Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
LP/00003/2020
[PA/50157/2019]

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7th December 2021	**On 15th December 2021**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

IA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton, of Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

Interpretation:

Mr W Amiri in the Pashto language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Afghanistan born in 1992. He arrived in the UK either in 2009 or in 2015. The appellant claimed asylum on 6th May 2015, and this claim was refused on 7th March 2018. He did not lodge an appeal against this decision. He made a fresh asylum claim on 2nd January 2019, which was firstly refused as such by the respondent, but then the decision was withdrawn following judicial review proceedings initiated by the appellant. The appellant's appeal against the decision accepting that he had made a valid fresh claim but refusing asylum/permission to remain on human rights grounds dated 15th October 2019 was dismissed by First-tier Tribunal Judge Feeney in a determination promulgated on the 1st March 2021.

2. Permission to appeal was granted by Upper Tribunal Judge Blundell on 12th May 2021, and I found that the First-tier Tribunal had erred in law, for the reasons set out in decision which is appended to this decision as Annex A, and set aside the decision and all of the findings.

3. The matter comes back before me to remake the appeal

Evidence & Submissions – Remaking

4. In his written and oral evidence the appellant's claim to remain may be summarised as follows. He was born in July 1992 and comes from AK village in Baghlan province in the north of Afghanistan. His father's name is YM, and he is a farmer. His family had a dispute, which started in 2001, with a local Taliban, MS, who wanted to marry his cousin NB as MS believed that she had been betrothed to him by the appellant's uncle. There was an attempt by MS and other Taliban to forcibly abduct NB from her house in the same village in 2001, with both sides having an armed clash as a result. One of the Taliban was injured in the leg by NB's father, the appellant's uncle, during this armed incident. In 2002 the parties sought resolution of the dispute via in courts in Baghlan and Kabul, and it was decided in 2004 by those courts that NB had not been betrothed to the Taliban MS, and instead had been promised to SR. The appellant's father and the village elders then decided that NB should marry his son ZK for her protection and to resolve the issue as the family of SR no longer wanted the marriage as they were afraid of MS and the Taliban.

5. NB married ZK in 2004 in an informal nikah ceremony and went to live in the appellant's family home. There was another attack by MS and the Taliban, where six of the appellant's relatives were injured and his uncle was shot in the ear so that he is now deaf. The family fled to Pakistan for safety in 2004, where ZK and NB

were formally married. However, the family returned to Afghanistan as they did not feel safe in Pakistan as the Taliban were also operating there. ZK, the appellant's brother, was killed in 2005 in the mountains, where the family had lived since their return to Afghanistan.

6. The appellant's father then, after a period of time, decided that he wanted the appellant to marry NB, and so arranged a nikah ceremony which took place in 2006. The appellant and NB were living in the same house at this time as she had remained there after her husband ZK was killed. The appellant was very young (approximately 13 years old) and he did not want to be married, and his mother was also, when she discovered that it had taken place, against the marriage as she feared for the safety of the appellant in the context of having already lost her son ZK. In 2007 the appellant and his mother fled to Pakistan, a few days after his mother found out about the nikah, with the help of one of his maternal uncles, who later paid an agent to bring him to Europe for safety. There were threats from the appellant's father, and so it was decided that the appellant should leave Pakistan.

7. The appellant left Pakistan in 2007, and travelled through Iran, Turkey, Greece, Serbia, Bulgaria, Hungary, Austria, Italy, Belgium and France. In 2008 the appellant had his last contact with his mother whilst he was in Greece as he then lost his mobile phone. At that time his mother was living in Peshawar in Pakistan. The appellant says that he arrived in the UK in a lorry in June 2009 where he was caught by the police, finger-printed and taken to a hotel with two others. He was 17 years old at this time. He says that the next day that they asked the receptionist in the hotel where they would be taken next, and they were told they would be going to a detention centre, so they decided to run away. He was scared that he might be sent back to Austria where he had been finger- printed, or to Afghanistan. He then spent six years living illegally in the UK before deciding, in 2015, to return to France as he had tooth ache and a skin problem for which he needed medical treatment and which he was unable to access in the UK. The appellant says he was trying to leave the UK in a lorry when he was found and taken to Dover detention centre, where he claimed asylum.

8. The appellant says that he had the documents regarding the court dispute with MS and his family as a result of being given them by his mother in Pakistan. However, he left them with other items in a bag with a friend, Z, in France when he took the lorry to the UK. Z then sent them to the UK and he tried to submit them to the Home Office with his first asylum claim but they were not accepted as there were no translations and he had no legal representative or legal aid/money to get them translated at that time. He gave them back to Z for safe-keeping, and they were kept by Z's family in

Afghanistan. The appellant asked Z to send them to the UK when he acquired a solicitor to assist with his fresh asylum claim. The appellant says that there is no formal evidence of a nikah ceremony so he cannot show his brother and he were married to NB, and many people die in Afghanistan without any documentary evidence of their deaths.

9. The appellant claimed asylum on 6th May 2015. The appellant says that he has had no contact with his family since this time. He says that he has had no contact with his father or NB since he left Afghanistan in 2006, and does not know what NB has done since that time. He believes that the Taliban would still be a serious threat to him even though a lot of time has elapsed since his nikah with NB because his family insulted MS's honour and his brother ZK was killed by them, and because he is, as far as he knows, still married via a nikah ceremony to NB. He has no knowledge of any divorce initiated by NB, and he did not believe that it would be possible for her divorce him without his involvement. He also fears returning to Afghanistan as he would be returning as a westernised person who speaks English, and this would also be a matter which would be seen as suspicious to the Taliban.

10. Mr Duffy relied upon the reasons for refusal letter. The reasons for refusal letter sets out that the appellant's asylum claim is not credible, in short summary, for the following reasons. It is argued that the appellant spent two years back in Afghanistan with no problems; that the documents should be viewed in the round and found not to be ones to which weight can be given as they are photocopies which do not show he is related to NB or that his brother ZK had died or that he or his brother were married to NB, and there is no explanation as to how the appellant got the documents. It is also not consistent with the country of origin evidence that the Taliban would bother pursuing the appellant across the whole of Afghanistan. It was not believed that he would be at risk as a westernised returnee as he could adapt to the customs and culture, and further he could seek police protection in Kabul.

11. Mr Duffy submitted that the case turned on whether the appellant was credible, which was in turn an issue of whether the history was plausible. Mr Duffy said that the history was not credible, particularly the contention that the appellant had spent six years in the UK from 2009 to 2015 before attempting to return to France for medical treatment. There was no evidence supporting this. Applying s.8 of the 2004 Act the appellant's immigration history must be placed in the balance when considering his credibility.

12. Mr Duffy accepted that if the appellant is found to be credible then his appeal would succeed on refugee grounds. He also accepted that there was no possibility of safety via internal relocation to

Kabul or elsewhere, and if the history of the family dispute with the Taliban was believed, even without the appellant having any personal involvement with it, then he would be entitled to refugee status given the fact that the Taliban are now in power.

13. The appellant argues in the skeleton argument of Mr Eaton and in oral submissions from Mr Eaton that the appellant has a well-founded fear of persecution from MS and the wider Taliban. It is noted that it is accepted by the respondent that the appellant cannot relocate to Kabul. As such, it is argued, that he is entitled to succeed in his appeal on refugee grounds for the following reasons.

14. It is argued that the appellant has provided legal documents which support his contention of litigation with the Taliban around the marriage of NB, and support an attack on his uncle's home. It is argued that these documents are corroborated as genuine by Dr Guistozzi using a proper source on the ground in Afghanistan. It is argued that these documents do in fact show that the appellant and NB belong to the same family, and also include a police document which shows that the appellant's uncle was injured by MS and his armed group. The appellant's account is consistent, and the evidence of Dr Guistozzi and the EASO report Afghanistan Criminal Law (cited in the respondent's December 2020 Afghani Country Background Note) is that time alone is not likely to resolve the feud as MS's honour has been insulted by the actions of the appellant's family. It is argued that s.8 issues must be balanced against these factors and that ultimately the history should be found to be credible.

15. It is also argued that the appellant would have very significant obstacles to integration and so is entitled to succeed in his appeal by reference to Article 8 ECHR and paragraph 276ADE(1)(vi) of the Immigration Rules. The appellant suffers from mixed anxiety and depression disorder and takes Mirtzapine for this condition. There is no treatment available in Afghanistan, and the appellant could not access medication and support for his mental health in his country of origin. Further, since the take-over of the Taliban there has been a break down of even basic levels of state support: there are millions of displaced people, many with no financial support or shelter and a wide- spread risk of famine this winter.

16. At the end of the hearing I reserved my decision.

Conclusions – Remaking

17. The key issue to determine in this appeal is whether the appellant's history is credible. If I find that his family had, as he claims, a dispute with the Taliban then it is accepted by Mr Duffy that he is entitled to succeed in his appeal. There are no issues of

inconsistency undermining the appellant's credibility. As Mr Duffy has accepted the question is whether the claim is plausible. Mr Duffy argues that it is not to be seen as such as the appellant's immigration history undermines his credibility as, it is contended, in short summary, he has lied about being in the UK between 2009 and 2015 and in any case he failed to claim asylum during this period of time; other aspects of his claim are also not believable such as the contended death of his brother ZK and his being forced to marry NB after that death by his father, and fleeing with his mother from his father and the Taliban; and it is not credible that the appellant asserted that he would be at risk nationwide from the Taliban when this should properly have been seen as a local issue.

18. I first examine the supporting documentation which is in the bundle provided to the First-tier Tribunal at pages A96 to A127. I note that there are documents regarding proceedings in the Baghlan Court and in the Supreme Court of Afghanistan, in Kabul, witness statements and a police report from 2002. The material from these documents may be summarised as follows. There was a dispute between MS, a 50 year old leader of a Taliban armed group, with respect to NB a 17 year old about whether she had been married to him by her father BK at a very young age, in exchange for a dowry of money and grain. The documents detail the attempt by MS to take NB by force and of NB's father being hit by a bullet in the ear. NB is described in these documents as being from a tribe with the same name as the appellant and from the same village. The documents from Baghlan court are found to be too old to verify directly with the court records by Dr Guistozzi's researcher Mr NNR, but to be, in the view of the researcher, genuine due to the layout, content, stamps and signatures. The documents from the Afghan Supreme Court were passed to another of Dr Guistozzi's researchers, this time a Mr HSR, who took them to a judge of the Afghan Supreme Court who confirmed that they were genuine. There are proper compliant reports from Dr Guistozzi supporting these verifications. I accept that the court and associated documents are genuine, and that they show that NB came from the same tribe/extended family and village as the appellant and that there was a gun fight between villagers and MS, a member of the Taliban, over whether she had been married by her father to MS in which people were injured, and that ultimately that MS lost these legal proceedings. I accept the expert evidence of Dr Guistozzi, clearly from a person of relevant expertise in a compliant report, that NB having refused to accept the contended marriage with MS will be perceived by him as an offence to his honour; and that the passage of time does not per se remove or diminish the offence; and that the Taliban might involve themselves in the dispute if MS reported the family as spies or opponents of the Taliban. Further honour killings are very common

in Afghanistan, and that the local police often do not interfere with disputes being resolved in this way.

19. Relying on the expert report of Dr Guistozzi I also find that it is customary that a widow would marry into the family of their deceased husband, and preferably to one of her brother-in-laws. Thus, if NB had married the appellant's brother ZK then it would have been plausible that after ZK's death he might have been married to the appellant. Further, the evidence of Dr Guistozzi, is that consensual marriages are rare, with forced and arranged marriages by parents being predominant, so the fact that this was done without the appellant's consent is further plausible, particularly given his young age, as it is consistent with the country of origin materials.

20. The respondent argues that the delay of two years in the appellant leaving Afghanistan after the contended killing of his brother in 2005, and the lack of any Taliban/ MS action against the family during this time is another matter which makes the history less plausible. I do not find that the contended return of the family to Afghanistan from Pakistan in 2004 is implausible: as the appellant has argued in the village the family were able to count on the support of other villagers who I find were willing to resort to armed resistance to MS from the evidence in the court papers, and the Taliban clearly did operate in Pakistan at that time. The appellant's evidence is that his mother took him to Pakistan very shortly after she discovered about his contended forced marriage to NB. I accept however it is evidence, even on the appellant's own account, that the Taliban did not seek to pursue an honour killing against the family or to forcibly take NB from 2005, when his brother ZK is said to have been killed by them, until 2007, when he left Afghanistan, a period of between one and two years. I find that this leads to the conclusion that there was not a risk of <u>immediate</u> serious harm at that time, but not that there was no real risk of serious harm. I do not find that the appellant fearing the Taliban all over Afghanistan, or his mother having decided he would be safer abroad weighs against the credibility of the history if it true. The appellant was a young child at the time all of the events happened and if true they would have been terrifying and he would plausibly have felt fear of all Taliban, not knowing who had connections with MS; and if the history is true then his mother would naturally have wanted the best protection she could arrange for this son, having had one murdered, and might rationally have concluded that this should be abroad.

21. I find that it is a neutral matter that there are no nikah documents or death certificate for the appellant's brother. I accept that these documents would not necessarily exist in rural Afghanistan.

22. The respondent argues that I should not believe the evidence of the appellant that he became directly involved with this conflict with a local Taliban firstly because he has not told the truth about his arrival in the UK, which, it is argued, was not in 2009 as the appellant has said but in 2015, and further that his credibility is reduced by his failure to make a timely claim for asylum, delaying 6 years either in Europe, as the respondent argues, or in the UK.

23. I note that there is a Eurodac match result for the appellant in the bundle at page 172 which finds that the appellant had been encountered on 24th and 27th May 2009 in Europe. This takes the matter no further as to what happened after that time. There is no documentary evidence from the appellant or respondent to take into account with respect to the claimed finger-printing in 2009 at a police station in the UK.

24. I find that the appellant has not provided a sufficiently detailed account of the period June 2009 to May 2015 when his asylum claim was made so as to enable me to find that there is a serious possibility that his version of what happened is true. His statement simply sets out that he went to stay with one of the Afghans' he entered the UK with friends in Ilford for a few months. This does not explain what he did or how he lived for the next period of almost six years. I accept that he suffers from eczema, anxiety and depression as these are documented in his GP notes, and therefore that he may well have needed medical treatment in 2015, but there is simply no explanation as why he thought this would be more easily available or better treated in France.

25. Clearly there is also a significant delay in the appellant making an asylum claim whether the appellant remained in France throughout the period 2009 to 2105, the logic of the respondent's position, or whether he simply lived illegally in the UK in this time as he says. Further, he clearly, on his own account, only claimed asylum after being detained by the Border Agency despite having an opportunity to claim before that time. I must factor into my assessment that in 2009 the appellant was a minor, and that he did not become an adult until July 2010. Nevertheless, there was a period of almost five years when the appellant was a young adult and did not act to regularise his stay in whichever country he was living despite that being a possibility as both the UK and France are safe countries. The delay in claiming and the circumstances of the asylum claim are factors that I find weigh against his credibility, but these must be considered in the round to properly apply s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

26. The question I must resolve is whether to the lower civil standard of proof the appellant has provided a credible history. In his favour is that he is consistent; he has provided documentary evidence,

verified as genuine, which supports the background facts that there was a village dispute over a marriage between his extended family/ tribe and that of a local Taliban MS, although not documenting his immediate family's involvement in that dispute; that the expert evidence supports the history to the extent that it is plausible if his brother had died that he would have been made to marry his brother's widow; that I find that nothing in the timings of what he says happened or his departure from Afghanistan is implausible or weighs against it being true beyond meaning that the MS/Taliban were not intent on immediate revenge on the family after the death of ZK in 2005. Against his credibility is the fact that s.8 matters of delay and the timing of his claim do weigh against him; and the fact that I have found that he has not provided a credible account of his time in Europe or the UK between 2009 and 2015. Weighing these matters carefully I conclude that I am just satisfied to the lower civil standard of proof that the appellant has told the truth about what happened to him in Afghanistan, and that his history should be found to be credible.

27. In light of my finding that the appellant's history is credible it is conceded by Mr Duffy for the respondent that given the Taliban are now being in power in Afghanistan that the appellant has a well-founded fear of persecution on account of his perceived political opinions as an opponent of a local Taliban figure in his home area of Baghlan, and that there is currently no possibility of finding safety via internal flight to Kabul or any other area of Afghanistan. The appellant's asylum appeal, and his protection appeal under Article 3 ECHR, therefore succeeds

28. The appeal clearly also succeeds in these circumstances under Article 8 ECHR as for the same reasons the appellant would have very significant obstacles to integration in Afghanistan, and thus would be entitled to succeed by reference to paragraph 276ADE(1)(vi) of the Immigration Rules. On top of those reasons I find, based on the Home Office country Policy and Information Note Afghanistan: Security and humanitarian situation Version 8 October 2021, that the appellant would probably have very significant obstacles to integration because, were he to return to his home area, he would suffer from severe and serious drought causing water shortages, as these affect 80% of the country and thus from food insecurity even though he is from a farming family. Further I find that his ability to cope with return and integration would be reduced by the fact that he suffers from depression and anxiety, which is being treated by his GP in the UK, and that from the country of origin materials it seems most unlikely he could access his medication. In addition, the appellant has now lived abroad almost half of his life, having left at the age of 15 years and spent 14 years abroad, and I find there would be likely to be issues with inadvertent breaching of societal norms due to his westernisation, particularly if mentally the appellant is struggling

to cope due to his depression and anxiety and lack of medication for these conditions.

Decision:

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

2. I set aside the decision and all of the findings of the First-tier Tribunal.

3. I re-make the appeal by allowing it under the Refugee Convention and on human rights grounds.

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

Signed: Fiona Lindsley Date: 8th December 2021
Upper Tribunal Judge Lindsley

Annex A: Error of Law Decision:

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Afghanistan born in 1992. He arrived in the UK in 2015. The appellant claimed asylum on 6th May 2015, and this claim was refused on 7th March 2018. He did not lodge an appeal against this decision. He made a fresh asylum claim on 2nd January 2019, which was first refused as such but the decision was then withdrawn following judicial review proceedings. His appeal against the decision accepting that he had made a valid fresh claim but refusing asylum/permission to remain on human rights grounds dated 15th October 2019 was dismissed by First-tier Tribunal Judge Feeney in a determination promulgated on the 1st March 2021.

2. Permission to appeal was granted by Upper Tribunal Judge Blundell on 12th May 2021 on the basis that it was arguable that the First-tier judge had erred in law in the assessment of the appellant's credibility, particularly in holding against the appellant his failure to claim asylum on route to the UK when he was an unaccompanied asylum-seeking child at the time. Permission was also granted with respect to the challenge to the findings on sufficiency of protection and internal relocation.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was heard via Teams, a format to which no party raised any objection. There were no problems of audibility of connectivity.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Mr A Eaton it is contend in summary as follows.

5. It is argued that the First-tier Tribunal failed to provide any cogent reasons for finding the appellant's claim not to be credible in the conclusions at paragraphs 44 to 45. The only clear reason relates to his failure to claim asylum in France in 2009, but at that time the appellant was a minor and so this cannot properly be a sole reason to disbelieve the appellant. The First-tier Tribunal accepts that the appellant is consistent and that his history is consistent with the extensive documentary evidence he has provided in support of his claim. The First-tier Tribunal also accepts that the supporting evidence of Dr Guistozzi is reliable. Further there was a failure to have consideration to the fact that the appellant was a minor at the time when the events took place and so his evidence ought to have been considered in line with the Joint Presidential

Guidance and Practice Direction for Child appellants and witnesses.

6. It is argued that there is also a failure of the First-tier Tribunal to come to a proper conclusions as to whether the threat from a local Taliban, Mohammed Shah, was on-going, and to consider that past persecution is an indicator of future risk, particularly given that Dr Guistozzi concluded that time itself was unlikely to resolve the feud. This conclusion is also consistent with that of the respondent's December 2020 country of origin background note on Afghanistan at 18.6.4 which cites the EASO report on Afghanistan Criminal law, customary justice and informal dispute resolution. It is argued that it is clear that the appellant's brother was killed after the family returned from Pakistan to Afghanistan so this return cannot be seen as evidence that the situation of the appellant had become safer.

7. The grounds also contend that there is insufficiently clear findings with respect to sufficiency of protection, and there is a failure to deal with the Afghan country guidance cases which indicate that there is no sufficiency of protection against targeted Taliban attacks, see RQ (Afghanistan) CG [2008] UKAIT13 and AK (Article 15(c) Afghanistan CG [2012] UKUT 163. Further Dr Guistozzi finds that the Afghan police would not get involved in a family dispute.

8. Finally, the grounds contend that the finding that the appellant had a viable internal flight alternative to Kabul was made on the basis that the asylum claim was not credible so he would not be at risk in Kabul. It is argued that the blood feud has involved wider Taliban actors. It is argued that the conclusion that there was safety to be found by relocating was not assessed against the individualised risk faced by this appellant, and in line with the guidance in RQ (Afghanistan).

9. The respondent argues in her Rule 24 notice drafted by Mr C Bates and in oral submissions from Ms Oboni, in summary, as follows.

10. The First-tier Tribunal did not believe that the appellant's brother was dead, and hence that the appellant had become embroiled in the feud over Ms Bibi, his brother's wife, with the Taliban, and thus that he was at risk. This was because the First-tier Tribunal found that there ought to have been some official documentation regarding this given the other official documents which the appellant had been able to produce. It was also found that the appellant ought to have produced evidence that the risk to him was on-going.

11. It was lawful for the First-tier Tribunal to have found that the appellant's credibility was affected by the false claim to have entered the UK in 2009, or to have failed to claim asylum in the UK

at that time and having returned to France where he also failed to make a claim.

12. The decision with respect to internal relocation is properly made by reference to the appellant's age, health, prospects of employment and accommodation, cultural familiarity and lack of family support in Kabul.

13. At the conclusion of the hearing I told the parties that I found that the First-tier Tribunal had erred in law. The parties agreed that in that case I should set aside all of the findings and the decision of the First-tier Tribunal, and retain the appeal in the Upper Tribunal for remaking.

Conclusions – Error of Law

14. There is no specific challenge to the decision of the First-tier Tribunal at paragraphs 18-19 that the appellant left Afghanistan as he claimed in 2007 but did not arrive in the UK until 2015, spending time in Austria, Hungary and France on the way. I find that these conclusions are well reasoned, and thus that the failure to tell the truth about this matter is of proper relevance to the determination of the appeal.

15. The First-tier Tribunal is satisfied that the court documents between the Taliban man, Mr Mohammed Shah, who tried to abduct his cousin, Ms Bibi, who was later married to his older brother, are found to have been properly verified as genuine by Dr Guistozzi at paragraphs 28 to 34 of the decision, and concludes that they are genuine at paragraph 45 of the decision. It also finds that the appellant has provided a consistent narrative with those documents at paragraph 53 of the decision.

16. The reasons why the claim is not believed are: that the Taliban used the law to resolve a dispute with the family of Ms Bibi and so would not pose a threat (paragraph 48 of the decision); there is no death certificate for the appellant's brother or other reports regarding this (which is the pivotal event putting the appellant in danger); that the appellant may no longer be at risk given he fled Afghanistan 11 years ago (paragraph 52 of the decision); that the family returned from Pakistan to the village in 2005 and would not have done so it they were at risk.

17. I find that the assessment of the appellant's credibility is relevant to the findings above as it is his evidence that his brother was killed, and if this evidence had been accepted as credible then additional documentation would not have been needed. It is accepted that the appellant has been consistent and that the documents he has provided support his narrative at paragraph 54 of the decision. The First-tier Tribunal also accepts that the

supporting evidence of Dr Guistozzi is reliable at paragraph 21 of the decision. The finding that the appellant lied, as an adult, about claiming asylum in the UK in 2009 is not challenged by the appellant, and is accepted as being properly reasoned at paragraph 18 of the decision. This matter therefore is therefore a negative against the appellant's credibility. I find however that the First-tier Tribunal erred in placing in the balance the failure to claim asylum in France when he was a minor in 2009 at paragraph 55 of the decision without consideration of his being an unaccompanied minor asylum seeking child at that time. I find that it cannot be said that it would be certain that the appellant would be found not to be a credible witness if this issue were considered with thought given to the appellant's age as there are both positive and negative findings in the decision which go in to the balance when credibility is to be determined.

18. I also find that there was a failure to fully take into account the evidence of Dr Guistozzi and the December 2020 Country of Origin Background Note on Afghanistan at 18.6.4 which cites the EASO report on Afghanistan Criminal law, customary justice and informal dispute resolution as identified at para 14 of the grounds of appeal, as well as paragraph 339K of the Immigration Rules, when finding the passage of time would have reduced the risk from the Taliban to the appellant at paragraph 52 of the decision.

19. The decision on the appellant's ability to safely relocate internally within Afghanistan is predicated on the appellant no longer being at risk from the Taliban in Kabul, as set out at paragraph 60 of the decision, and as the above errors go the nature and extent of the risk from the Taliban the conclusions on this issues are also made unreliable by the above error or law.

Decision:

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

2. I set aside the decision and all of the findings of the First-tier Tribunal.

3. I adjourn re-making of the appeal

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

of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 26th October 2021
Upper Tribunal Judge Lindsley