



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08109/2016  
PA/09067/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1 May 2019

Decision & Reasons Promulgated  
On 5 June 2019

Before

UPPER TRIBUNAL JUDGE RIMINGTON  
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR AN  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms H Foot, instructed by Wilsons Solicitors LLP  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The Appellant, a national of Afghanistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 11 August 2016 refusing his application for asylum and humanitarian protection in the UK. His appeal was dismissed by First-tier Tribunal Judge Loke in a decision promulgated on 14 November 2018 and he appealed to this Tribunal with permission. On 6 March 2019 the decision was set

aside in its entirety by Upper Tribunal Judge Rimington, that decision is appended hereto.

2. At the resumed hearing on 1 May 2019 we had the following documentary evidence before us:
  - Home Office bundle;
  - Appellant's consolidated bundle (979 pages);
  - Respondent's written submissions;
  - Appellant's skeleton argument;
  - Copy of a 'letter of concern' dated 26 June 2017 from the appellant's solicitors to London Borough of Dagenham and Barking in relation to the age assessment carried out in September 2015 submitted by Ms Foot.
3. The appellant did not give oral evidence based on advice from Ms Foot in light of the recommendation by Dr Fairweather. We heard submissions from Mr Melvin and Ms Foot and we reserved our decision.

### **The background**

4. The appellant arrived in the UK on 11 December 2014. He claimed to be 13 years old with a date of birth of approx May/June 2001. An age assessment carried out by London Borough of Barking and Dagenham in 2015 concluded that his date of birth was 10 December 1998. His application for asylum was refused on 15 October 2015 but he was granted Discretionary Leave to Remain as an unaccompanied minor until 11 February 2016. He made an application for further leave to remain which was refused on 11 August 2016 and is the subject of this appeal. The appellant's appeal was heard in the First-tier Tribunal and dismissed by First-tier Tribunal Judge Moore in a determination promulgated on 14 November 2017, however that decision was set aside by the Upper Tribunal and remitted to the First-tier Tribunal where the appeal was heard by First-tier Tribunal Judge Loke whose decision was set aside on 6 March 2019.
5. The appellant's claim for asylum is based on his fear of return to Afghanistan because of his imputed political opinion as the son of a prominent Taliban member. He claims that his father is a high ranking member of the Taliban who told the appellant that he would force him to fight in 'jihad' against the Afghan security forces and becoming a Mujahedeen. His mother was present when this conversation took place and later told him that she did not want him to die so she was going to take him to a safe place. He says that he was taken to the home of his maternal uncle to hide from his father and the next day he was taken to an agent who organised his journey. He claims that he cannot relocate within Afghanistan on return as his father would find him because he has a network of connections in the area. He also claimed that he would be at risk of recruitment generally by the Taliban as a young Pashtun male of fighting age. He further claimed he faced a real risk of serious harm contrary to Article 15(c) of the Qualification Directive 2004/83/EC in Logar which suffered from indiscriminate violence and that his removal would breach his rights under

Articles 2, 3 and 8 of the ECHR. The appellant claims that he has no relatives in Kabul and has been unable to trace the whereabouts of any of his relatives owing to the suspension of activities in Afghanistan by the Red Cross. The Secretary of State disputed his account of events in Afghanistan and submits that there is a sufficiency of protection for the appellant in Afghanistan and that he could internally relocate. The respondent does not accept that the appellant's return to Afghanistan would give rise to a real risk of serious harm or a breach of his rights under Article 8 of the European Convention on Human Rights.

### **The Law**

6. The burden of proof in all these matters is upon the appellant. He must show that there is a real risk of:
  - (a) being persecuted for one of the five reasons set out in the 1951 Refugee Convention. A refugee is defined in Article 1A (2) of the Convention as any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear is unwilling to avail himself of the protection of that country;
  - (b) suffering serious harm if returned to Afghanistan under paragraph 339C of the Immigration Rules. A person will not be granted Humanitarian Protection where s/he qualifies as a refugee.
7. Article 2 of the ECHR protects the right to life and Article 3 prohibits torture, inhuman or degrading treatment or punishment. Article 8 provides that everyone has a right to respect for his private and family life, his home and his correspondence. It is for the respondent to demonstrate that any interference with the right to private and family life under Article 8 is in accordance with the law, corresponds to a pressing social need and is proportionate to the legitimate aim pursued.

### **The hearing**

8. At the outset of the hearing Ms Foot submitted the letter from Wilsons' solicitors in relation to the age assessment conducted in 2015. She accepted that there had been no formal challenge to the age assessment but referred to a complaint made to the appellant's former solicitors about how the case was handled. She accepted that the starting point for the appellant's age must be the age assessment and that the appeal must proceed on the basis that the appellant is now 20 years old in accordance with that age assessment. However she submitted that the age assessment should be given very limited weight.
9. The appellant did not give oral evidence at the hearing, Ms Foot said that this was in light of the recommendation of Dr Fairweather at paragraph 8.11.3 of her report dated 10 October 2018 where she said that in a Tribunal hearing the appellant will 'inevitably present in an anxious and emotionally overwhelmed state' and that in this state 'he cannot give reliable evidence and therefore, it would be preferable that his paper submissions are relied upon'. Ms Foot accepted that this means that less

weight can be given to the appellant's evidence in general as he would not be subjected to cross-examination. However she submitted that the probative value of oral evidence is likely to be of limited weight in this case. In these circumstances she said that she had decided not to call the appellant to give oral evidence.

10. Ms Foot outlined the appellant's case. She said that he is from Logar province; he claims that his father was a member of the Taliban, although he is not sure of his father's position she submitted that it is not reasonable to expect him to be clear about this. She submitted that it is the appellant's account that his father threatened him to join the Taliban and that, on the advice of his mother and maternal uncle, he fled to the UK for his own safety. She submitted that if he returned to his home area he will be forcibly recruited or harmed by the Taliban or his father and that he is at risk from the Afghanistan authorities because of his association with the Taliban. In her submission he is also at risk as a vulnerable young person with no family members. She submitted that the Red Cross has suspended operations in Afghanistan (see p360 of the appellant's bundle) and that the appellant is afraid for his family if tracing is undertaken, the appellant claims that he has had no contact from his family in his home area. She said that the appellant's family cannot offer him any protection from recruitment by the Taliban. She highlighted that he was a child when the material events occurred and that his case should be assessed in the round and on the basis of the background evidence. She submitted that the appellant's account is credible in light of his PTSD symptoms, the difficulties he faces, his age at the time of material events and the expert evidence. She submitted that his account is plausible and any apparent minor inconsistencies can be explained and the core his account is credible. She submitted that any apparent inconsistencies should be resolved in the appellant's favour. In terms of risk she submitted that the appellant is at risk of recruitment by the Taliban because of his father and the fact that he is a young man of fighting age. She submitted that he is at risk of harm as a result of indiscriminate violence in his home area.
11. Ms Foot submitted that the appellant cannot relocate internally in light of the factors in **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**. She highlighted the appellant's mental health struggles. She said that the case of **AS** is under consideration by the Court of Appeal and that she understands that it is likely that the decision in **AS** will be reheard. She cautioned against making any adverse inferences from the findings in the previous two decisions as both had been set aside.
12. Mr Melvin relied on his written submissions and the two Reasons for Refusal letters. He submitted that this case turns on the expert reports. He took issue with the medical reports from Dr Fairweather and the expert report from Dr Foxley. He submitted that the appellant has had no medical treatment in the UK. He submitted that Dr Fairweather's conclusions were based on what the appellant told her about the domestic violence in his home and his traumatic journey to the UK. In his submission the Tribunal should be wary of the assertions made by Dr Fairweather as the conclusions were based purely on the appellant's immigration status which caused him anxiety when he attended her office and the solicitors' offices. In his submission the later diagnosis changes little from the first. He submitted that little weight should be given to the medical evidence as it stands alone in this appeal. He

submitted that it is difficult for the Tribunal to assess the evidence in these circumstances where the appellant is not giving evidence and where Dr Fairweather says that the appellant's previous evidence cannot be relied on in circumstances where the burden is on the appellant to prove his case. He submitted that the Tribunal is being asked to find that the appellant's evidence is broadly plausible. However in terms of credibility he submitted that the appellant gave the impression in his witness statement that his father made a sudden choice that the appellant would be a fighter with him and that his mother and uncle quickly raised the funds and arranged for him to leave the country. Yet in his submission this conflicted with the appellant's account that he had never been allowed to attend mainstream school, only attending a Madrassa, and he had been taught to handle weapons and in these circumstances it was not a surprise that he was expected to become a fighter, the appellant's account that this was a sudden decision is not credible. He submitted that there is a further inconsistency in the appellant's account as to when and how he was taken from home. Further, he pointed out that there is no indication as to how the finance was raised to fund his journey. He submitted that it would be expected that the appellant would have had contact with his family to let them know that he had arrived safely in the UK. Mr Melvin submitted that the appellant's claim that his father was a Commander in the Taliban is undermined by the fact that the expert could not find anyone of that name nor could he find the appellant's village. He relied on his written submissions in relation to the medical evidence and the expert's report.

13. Mr Melvin accepted that the decision of the Upper Tribunal in AS is under challenge in the Court of Appeal but submitted that the Tribunal should rely on it as the current country guidance. He submitted that it is safe for the appellant to return to Afghanistan based on the following factors - he is now aged 20, he misled the Home Office as to his age on arrival; he did not challenge the age assessment; he is in relatively good health; he has been living independently for at least 2 years; according to his last witness statement he was engaging with a mechanics course at a local college and was learning English, this is inconsistent with Dr Fairweather's assertion that he is not engaging with education; as considered in AS there is no risk as a result of Westernisation or recruitment to the Taliban. He submitted that the appellant could return to his home area and to the family who paid substantial funds for his journey to the UK. He submitted that the appellant would be eligible for funds from the UK authorities to enable him to reintegrate and settle on return to Afghanistan.
14. In response Ms Foot submitted that, although she accepts that there are resettlement packages available, there is no evidence from the Home Office as to what resettlement package is available to this appellant. She submitted that Dr Fairweather's report explains the apparent minor discrepancies in the appellant's account and that it is necessary to ask whether any apparent discrepancies are explained by the appellant's PTSD symptoms. She relied on paragraph 8.10 of Dr Fairweather's first report where she describes the effects of psychological distress on the appellant's ability to recall exact dates. In her submission Dr Fairweather's assessment does not mean that everything the appellant has said to date cannot be

relied on, instead it means that what he would say in the court environment would be of limited probative value. In her submission the asylum interview and witness statements should be read together and consideration should be given to assessing whether any inconsistencies are material and whether they could be explained by the appellant's symptoms. She submitted that weight should be given to Dr Fairweather's report as evidence of the appellant's symptoms. Ms Foot submitted that it is not relevant whether the appellant's father's decision that the appellant should join the Taliban came as a surprise, the issue is that this is the point at which he was at risk and his family arranged for his departure. In her submission little turns on his account that he has not been in contact with his family to confirm his safe arrival. She submitted that it is understandable that the appellant would be afraid that tracing through the Red Cross would place the appellant at risk. In any event, in her submission there is no evidence of contact with the family and in 2017 the Red Cross were not tracing in Afghanistan (page 361 appellant's bundle), she accepted that there is no evidence as to whether that is still the case.

15. In Ms Foot's submission the appellant says in his most recent witness statement that he attends college but that he cannot cook and that he finds it difficult to study due to intrusive thoughts. In her submission this is consistent with Dr Fairweather's assessment that he is likely to struggle on a daily basis. She pointed out that the appellant is living in supported accommodation under Pathfinder care (page 353). She accepted that there has been no challenge to the age assessment but submitted that the assessment is not Merton-compliant as it placed a lot of weight on his demeanour and she referred to the letter of complaint and submitted that little weight should be placed on the report insofar as it is relevant to the asylum appeal. Ms Foot accepted that there is limited weight to be attached to the issue of Westernisation as set out in AS. However she submitted that the appellant is at risk from the Taliban in Logar province (page 231-233 appellant's bundle), she also submitted that there is a risk of exploitation from criminal gangs. In light of the security situation in Logar the appellant is at risk from 15(c) harm there. If it is accepted that the appellant is at risk in his home area Ms Foot submitted that it is not reasonable to expect him to relocate internally in Afghanistan, she relied on head note (iii) in AS and highlighted that the appellant has no family support in Kabul; he is vulnerable as a result of PTSD symptoms and the likely worsening of those symptoms on return without support; the fact that he did not go to school in Afghanistan. In the alternative she submitted that the appellant comes within paragraph 276ADE (1)(vi) of the Immigration Rules in that there are very significant obstacles to his reintegration in his home area and in Kabul.

### **Our Findings**

16. We have taken account of the Joint Presidential Guidance on Child, vulnerable adults and sensitive appellants. In assessing the appellant's evidence we take account of the fact that he was a minor when the alleged events occurred and when he travelled to the UK, entered the UK and when he was interviewed by the Home Office. He turned 18 in December 2016. We also take account of the medical evidence and the fact that the appellant has been diagnosed with PTSD symptoms and mood symptoms (8.2.1 of Dr Fairweather's report of 10 October 2018). In assessing the

credibility of his account we also take account of Dr Fairweather's assessment that, as a result of his symptoms, the appellant would be unable to give reliable oral evidence at a Tribunal hearing.

17. We take account of the age assessment as determining the appellant's age. We note the letter from the appellant's solicitors dated 26 June 2017 raising concerns about the assessment. However Ms Foot accepted that the age assessment has not been challenged. There is no alternative evidence before us addressing the appellant's claimed age. Accordingly in our view it is appropriate to accept that the age assessment determines the appellant's age. However, in light of the concerns raised about some of the issues raised in the age assessment we do not take account of the report in our assessment of credibility in relation to the appellant's asylum claim.
18. In assessing credibility we have considered the appellant's account given in his interviews and witness statements. We have not considered the determinations of First-tier Tribunal Judge Moore or First-tier Tribunal Judge Loke in reaching our decision. We also disregard the part of the witness statement of 16 May 2017 dealing with the age assessment and the section of the appellant's witness statement dated 10 October 2018 addressing the hearing before First-tier Tribunal Judge Moore.
19. In her report of 21 June 2017 Dr Fairweather described the appellant's account of witnessing domestic violence at home perpetrated by his father against his mother as well as against him and his siblings. He described how he suffered from headaches. She said that objectively the appellant 'seemed a little low' (para 7.9.3). According to the report the appellant's key worker told Dr Fairweather that those at his supported accommodation had no concerns about the appellant's mental health but were aware that he was at risk of presenting with difficulties, he observed that the appellant was able to get up for college as needed and he did not identify any concerns with the appellant's mood (paragraph 7.10.2). In the 2017 report Dr Fairweather concluded that the appellant presented with a number of psychiatric symptoms which caused him a 'low level of impairment and distress' and the symptoms were post traumatic in nature (8.2.1). She said that he did not meet the full diagnostic criteria for PTSD but that the symptoms cause him subjective distress particularly at night. Although it is said that he reported a number of mood symptoms, which would not meet the threshold for a diagnosis for a depressive disorder, but seemed persistent in nature and meant that he is vulnerable to developing a depressive disorder if he experienced stressors, and, that these are also relevant when considering his ability to cope with significant changes in his circumstances, such as enforced return to Afghanistan.
20. In her 2017 report Dr Fairweather considered that the appellant's 'qualifying exposure to trauma in his reported history is the chronic exposure to domestic violence he witnessed between his parents from a child'; he also reported being beaten on his journey to the UK (8.2.2). She went on to conclude that the most likely cause of the appellant's PTSD symptoms are the traumatic events in his history including the reported chronic domestic violence in his childhood, a difficult journey to the UK and the development disruption of his adolescence by these events and not being cared for by close family now (8.3.1). She considered that a significant

perpetuating factor for his current PTSD symptoms is his uncertain immigration status with the threat of return to Afghanistan (paragraph 8.3.2). We note that she did not attribute his symptoms to a fear of recruitment to the Taliban.

21. In her report of 10 October 2018 Dr Fairweather concluded again that the appellant seemed 'a little low' (7.8.3) and considered that the current psychiatric diagnosis remained similar to that in her earlier report in that he presented with PTSD symptoms and mood symptoms although there appeared to be an increase in PTSD symptoms. However he remained sub-diagnostic threshold but if there was any deterioration in his state it was more likely than not that he would meet full diagnostic criteria for PTSD. She said that his worsened state related to his perceived increased threat of return following his unsuccessful appeal in the First-tier Tribunal in June 2017 (8.2.1). Dr Fairweather again said that the factors relevant to her assessment were the chronic domestic violence he witnessed between his parents as a child and the physical abuse he suffered from his father as well as the reports of beatings on his journey to the UK (8.2.2).
22. We find it significant that the appellant did not mention domestic violence in his witness statement of 16 May 2017. He said that his father beat him outside and inside the home but made no reference to him beating his mother or siblings (paragraph 46-48). This is particularly significant given that the witness statement is extremely detailed, running to 72 paragraphs, it was taken by his solicitors, therefore it is presumed that he was relaxed and able to give a full statement, and it was translated to him.
23. In his SEF interview on 17 June 2015 the appellant said that before he left Afghanistan he asked his mother what his father does and she told him that he was a member of the Taliban (Q76) but he went on to say that when he was growing up he knew that his father was going to fight other people and that he was a member of the Taliban. In his witness statement dated 16 May 2017 the appellant said that he saw his father congregating with other Taliban members in an area by his home and that his father was always armed and that he thought his father was a high ranking officer because he seemed to be addressing the others (paragraph 15).
24. In his witness statement dated 9 February 2015 the appellant said that his father is a member of the Taliban. He said that his father has a high position and that he would take the appellant to become a jihadist when he was older (paragraphs 12, 16). In his interview he said that his father had said this to him recently (Q81). There is some conflict in the appellant's account as to when his father told him this. However in his SEF statement the appellant said that he saw his father training and that he told the appellant about it.
25. However Dr Foxley was unable to locate the appellant's village in Azra district or any specific reference to the appellant's father (paragraph 44, 46 report of 4 March 2017). He said that the appellant's father 'looks to be a local, low-level member of a small unit of local Taliban fighters. As such he plausibly has some standing within the community, particularly if there is some support for the Taliban in the local village'. In his report of 10 October 2018 Dr Foxley said that it is possible that the appellant's father is prominent in his local area but largely unknown across the



country and beyond and he found it plausible that the appellant believed his father to be more powerful within the Taliban than the reality (paragraph 34).

26. We take account of all of the evidence before us in light of the appellant's age and mental health symptoms. We accept that the appellant is from the Logar province as claimed. There is a conflict in his evidence as to domestic violence within the family home but we accept to the lower standard that it did occur as claimed. The appellant's account as to his father's activities with the Taliban is lacking in detail. However he has been largely consistent in his claim that his father was involved with the Taliban. We take into account the evidence from Dr Foxley and we find that the appellant's father may have been a local, low-level member of a small unit of local Taliban fighters and that the appellant may have thought he was more prominent than he was. We accept the appellant's evidence that his father expected him to join the Taliban and that he may have been under some pressure or expectation from his father to join the Taliban locally. However there is limited evidence of forcible or coerced recruitment to the Taliban and it is not the appellant's account that he refused to join or that his father threatened him if he refused to become involved.
27. It is unclear what the consequence would be to the appellant of refusing to join the Taliban. Dr Foxley based his assessment as to the appellant's risk of recruitment initiatives on the assumption that the appellant's father is a local Taliban commander (paragraph 40 report of 10 October 2018). However this is inconsistent with his earlier conclusion that the appellant's father is likely to be a local, low level member of a small unit. We also note Dr Foxley's opinion that coercion is not the Taliban's preferred method of recruitment. The appellant is now an adult who has lived in the UK for five years, he has received education and support here, he is no longer naïve, lacking in education or vulnerable to suggestion as set out in Dr Foxley's report (paragraph 48). Looking at all of the evidence we do not accept that the appellant is at risk of coerced recruitment in his home area where his father may be a low level member of the Taliban, or further afield. There was no evidence that the father, as a low-level member, had extensive reach. We do not accept the submission that he is at risk from local Taliban members, and any suggestion by Dr Foxley that this may be the case is speculative and based on the assumption that he had left the area and Westernisation may place the appellant at risk.

#### Sufficiency of protection

28. In any event we consider that there is a sufficiency of protection in the appellant's home area. The appellant said in his witness statement of 16 May 2017 that he believes the police in his area would not help him as he is the son of a Taliban member and that, even if they did not know this, they would not be willing to help him. However the appellant did not seek the protection of the police in his home area in relation to his father's violence or the expectation he would join the Taliban. Dr Foxley discusses protection at paragraph 76-81 of the report of 10 October 2018. This sets out improvements in the police service. He talks about the focus of the police being on fighting the Taliban, accordingly it could be expected that they would offer some protection to the appellant from the Taliban.

## Internal relocation

29. In the event that we are wrong in our conclusions as to the risk to the appellant in his home area we have considered the feasibility of internal relocation to Kabul. We take account of the guidance in **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** as it is current country guidance. Albeit, as Ms Foot submitted that **AS** under consideration in the Court of Appeal, **AK** remains in force and unaffected by **AS**. The Tribunal's conclusions are summarised in the head note 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.*

### *Previous Country Guidance*

- (vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*

*(viii) The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision."*

30. Applying this guidance to the appellant we take into account that he is at most of lower level interest to the Taliban locally and therefore not at real risk of persecution from the Taliban in Kabul.
31. In his witness statement of 16 May 2017 the appellant said that he is scared that the Taliban would find him and that he believes that his father is a powerful member of the Taliban so he would have links with the Taliban in Kabul. He also said that his father will be angry and vengeful and he will kill the appellant or make him join the Taliban. He said that he will be arrested and tortured when the authorities know his father's name or that the Taliban will kill him for running away (paragraph 19-26).
32. However this view is not supported by Dr Foxley. At paragraph 50 - 60 of the report of 4 March 2017 Dr Foxley said that the main risk of recruitment to the Taliban for the appellant is from a return to his home area. However he did not consider it likely that the Taliban would have any interest in the appellant outside his immediate home area unless he fell into the hands of the Taliban in Kabul or some other city and his background became known he would likely be at a higher risk than an average citizen (paragraph 62). At paragraph 54 of the report of 10 October 2018 Dr Foxley said that the circumstances that befell the appellant 'look quite localised and his circumstances quite specific so it is very hard to give a judgement either way about immediate risks upon arrival in Kabul'. Given that his father is a local low level member of the Taliban we do not accept that it is likely that he will be at risk from the Taliban in Kabul.
33. The appellant said in his witness statement of 16 May 2017 that he has not had any contact with his family since leaving Afghanistan and that he is afraid to trace them because he is worried about the danger that could come to his mother and maternal uncle if he tries to trace them. In his witness statement of 10 October 2018 he said that the Red Cross told him that they could try to find his family but he said no because he is scared that his mother and uncle will get into trouble when it is discovered that he has spoken to the authorities in another country about what he has been through (paragraph 31). The appellant also submitted evidence that the Red Cross had suspended all tracing activities in Afghanistan (page 360-361 appellant's consolidated bundle). However there is no evidence as to how long this suspension lasted. There is no evidence that the Red Cross have currently suspended tracing services. We do not accept that the appellant would be unable to seek the support of his family, which could be remote, in particular his maternal uncle who funded his journey to the UK. We find that the appellant's decision not to give consent to the Red Cross casts doubt on the credibility of his claim that he is no longer in contact with his family. In our view it is likely that the appellant is in fact in contact with his mother and his maternal uncle.
34. Nonetheless we have considered whether the appellant could relocate to Kabul without family support. The appellant said in his witness statement of 10 October 2018 that he intended to seek medical support from his GP for his mental health issues. However there is no evidence before us that he has sought advice from his GP

and no evidence that he is undertaking any ongoing therapeutic intervention or that he is taking any medication. One of the potential difficulties in relocating identified by Dr Foxley is the lack of availability of medical support. However, the appellant has not been receiving any medical support in the UK where it is available to him. Whilst Dr Fairweather suggests that his symptoms may worsen if he is returned to Afghanistan this assessment is somewhat speculative and based at least in part on a lack of family support (which we have not accepted) accordingly we do not accept that he is likely to need support with mental health issues in Afghanistan. Although he has some mental health issues these do not affect his ability to follow his studies in the UK and are not sufficient to lead to any formal diagnosis of any mental health condition. He receives no treatment in the UK. Accordingly we find that he is in relatively good health.

35. In terms of his ability to look after himself upon return to Kabul we take into account a number of further factors. For the past two years the appellant has been living in supported accommodation where he has been receiving support to enable him to acquire life skills needed for independent living (page 353 appellant's consolidated bundle). He is now 20 years old. He has been studying English and is enrolled in a mechanics course (page 135 appellant's consolidated bundle) therefore he has acquired skills which may enable him to seek employment in Kabul. As accepted by Ms Foot, the appellant may be entitled to a resettlement package from the UK authorities to help him to reintegrate and settle on return to Afghanistan.
36. In all of these circumstances we find it reasonable and not unduly harsh to expect the appellant to relocate to Kabul.

#### Humanitarian Protection

37. In light of our findings above we are not satisfied that if he returns to Afghanistan the appellant is at real risk of suffering serious harm under paragraph 339C of the Immigration Rules.

#### Articles 2 & 3

38. In this appeal Articles 2 and 3 stand or fall with the asylum claim. In light of our findings above we are not satisfied that if he returns to Afghanistan the appellant may be subjected to torture, inhuman or degrading treatment or punishment or face death in breach of Articles 2 or 3 of the ECHR.

#### Private and Family life

39. Ms Foot submitted that the appellant is entitled to remain in the UK on the basis of paragraph 276ADE of the Immigration Rules, the relevant provision is paragraph 276ADE (1)(vi) which provides:

“276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

...

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

40. In light of our findings above as to the appellant's return to Afghanistan in general and to Kabul in particular we do not accept that there would be 'very significant obstacles' to his reintegration there. We do not accept that the appellant has not had contact with his family. He has not given any adequate explanation for his refusal to engage with the Red Cross to trace his family. There is no evidence that the Red Cross have currently suspended tracing services and we do not accept that the appellant would be unable to seek the support of his family, in particular his maternal uncle who funded his journey to the UK. Whilst he has some mental health difficulties, the appellant does not currently receive any treatment for his mental health issues in the UK. Further, many of the stresses referred to in the medical reports relate to the appellant's journey to the UK, his separation from his family and the uncertainty of his situation in the UK. These issues would be largely resolved by his return to Afghanistan based on our findings above.
41. Although it is said that the appellant has a girlfriend in the UK there is inadequate evidence as to that relationship and no submission that he meets the requirements of Appendix FM. No argument was advanced that his removal would breach his right to a family life here.
42. Accordingly we find that the decision does not breach the appellant's rights under Article 8 as put forward in the skeleton argument.

### **Notice of Decision**

The appeal is **dismissed** on asylum and on human rights grounds.

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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: 31 May 2019

*A Grimes*

Judge of the First-tier Tribunal

To the Respondent  
Fee Award

The appeal has been dismissed therefore there is no fee award.

Signed

Date: 31 May 2019

*A Grimes*

Judge of the First-tier Tribunal

APPENDIX



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08109/2016  
PA/09067/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 6<sup>th</sup> March 2019

Decision and Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

A N  
(Anonymity Direction Made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms H foot, instructed by Wilsons Solicitors LLP  
or the Respondent: Mr T Melvin Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appealed against the decision of First Tier Tribunal Judge Loke promulgated on 14<sup>th</sup> November 2018 dismissing his appeal.

2. The appellant's appeal was previously heard and dismissed by FTTJ Moore in 2017 but that decision was overturned by the Upper Tribunal on 6<sup>th</sup> March 2018 owing to a failure to apply the appropriate guidance on vulnerable witnesses (Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance).
3. There have been two decisions from the Secretary of State in relation to this appellant; one dated 15<sup>th</sup> October 2015 (refusal of an asylum claim) and the appellant was granted permission to appeal out of time. The second decision was taken on 11<sup>th</sup> August 2016 in relation to refusal a human rights claim. This decision referred to matters initially unchallenged by the first decision. In the event the challenge to both decisions have been subsumed into an appeal on asylum, humanitarian protection and human rights grounds.
4. The appellant, a citizen of Afghanistan, claimed asylum based on his fear of return because of his imputed political opinion as the son of a prominent Taliban member. Further the appellant claimed he had a fear of persecution on the basis of his status as a vulnerable unaccompanied young person in Afghanistan. He asserted that he was at risk of recruitment by his father in the province of Logar and that he would be at risk of recruitment generally by the Taliban as a young Pashtun male of fighting age. He further claimed he faced a real risk of serious harm contrary to Article 15(c) of the Qualification Directive 2004/83/EC in Logar which suffered from indiscriminate violence and that his removal would breach his rights under Articles 2, 3 and 8 of the ECHR. It was adumbrated that the appellant had no relatives in Kabul and had been unable to trace the whereabouts of any of his relatives owing to suspension of activities in Afghanistan by the Red Cross (A/B 137) (see Skeleton Argument dated 18<sup>th</sup> October 2018)
5. The Secretary of State disputed his account of events in Afghanistan and submits that the appellant could relocate.
6. The appellant in turn disagreed with the age assessed by the London Borough of Dagenham (date of birth given as 10<sup>th</sup> December 1998). The appellant asserts he was born on 10<sup>th</sup> December 2001. There has been no judicial review challenge on the age assessment. Nonetheless it was asserted that there was no 'bright line rule' whereby risk owing to minority disappear when a child reaches majority **KA (Afghanistan) v Secretary of State** [2012] EWCA Civ 1014. Even on the basis of his alleged age he was a minor when he claimed asylum and was interviewed.

#### **Application for Permission to Appeal**

7. The grounds advanced that:
  - (i) the judge unlawfully relied on her own view of what was plausible or reasonable to expect an Afghan woman to do and failed to take into account material evidence and misread the evidence before her. At [27] and [28] the judge rejected the appellant's claim that his mother was instrumental in arranging his escape from his father, because she was the victim of domestic violence. The judge asserted this did not chime with the objective evidence. Whilst this was correct as a general summary country position the judge relied



unlawfully on her own view of what was plausible contrary to **MM (plausibility) (DRC)** [2005] UKIAT00019, **HK v SSHD** [2006] EWCA Civ 1037 and **Y v SSHD** [2006] EWCA Civ 1223. There was no evidential basis for the judge finding the appellant's mother would face severe repercussions from her husband as a result of the role in enabling the appellant's departure and the judge had misread the evidence.

- (ii) the distinctions in the evidence drawn by the judge, between evidence accepted and rejected specifically for discrepancies, was unsustainable. Further the distinctions drawn arose from a misreading of the evidence which could not be said to be inconsistent. At q [80]-[82] of the AIR the appellant confirmed that his mother *was* present, (not absent as the judge cited) and his witness statement of 9<sup>th</sup> February 2018 was not at variance. Further the appellant stated he had not traced because of his fears for his family's safety but the evidence showed tracing was impossible even if the appellant had not had those fears. This was ignored at [29]. These were material legal errors.
- (iii) the judge placed unlawful reliance on previous Tribunal findings. At [26] and [29] the judge relied on evidence given at the previous hearing, but the determination was set aside in its entirety. The record of the evidence contained in the determination was unsafe not least in the light of the psychiatric evidence of Dr Fairweather as to the appellant's mental state. It was for this reason that the appellant did not give evidence.
- (iv) The judge failed to address all grounds (heads of risk) namely that the appellant was in fear not only of recruitment by his father but also in relation to the Taliban per se and on route home. Paragraph [31] of the decision was inadequate.
- (v) there were errors in relation to internal relocation. The judge failed to give proper consideration to the reports of Dr Fairweather and Dr Foxley in the assessment of his PTSD and ability to return to Kabul. The findings in relation to the whereabouts of the family, as argued above, were unlawful because of the failure to take into account the evidence on the Red Cross, and thus the assessment on relocation was unsustainable and inadequate

8. Permission to appeal was granted by Deputy Upper Tribunal Judge Davey who found only grounds (i)(ii)(iv) arguable.

### **The Hearing**

- 9. Grounds (iii) (v) and (vi) were renewed before me on the basis that the grounds intertwined and overlapped. In ground (iii) Ms Foot argued that the judge had made references to the evidence given in his previous hearing for example at [26] but that decision had been overturned. In addition, the fact that the Red Cross had suspended operations and tracing in the area was not taken into account. Mr Melvin rejoindered that this was evidence given rather than an assessment.
- 10. I gave permission to argue grounds (iii) and (v). The evidence referred to in ground (iii) at [26] and [29] was approached without apparent consideration of the vulnerable witness guidelines or the psychiatric report of Dr Fairweather. Further,

there was clearly evidence that had not been taken into account with regard to the Red Cross.

11. Ground (v) in part overlapped with ground (ii) on which permission was given and it was arguable that the evidence of Dr Foxley as to the appellant's ability to care for himself in the light of his PTSD was not fully addressed.
12. On the face of it I was not persuaded that the assessment of Article 8 was defective but clearly further findings in relation to the evidence may affect any assessment thereto and I reserve the position with regards Article 8.
13. At the hearing before me Ms Foot in relation to ground (i) submitted that the uncle was the mother's brother. The judge was right in citing the background evidence, but it was not uncommon for a mother to play a role in their children's departure. At p149 of the Consolidated Bundle ('C/B'), the appellant stated it was a secret arrangement. The failure by Dr Foxley to comment on the mother being instrumental was at best a neutral factor.
14. With respect to ground (ii) the appellant had been diagnosed with PTSD. The answers in the asylum interview were not inconsistent with his witness statement and yet it was stated as being so. As to who took the appellant from the home the inconsistency was drawn only from Dr Fairweather's report. Separately as explained above the Red Cross (see p 360 of the C/B) had suspended tracing operations and this was material.
15. Ms Foot did not repeat her previous submissions on Ground (iii) but relied on those given when seeking permission.
16. On ground (iv) I was referred to paragraph 18.1 of the skeleton argument presented to the First-tier Tribunal, which set out the various ways in which the appellant claimed he was at risk from the Taliban both in the form of recruitment and punishment for having rejected them. Paragraph [31] was insufficiently reasoned to address this point.
17. On ground (v) Ms Foot argued that it was never the appellant's claim that he had relatives in Kabul; he would be returning alone and the reference to 'support network' at [35](b) did not take into account the Fairweather report as to independent living (p181, para 8.91 of the C/B) and p 210 of the C/B). Nor did the decision address Dr Foxley report (at p 65 C/B). There was no freestanding assessment.
18. Mr Melvin referred me to the Rule 24 response and submitted that there was no merit to the grounds of appeal. It was open to the judge to make the findings she did. There were discrepancies in the evidence on which the judge was entitled to rely. The judge applied the vulnerable witness guidelines. There were discrepancies as to who was in the house during the conversation about whether the appellant should fight for the Taliban, and who took the appellant when he departed in flight.

19. With reference to ground (iii) the previous determination findings were in fact evidence given by the appellant and it is open to judges to refer to such evidence recorded in a previous determination.
20. In ground (iv) the objective evidence did not indicate risk of Taliban recruitment for young Pashtun males or risk to returnees from Westernisation. His home was not a hotspot for kidnapping. With respect to the tracing point the evidence of the appellant himself should be considered regardless of whether the IRC had stopped tracing. The findings were against the appellant's own evidence. Translation problems were not part of his evidence and the appellant was relying on the psychiatric evidence to fill the holes in his case. There was no evidence of treatment and indeed at [35] a finding was made that any return would not interrupt treatment.
21. With regards ground (v) and internal relocation the account of the appellant himself was found wanting and **AS (Safety of Kabul) Afghanistan CG** [2018] UKUT 00118 (IAC) was current guidance such that a healthy male could return to Kabul.

### **Conclusions**

22. Many of the strands within the grounds of appeal are overlapping. At the heart of the decision is the adverse credibility finding made against the appellant. With regards ground (i) the judge did take into account the background evidence, but it is not possible to assume any particular behaviour on the part of the mother in this instance. As pointed out in **Y** at [25] on the approach a judge should adopt to the evidence  

*'The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes'.*
23. The judge was entitled at [27] to consider the background evidence which she rightly did. To conclude, however that the background of a patriarchal society and the violent attitude of the father, would preclude the mother from assisting the appellant with her own brother (the appellant's uncle), characterises the evidence in an over restrictive manner and introduces an element of assessment outside the remit of the judge. That Dr Foxley failed to comment on the credibility of the appellant's mother being instrumental in the escape is at best a neutral factor rather than one undermining the appellant's case.
24. Taken together with ground (ii) where it appears the judge misread the evidence in relation to the witness statement and the asylum interview, the overall credibility assessment is materially flawed. For example, at Q80-84 of the appellant's substantive asylum interview, contrary to paragraph 24 of the decision, the appellant did state that his mother was in the house. As pointed out the timescale point was not taken against the appellant with regards other evidence and yet was weighed at this point without any real explanation for the distinction. Ms Foot referred to the

evidence which suggested that the appellant moved to three differing venues during his departure and this was not addressed in the evidence. That did not feature in the assessment when making key credibility findings. On the one hand the judge permitted difficulties with the timescale but when assessing other sections of the evidence the judge refused to accept deficiencies in the timescale without further explanation.

25. In addition, as per ground (iii) when assessing the account, the judge relied on evidence given in the previous hearing. That determination was set aside in its entirety. I take Mr Melvin's point that this was evidence recorded not a finding by the judge but the observations and use of the same was not qualified by the realisation that that previous determination had been set aside because of the failure to observe the vulnerable witness guidelines, the psychiatric evidence given of the appellant's PTSD and the acknowledgement that in the second hearing the appellant did not give evidence. That must again undermine the overall credibility findings.
26. Mr Melvin submitted that the appellant's own evidence itself, (his fears) on the Red Cross tracing was the focus of the judge's criticism rather than the impossibility of there being any tracing but that assessment of the appellant's comments in his witness statement (10<sup>th</sup> October 2018 paragraph [31]) did not explore the context of the psychiatric evidence and further does not allude, when referring to paragraph [27] of the earlier witness statement of 16<sup>th</sup> May 2017, to the fact that the appellant knew and identified in his statement that Red Cross tracing was suspended.
27. There was a concentration within the determination on the risk from the father which in turn led to an inadequate assessment of all heads of risk. Paragraph [31] does not encompass all parts of the appellant's protection claim including his claimed risk from the Taliban and danger to him of travelling to his home area.
28. With regard internal relocation and ground (v) the judge proceeded on the basis that the appellant could access family support in Kabul. Having found against the appellant for reasons which have been outlined above (and found deficient), in relation to the availability of a return home, there was no engagement with the evidence that the Red Cross had suspended searches for family; there was no reference to him being supported remotely. There were no findings as to the ability of the appellant to cope in Kabul *without* family support bearing in mind the reports of Dr Fairweather and Dr Foxley. **AS (Safety of Kabul) Afghanistan CG** [2018] UKUT 00118 (IAC) confirms in the headnote

*'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'*
29. The judge appears to conclude that the appellant would have a support network see [35] (b) as she states, *'the appellant will not be returning to Kabul without any support network'*. This is on the basis that he could return home. That presupposes that the findings in relation to his credibility were sound. I find that there are errors of law in the decision which are material. It is trite law now that evidence must be viewed

holistically and as seen above specific but key credibility findings have been tainted by legal errors and, in turn, influence the findings regarding relocation.

30. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). I preserve no findings. Bearing in mind the nature and extent of the findings to be made the matter should be retained in the Upper Tribunal and there should be resumed hearing before me.

**Directions**

31. Any further evidence should be filed and served no later than 14 days prior to the resumed hearing and skeleton arguments should be filed and served 3 days prior to any hearing date.

**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 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.

Signed *Helen Rimington*

Date 6<sup>th</sup> March 2019

Upper Tribunal Judge Rimington