Overall, the very limited findings that were made by Judge Blake are not sufficient as an individual assessment of risk in accordance with the country guidance cases and it is unarguable that this error is not material.
27. There is nothing contradictory to the findings in AK or as to the need for full assessment of an individual circumstances set out therein, in AA or KA to support the submission on behalf of the Appellant that Judge Blake's findings fell within the ambit of other country guidance given about return of unattended children AA and/or KA in circumstances where, even without a bright line rule, it has to be considered that the Appellant is now a young adult. The failure to consider and apply AK could not even arguably be immaterial in these circumstances.
28. There is also no response whatsoever on behalf of the Appellant to the failure to consider or apply the guidance in HK (albeit qualified in AA as above) as to the need for evidence in relation to a specific person to show a real risk of forced recruitment in Kabul. That is so even if the decision could be read as including a finding that Kabul is an area of high militant activity or militant control (which in my view is not supported by the objective evidence which was available to the First-tier Tribunal as to Taliban presence in and around Kabul).
29. The First-tier Tribunal decision of Judge Blake dated 19 September 2016 must be set aside for the reasons given above. In the absence of a lawful assessment of whether the Appellant could internally relocate to Kabul, it is a material error of law to allow the appeal on asylum and human rights grounds (the latter of which expressly relied on the asylum findings). There is no challenge to the credibility findings nor the finding that the Appellant would be at risk on return to his home area in Afghanistan and those findings, set out in paragraphs 82 to 89 (first sentence) are therefore preserved.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

Directions to the parties

- 1. This appeal is adjourned to an oral hearing, to be relisted before UTJ Jackson to re-determine the appeal, with specific reference to whether the Appellant could internally relocate to Kabul.**
- 2. Any further evidence relied upon by the parties shall be filed with the Upper Tribunal and served upon the other party no later than 14 days prior to the hearing of the appeals.**
- 3. The Appellant is to file with the Upper Tribunal and serve upon the Respondent a skeleton argument setting out the relevant issues, with reference to evidence and case-law no later than 14 days prior to the hearing of appeals.**

Directions to Administration

- 1. The appeal is adjourned, to be relisted for an oral hearing before UTJ Jackson on the first available date after 28 June 2017.**
- 2. The time estimate for the hearing is 1.5 hours.**
- 3. A Pushtu (also known as Pashto) interpreter is required.**

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their 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.

Signed



Date

26th May 2017

Upper Tribunal Judge Jackson