Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13366/2017

THE IMMIGRATION ACTS

Heard at UT (IAC) Hearing in Field House	**Decision & Reasons Promulgated**
On 6 March 2019	**On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ZRJ
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms L Kenny, Senior Home Office Presenting Officer
For the Respondent: Ms S Akinbolu, Counsel, instructed by Duncan Lewis & Co Solicitors (Harrow Office)

DECISION AND REASONS

Background

1. The appellant in this case is the Secretary of State and the respondent is Mr Z R J. For the purposes of this decision and reasons I refer to the parties as they were before the First-tier Tribunal where Mr Z R J was the appellant.

2. In a decision on error and law and directions sent on 3 January 2019, the Upper Tribunal found an error of law in a decision of First-tier Tribunal Judge Anthony in allowing the appellant's appeal on asylum grounds. That decision is appended to this decision and reasons.

Remaking the Decision

3. In response to my directions, the respondent's solicitors provided a comprehensive separately tabulated bundle of evidence, running to some 900 pages, containing the written submissions of Counsel, the additional evidence relied upon on behalf of the respondent, the bundle before the First-tier Tribunal and the objective material before the First-tier Tribunal. The Secretary of State did not file any further evidence. It emerged for the first time at the hearing that the Presenting Officer had not received the appellant's bundle, despite the fact that this had been received by the Upper Tribunal, from Duncan Lewis, on 29 January 2019. Ms Akinbolu confirmed, following taking instructions, and Ms Kenny did not dispute, that this bundle was also served by e-mail on the respondent on 28 January (and a named officer was given).

4. Ms Kenny confirmed, in light of the fact that the bundle had been served and that the respondent had not filed anything in compliance with directions, that it was fair for the proceedings to proceed. I allowed Ms Kenny additional time to review the documentary evidence.

5. As indicated in the decision of error of law and directions, the findings of the First-tier Tribunal, Judge Anthony were misconceived in relation to asylum as the appellant's fear had always been on the basis of an alleged blood feud which was not accepted by the previous Tribunal. I set aside Judge Anthony's findings that the appellant was at risk of persecution as someone who is perceived as westernised in his home area of Nangarhar.

6. I remain satisfied, and such was not specifically disputed before me, that the appellant cannot succeed on Refugee Convention grounds.

Article 3/Humanitarian Protection – Article 15(c) Qualification Directive

7. The appeal was relisted before me in order to hear submissions in relation to whether the appellant qualified for subsidiary protection under Article 15(c) and the appellant's human rights case, under Articles 3 and 8.

8. Although Ms Akinbolu made submissions and relied on evidence in relation to an Article 3 medical claim, she did not do this with any great force. I have considered the relevant guidance including **J v SSHD [2005] EWCA Civ 629** and **MP (Sri Lanka) Case C-353/16** of the CJEU, including that the "removal of a third country national with a particularly serious mental or physical illness constitutes inhuman and degrading treatment, where removal would result in a real and demonstrable risk of significant and permanent deterioration in the state of the health of the person concerned."

9. However the evidence relied on by the appellant, albeit that he has diagnosed mental health difficulties and as considered below this is relevant to his risk on return to Afghanistan, fell short of establishing that removal would reach the still high threshold in this regard. In reaching this finding I take into account that although there was evidence in relation to the absence of adequate medical support for mental health in Afghanistan and it was accepted by Judge Anthony and preserved in my findings that he would have no family support on return and may well face a deterioration in his mental health if returned; none of this establishes that it would reach the threshold. I am not satisfied that the appellant's Article 3 medical case can succeed.

10. With relation to the appellant's Article 15(c) case for subsidiary protection, the Secretary of State in the refusal letter dated 1 December 2017 considered return to the appellant's home area of Nangarhar Province. The Secretary of State took into consideration the Country Policy and Information Note (CPIN) – Afghanistan Security and Humanitarian Situation August 2017 which provided the then most up-to-date information in relation to Nangarhar. This also took into consideration the country guidance of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)** which finds that at that date, that even in the provinces worst affected by violence the level of indiscriminate violence did not reach the Article 15(c) threshold. It was however noted in the CPIN that the worst affected areas, at that stage, included Nangarhar.

11. The refusal letter went on to reiterate that relatively few people are affected by generic violence and in summary the CPIN policy note, which the respondent relied on in the refusal letter, confirmed that the humanitarian situation in Afghanistan had not deteriorated to the extent that represented in general a real risk of harm contrary to Article 15(b) of the Qualification Directive/Article 3 of ECHR although individual factors must be taken into account and that country guidance case law established that the level of indiscriminate violence in Afghanistan taken as whole was not as such a high risk to mean, within the meaning of Article 15(c) of the Qualification Directive, that there are substantive grounds for believing a civilian faced a real risk to his life or person solely by being present in the country. The CPIN then went on to state that despite a 32% increase in civilian casualties since 2011, the violence varied significantly and it was not at such a level in general that there was a general Article 15(c) risk but that a person's individual circumstances might nevertheless place them at risk and each case must be considered on its facts.

12. Ms Akinbolu took me to evidence in relation to the deterioration in the security situation, particularly in the appellant's home province of Nangarhar, including that civilian casualties had greatly increased and that the Taliban and other insurgent forces had a wider and more tangible presence. The appellant also relied on the expert report of Jawad Zadeh, provided to the First-tier Tribunal as well as the recent August 2018 UNHCR Eligibility Guidelines (which were not available to the Upper

Tribunal in **AS (Safety of Kabul) Afghanistan)** documenting the ongoing civilian casualties in the appellant's home area. The European Asylum Support Office (EASO) Afghanistan country guidance and common analysis, at page 246 of the appellant's consolidated bundle to the Upper Tribunal, concluded at May 2018 that:

> "Looking at the indicators, it can be concluded that the indiscriminate violence taking place in the province of Nangarhar reaches such a high level that minimal individual elements are required to show substantial grounds for believing that a civilian, returned to the province, would face a real risk of serious harm in the meaning of Article 15(c)."

13. Applying the guidance in **AK (Afghanistan)**, considered in line with the respondent's CPIN (including as set out in the refusal letter), I must consider the appellant's individual circumstances and whether those individual circumstances would place him at risk on the facts of the appellant's case. I have considered all the factors including the appellant's age, gender, health condition, social and educational background together with family and social ties, language etc.

14. As set out in the error of law decision, I preserved the findings of Judge Anthony including in relation to the medical evidence and that the appellant does not have family support in Afghanistan. Judge Anthony adopted the findings of Dr Chisolm who confirmed that the appellant, although he did not at the date of the assessment in March 2018 meet the criteria for diagnosis of PTSD, his PTSD having resolved, had mental experiences consistent with derealisation. Dr Chisolm concluded that the appellant had a moderate depressive disorder and that his symptoms were consistent with derealisation and co-morbid depressive disorder. The appellant met the criteria of derealisation because he had subjective difficulty in vividly recalling past memories due to childhood trauma. Although the appellant is a young man I accept that he has some mental health difficulties. Although I accept there is no evidence of current access of mental health facilities in the UK (other than medication) the report of Dr Chisolm confirmed that the appellant's "condition is likely to worsen if returned to Afghanistan". There was nothing before me that might specifically contradict that expert view, which I accept.

15. In considering the situation that the appellant would find himself in in Nangarhar I accept, as Judge Anthony did, that the appellant does not have family in Afghanistan and although now an adult, he would be returning as a young man, with mental health issues and without family support. I preserved Judge Anthony's findings that he does not have any contact with family.

16. I take into consideration that although Judge Anthony's findings in relation to allowing the appellant's appeal, essentially because he would be perceived as westernised, were misconceived, I must consider, in the round, the background country information in relation to westernisation

including as relied on by Ms Akinbolu. I have considered this in the context of an appellant who has now been in the UK for ten years having left Afghanistan at the age of 14.

17. I take into consideration that the UNHCR eligibility guidelines (August 2018) at pages 75, 76 of the appellant's bundle outline the difficulties for those perceived as westernised including that the Swedish Network of Refugees Support Groups reported in 2017 that as did the Danish Refugee Council that suspicion of returnees from the Europe or the "west" more generally was greater the longer returnee has stayed outside Afghanistan and the further away the returnee has been and that young returnee boys and men are particularly at risk including of recruitment by extreme or criminal networks as a result of high visibility and social isolation. In Taliban held areas in particular for example it is noted that individuals would not want to be heard speaking English or to be seen to be having international contacts on their phone. The appellant had provided, contrary to the submissions of Ms Kenny, evidence to the First-tier Tribunal of private life in the UK, and it is accepted that he has no current contact with family members in Afghanistan. There is some weight therefore in Ms Akinbolu's submission that the only contact that the appellant would likely to have on the phone would be international contact in English with individuals in the UK.

18. Background country information also shows that Nangarhar has both Taliban and Islamic State elements, with regular clashes between the groups as well as with Afghan and international forces.

19. I have taken into consideration the country expert report provided for the First-tier Tribunal by Jawad Zadeh, which detailed the difficulties and risks for individuals perceived as westernised and also detailed the difficulties in Nangarhar including that it is one of the most volatile provinces of Afghanistan. Although therefore the appellant's westernisation, which I accept (including given that the appellant has been in the UK for over ten years since the age of 14) is not a stand-alone risk that would in itself found a successful protection claim, I am satisfied that it is a factor to be considered in assessing the risk to the appellant on return to Afghanistan including to his home province.

20. There was much discussion, both at the error of law hearing and at the remaking stage, as to the meaning of the medical report in its conclusion that the appellant had a good prognosis "if his asylum status is resolved. Once he feels safe, it is likely that his symptoms will spontaneously resolve." Although the Secretary of State asserted that this resolution could equally include the appellant being unsuccessful and being returned to Afghanistan as a failed asylum seeker, I am not satisfied that such a conclusion is available from the medical evidence, including that the clinical psychologist who completed the report was of the view that the appellant's symptoms would resolve "once he felt safe" and, importantly, that his condition was likely to worsen if he returned to Afghanistan. Again, although not a stand-alone reason that would lead to the

appellant's claim succeeding, it is a factor that I must consider in the round: that the appellant's vulnerability would be heightened.

21. I have considered these factors in the light of the background country information including in relation to the volatility of Nangarhar, the inadequacy of mental health services and that the UNHCR guidelines now cite Nangarhar as one of the provinces where "minimal individual elements" are required to show substantial grounds for believing a civilian would face a real risk of serious harm in that area, within the meaning of Article 15(c) of the Qualification Directive (at the date of the most recent UNHCR guidelines, 30 August 2018, Nangarhar was one of the provinces with the highest levels of indiscriminate violence.

22. Taking all these factors into consideration and applying the guidance in **AK Afghanistan** and the respondent's CPIN, considering the current background country information and the appellant's individual circumstances I am satisfied on the facts of the appellant's case that he has established that there are the 'minimal individual elements' in his particular case, where he would be at an Article 15(c) risk on return to his home area of Nangarhar.

23. Considering then, whether the appellant could internally relocate to Kabul I have considered, what remains at the date of this decision the current guidance, in **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**.

24. This provided including in the headnote in relation to internal relocation:

> "(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 and 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 and 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."

25. **AS Afghanistan** is currently under appeal to the Court of Appeal, but it was not disputed that it remains the extant country guidance before me. Although I accept therefore that a single adult male in good health can generally relocate to Kabul, even without any specific connections or support network and that it will not generally be unreasonable or unduly harsh, that guidance highlighted that the particular circumstances of an individual applicant must be taken into account.

26. I rely on my findings and those preserved findings of Judge Anthony that this individual, although not in serious ill-health at the moment, does suffer from a moderate depressive disorder and suffers from derealisation disorder and the psychologist's report confirmed that there would be an increase in symptoms and an increase in distress relating to concerns about safety if the appellant were to return to Afghanistan.

27. Therefore I accept that although the appellant's condition in the UK appears to be under control (and the evidence indicates the appellant is currently taking Quetiapine and sleeping pills) I further accept that there would likely be a deterioration if he were returned to Afghanistan. Whilst that in my findings could not bring the appellant within the higher threshold of an Article 3 medical claim, it is a factor that must be considered when considering whether it was unduly harsh or not for the appellant to relocate to Kabul.

28. I take into consideration that the appellant when he left Afghanistan at the age of 14 had limited educational history. Such was not specifically disputed before me and I accept to the lower standard, as set out in the appellant's witness statement, that he did not attend school in Afghanistan at all. Although he was enrolled at school in the UK for 2 years, I accept that his attendance was affected due to his mental health issues, although he was able to obtain certificates in IT, English and Maths in the UK.

29. As indicated, I rely on the findings that the appellant has no family in Afghanistan and I accept, and such was not specifically disputed, that he has no friends or network to return to in Kabul or Afghanistan in general. I take into consideration that he has been outside of Afghanistan for over ten years and left as a child. I take into consideration that although in Kabul there is better access to health care, as highlighted at [143] of **AS (Safety of Kabul) Afghanistan** there remains a shortage.

30. In relation to mental health difficulties **AS (Safety of Kabul) Afghanistan** (at 142 and following) highlighted that there are very high levels of mental health problems in Afghanistan, particularly depression, anxiety and PTSD, which has created significant needs but that there are a lack of trained professionals and inadequate infrastructure. Although the Public Health Minister reported that psychological services were available at some 1500 health centres with 300 dedicated mental health clinics, there was only one dedicated mental health hospital in Kabul and a 2016 study referred to there only being three trained psychiatrists and ten psychologists in the whole of Afghanistan.

31. Although, therefore **AS (Safety of Kabul) Afghanistan** confirmed that it was not essential for a person relocating to have an existing support network in Kabul to access housing or employment, that is the case for single males in good health. At paragraph 234 the Tribunal highlighted that it was reasonable to infer that poor physical or mental health could be

relevant to the issue of the reasonableness of internal relocation to Kabul and 'would need to be carefully considered'.

32. I take into account that it was not suggested that the appellant can speak Pasthto (although equally his evidence that he cannot write Pashto was also not disputed) and he therefore would speak a local language on return. However, as a young adult, who may be perceived as westernised (notwithstanding that **AS (Safety of Kabul) Afghanistan** indicates that there is generally a higher tolerance in Kabul of westernisation than in rural areas), without any support network at all, and with existing mental health conditions and with limited possibilities and limited availability of treatment in the event of a deterioration (which I accept, on the medical evidence, is likely to occur) together with very limited educational/skills attainment, I am satisfied that internal relocation would be unreasonable for this appellant. I am satisfied to the lower standard that the appellant would be at an Article 15(c) risk in his home province and could not relocate.

Article 8

33. Further and in the alternative, in relation to Article 8, it was Ms Akinbolu's submission that the appellant would face very significant obstacles. Although the appellant's mental health difficulty in itself could not lead to the appellant's appeal succeeding under Article 8 (see including **Akhalu (health claim ECHR Article 8) [2013] UKUT 400).** I take into consideration the appellant has been in the UK for over ten years, since the age of 14 and there was evidence of his private life, including in witness statement form, before the First-tier Tribunal from one of his friends in the UK (and who attended the Upper Tribunal hearing) who forms part of his support network, including reminding the appellant in relation to medication.

34. Although the appellant does not have any right of appeal against the refusal of his private life claim under the immigration rules, I have considered his Article 8 appeal through the prism of the immigration rules, specifically paragraph 276ADE(vi) and I am satisfied for this particular appellant on the facts, relying on my findings in relation to both his home province and Kabul that there would be very significant obstacles to his reintegration in Afghanistan.

35. Factoring that consideration into the general Article 8 consideration I have applied the five-stage test. The appellant has established a private life in the UK during the decade he has lived here. I am further satisfied, given that low threshold, that the respondent's decision may interfere with that private life. Such decision is in accordance with the law and is for the legitimate purpose of the maintenance of immigration control.

36. Turning to the final proportionality question I have considered all the factors. I have taken into consideration the public interest including the Section 117 provisions and that little weight should be attached to such

private life. I have also considered, that despite obtaining an English certificate there was no adequate evidence that the appellant could speak English or that he is financially independent. I do therefore consider these factors add to the public interest. However I take into account that the appellant in my findings meets the requirements of the immigration. I take account of all the factors including the appellant's particular circumstances and that although a young adult he is, in my findings, a vulnerable one including given his mental health difficulties and that he would be returning without any support. I am satisfied therefore that there are compelling reasons and that in the alternative the appellant's appeal falls to be allowed under Article 8.

Conclusion

37. The decision of the First-tier Tribunal contains an error of law and is set aside (other than preserved findings). I remake the decision dismissing the appellant's appeal on asylum grounds. I allow the appellant's appeal under humanitarian protection and human rights 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 Dated: 20 March 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable so no fee award is made.

Signed Dated: 20 March 2019

Deputy Upper Tribunal Judge Hutchinson

APPENDIX

IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13366/2017

THE IMMIGRATION ACTS

Heard at Field House
On 5 December 2018

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR Z R J
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms Willocks-Briscoe, Senior Home Office Presenting Officer
For the Respondent: Ms S Akinbolu, Counsel instructed by Duncan Lewis & Co Solicitors

DECISION ON ERROR OF LAW AND DIRECTIONS

Background

1. The appellant, who was born on 16 September 1994, is a citizen of Afghanistan who appealed to the First-tier Tribunal against the decision of the respondent, of 1 December 2017, to refuse his protection claim. In a decision promulgated on 29 August 2018 Judge of the First-tier Tribunal Anthony allowed the appellant's appeal. The appellant in this case is the

Secretary of State and the respondent is Mr Z R J. For the purposes of this decision and reasons I refer to the parties as they were before the First-tier Tribunal where Mr Z R J was the appellant.

2. The First-tier Tribunal allowed the appellant's appeal. The appellant (who claimed asylum on 8 April 2009) had previously been unsuccessful in his first asylum appeal and was found not credible by Judge Eldridge, in a decision promulgated on 22 April 2014. The appellant made further submissions which were refused by the respondent on 1 December 2017. Judge Anthony found that the appellant's claim engaged the Refugee Convention on the basis of his imputed political opinion due to a fear of the Taliban. The judge went on to find, at [22], that the appellant, who had lived in the UK since 2009 when he was a child, would on return be perceived as westernised in his home area of Nangarhar which would make him a target. The judge went on to find that even proceeding on the basis that the appellant's blood feud did not happen the appellant would be returning in very different circumstances.

3. It was the grounds of the Secretary of State that:

> Ground 1: the judge erred in the approach to **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118**;
>
> Ground 2: the judge erred in the approach to the appellant's mental health issues and his findings were inadequate given that the appellant's PTSD, if it existed, had resolved and he experienced moderate depressive disorder and that he had a good prognosis if his asylum status was resolved;
>
> Ground 3: it was argued that the First-tier Tribunal's reasoning was inadequate in concluding that there was a Convention reason in the context of a localised threat from non-state agents.

Error of Law Hearing

4. In relation to the Convention reason, as noted in the respondent's reasons for refusal letter, the appellant's claim was based on a land dispute and this was not considered to be a Convention reason whereas the judge found that the appellant had a political opinion due to fear of the Taliban. Although the individual that the appellant feared, in respect of what was claimed to be a blood feud, worked for the Taliban, there was no suggestion of Taliban involvement and the judge had not given any adequate reasons for finding imputed political opinion as a Convention reason.

5. Ms Willocks-Briscoe relied on the respondent's 2009 decision which, in the refusal letter, set out what exactly the appellant feared; at no point was there any suggestion that he feared Taliban interest in him or in his family. Ms Willocks-Briscoe submitted that in any event the judge did not make any findings as to why the appellant was at risk and the Convention ground was not made out. The claimed fear of the Taliban was mere

speculation on the part of the judge given that the entire account was based on non-state actors.

6. In respect of ground 2, in relation to the medical evidence, it was submitted that the judge failed to give adequate reasons particularly in light of the fact that the medical evidence suggested that much of the problem was in relation to the uncertainty of the asylum claim. Ms Willocks-Briscoe pointed to the fact that the judge recorded at [13] that the appellant's counselling had finished. Although he had been referred again it would suggest the current situation was not critical. Although the judge referred to a diagnosis of Derealisation, in relation to the appellant recalling the past memories and trauma, there was still a good prognosis if his status was resolved. Therefore it was submitted that the judge's findings were inadequate. It was further submitted that the judge also failed to consider, as set out in the refusal letter, what other factors were relevant to the appellant's ability to reintegrate on return, including possible employment and accommodation and assistance he might get from the respondent on returning.

7. Ms Willocks-Briscoe submitted that the judge did not engage with how the medical evidence affected the appellant's ability or otherwise to engage with support services. What the judge did was look at the medical evidence without looking at what was available on return and what the appellant would not be able to do. The judge simply stopped at his findings at [33]. It was Ms Willocks-Briscoe's submission that the judge did not adequately address the humanitarian protection issue and Article 15(c) due to the error in relation to the asylum grounds and no assessment was made under Article 3.

8. Although it was submitted in the grounds that there was no challenge to the judge's findings on Article 3 she submitted it was all bound up in the judge's findings on asylum. If the Upper Tribunal found that there was no Convention reason there would have to be a further assessment including on relocation and whether there was a breach of Article 2 or 3.

9. Looking at **AS (Safety of Kabul) [2018]** the Upper Tribunal at paragraphs 180, 181, 183 and paragraph 184 confirmed there was no risk from the Taliban and at paragraph 187 no risk in terms of westernisation and paragraph 194 addresses safety in Kabul and that a support network is not necessarily required.

10. Ms Willocks-Briscoe pointed to the raft of information that was taken into consideration by the Upper Tribunal in **AS**. It was Ms Willocks-Briscoe's submission that although the judge took into account the expert report before the First-tier Tribunal, this appeared to be predicated on less up-to-date information than was considered by the Upper Tribunal in **AS Afghanistan**. For example, at paragraph 23 of the report the expert is dealing with 2014 evidence. Ms Willocks-Briscoe referred me to the annex in **AS** which set out the significantly larger body of expert evidence relating right up to the end of 2017. She relied on what was said in **SG**

(Iraq) [2012] EWCA Civ 94 at paragraphs 47, 50 and 67 that there needs to be very strong grounds for departing from country guidance and that one expert report based on out-of-date evidence did not amount to such grounds. In respect of the medical evidence Ms Willocks-Briscoe submitted that it did not address the fact that there is treatment available which was addressed at paragraphs 58 and 59 of the refusal letter.

11. Ms Akinbolu submitted that it was incorrect to say that there was no reason for finding a Convention reason whereas it was because he would be perceived as a westerner and would be a target and the judge relied on the report from the expert Mr Zadeh and found that this particular appellant who had lived in the UK since 2009 would be a target in his home area and that was sustainable on the evidence. In respect of **AS Afghanistan** Ms Akinbolu submitted that the **AS Afghanistan** concentrated on Kabul whereas the Tribunal was concentrating on the home area.

12. Ms Akinbolu submitted that Judge Anthony specifically had an expert report before her exclusively on this issue and relied on paragraphs 17 to 19 of that report and following (at page 55 and onwards of the appellant's bundle). However she was unable to point me to any cogent evidence that the expert identified which was such could overcome the finding of the lack of such evidence in **AS**. Ms Akinbolu submitted that the judge found that the appellant specifically returning to Nangarhar with no family was the cogent evidence and he would be perceived as westernised and this would cause him harm personally whereas **AS** was looking at the more generalised position and she submitted this was sufficient to depart from the country guidance.

13. In respect of relocation **AS Afghanistan,** although the starting point, relates to a normal healthy single male whereas the judge dealt with relocation for someone like the appellant who had mental health difficulties. She submitted that Ms Willocks-Briscoe was taking a very narrow version of the medical evidence. This is an appellant with a major depressive disorder, night terrors and other associated difficulties. Although he has improved he still suffers from the condition and it was in this context the judge made her findings.

14. In reply it was submitted that the judge had not made clear on what basis she could depart from **AS Afghanistan** and Ms Willocks-Briscoe reasserted that part of the expert report was based on the 2014 argument. Although Ms Akinbolu had referred to paragraphs 20 to 22 of the expert report which relied on an August 2017 document this was just one document and certainly not the cogent evidence which the panel in **AS** found to be lacking and this is in the context of a panel that considered extensive evidence. What the expert report does confirm is the position in **AS** was insufficient evidence to show the risk due to westernisation and Ms Willocks-Briscoe submitted that in any event the report does not appear to address the country guidance and in light of what was said in **SG** departure was not properly warranted.

15. In respect of reintegration which was dealt with by the judge in the context of the asylum claim, leaving aside Article 3 issues, whether or not relocation to Kabul or somewhere else was reasonable, the judge did not take into account the factors and did not give adequate reasons that the appellant is not currently receiving counselling and even if the expert was of the view that there was no family it does not address the Reasons for Refusal Letter that there are medical facilities available.

16. Ms Willocks-Briscoe accepted that if I was with her then further findings were needed on the risk on return. Ms Akinbolu submitted there was further UNHCR evidence which would need to be considered.

Conclusion on Error of Law

17. The judge's reasoning in relation to the Refugee Convention reason is wholly inadequate. It is entirely unclear on what basis the judge finds that the appellant is at real risk of persecution given that the appellant had not previously raised a fear of persecution by the Taliban. As indicated the appellant's prior fear had always been on the basis of an alleged blood feud which was a claimed localised issue and in any event had not been accepted by the previous Tribunal. The judge failed to give any adequate reasons for finding imputed political opinion as a Convention reason

18. That error was compounded by the fact that the judge comes to the erroneous conclusion that the appellant would be perceived as westernised in his home area of Nangarhar which would make him a target. That appeared to be based on what was said in the expert report which considers westernisation. However that is to ignore the extensive consideration undertaken by the Upper Tribunal in **AS Afghanistan** which found that a person on return to Kabul, or more widely to Afghanistan, would not be at risk on the basis of westernisation on the lack of any cogent or consistent evidence of incidents of such harm on which it could be concluded there was a real risk to a person who had spent time in the west to be targeted for that reason.

19. The Tribunal considered the evidence at paragraphs 90 to 94 and reached the finding at paragraph 187 having considered the evidence of targeting due to westernisation as follows:

> "187. We do not find a person on return to Kabul, or more widely to Afghanistan, to be at risk on the basis of 'Westernisation'. There is simply a lack of any cogent or consistent evidence of incidents of such harm on which it could be concluded that there was a real risk to a person who has spent time in the west being targeted for that reason, either because of appearance, perceived or actual attitudes of such a person. At most, there is some evidence of a possible adverse social impact or suspicion affecting social and family interactions, and evidence from a very small number of fear based on 'Westernisation', but we find that the evidence before us falls far short of establishing an objective fear of persecution on this basis for the purposes of the Refugee Convention."

20. There is nothing in the expert report which was before the judge which Ms Akinbolu could point to which amounts to strong grounds to depart from those findings. Indeed the judge, although she cited **AS Afghanistan**, did not properly direct her mind to the findings in relation to westernisation. Although the headnote of **AS Afghanistan,** at (ii) and (iii), was cited by Judge Anthony and confirms that regard has to be had to the circumstances of a particular individual in relation to internal relocation, what the judge did not take into account was that the particular circumstances of westernisation was not a factor which could establish an objective fear of persecution, and therefore internal relocation was not an issue.

21. The judge correctly directs herself that the findings of Judge Eldridge are a starting point (**Devaseelan [2002] UKAIT 00702).** Judge Anthony noted that Judge Eldridge found the appellant not credible because of the large number of inconsistencies in his evidence. Although the judge found that there was 'some support' within the psychological medico-legal report for the claim that the appellant's difficulties recalling past traumatic events affected his ability to give a clear and consistent account of his asylum claim, she made no further findings that might displace Judge Eldridge's findings on asylum. On the basis of Judge Anthony's findings of fact, although the finding in respect of the convention ground and westernisation is in error, the remaining findings, viewed holistically, amount to a confirmation of Judge Eldridge's rejection of the appellant's 'blood feud' asylum claim.

22. Judge Anthony went on to note that Judge Eldridge also found that even if the blood feud did happen this was a localised dispute. This was accepted by the appellant's representative before the First-tier Tribunal and I note that although the grounds of appeal to the first tier Tribunal pleaded asylum, the appellant's skeleton argument relied only on the 1950 European Convention on Human Rights (ECHR) and Humanitarian Protection (the Human Rights Convention).

23. Although it is difficult to see how an asylum claim could prosper given the findings of fact of both Judge Eldridge and Judge Anthony, what Judge Anthony failed to do was to make any further findings in relation to humanitarian protection and Article 15(c) and Articles 2, 3 or 8 of the Human Rights Convention. This was accepted by Ms Willocks-Briscoe.

24. The First-tier Tribunal also failed to make adequate findings in relation to the impact of the appellant's mental health issues including the availability or otherwise of support services on return to Afghanistan.

Notice of Decision on Error of Law

The decision of the First-tier Tribunal contains an error of law capable of affecting the outcome of the appeal and is set aside. I preserve Judge

Anthony's findings of fact at [13], [14], [16], [25], [26]. The decision on appeal will be remade by a single judge or deputy judge of the Upper Tribunal.

Directions

(a) The parties confirmed that no further oral evidence is required and is relisted for submissions on remaking on Human Rights and Humanitarian Protection. The appellant is to file and serve a consolidated bundle of evidence so that it is received no later than 29 January 2019. The bundle is to separately tabulate: (i) the evidence relied upon before the First-tier Tribunal; and, (ii) any additional evidence that it is now sought to rely upon before the Upper Tribunal; (iii) written submissions on remaking the decision in respect of Articles 2, 3 and 8 of the Human Rights Convention and Article 15(c) of the Qualification Directive.

(b) The Secretary of State is to file and serve, by no later than 5 February 2019, any evidence relied upon that is not contained within the bundle relied upon before the First-tier Tribunal.

Any failure to comply with these directions may lead the Tribunal to exercise its powers to decide the appeal without a further oral hearing, or to conclude that the defaulting party has no relevant information, evidence or submissions to provide.

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: 28 December 2018

Deputy Upper Tribunal Judge Hutchinson