



IAC-AH-DN-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01228/2018

THE IMMIGRATION ACTS

**Heard at Field House via Video Link
On 27 April 2021**

**Decision & Reasons Promulgated
On 28 May 2021**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**Z R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Fitzsimons, instructed by Wilson & Co

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of the Secretary of State made on 4 January 2018 to refuse his protection claim and human rights claim subsequent to a deportation order being made against him by virtue of Section 32(5) of the UK Borders Act 2007. That, in turn, was read on the basis of his conviction on 13 October 2017 for being concerned in the supply of a controlled class A drug due to be sentenced to fourteen months' imprisonment.

2. The appellant's appeal against that decision was dismissed by the First-tier Tribunal for the reasons given in a decision promulgated on 21 September 2019. For the reasons set out in my decision of 20 December 2019 that decision was set aside in part, a copy of that decision is attached to this decision.
3. The appellant's case is that the Taliban had killed his father, uncle and cousin and that his older brother had run away from home as had another brother. He had remained at home with his mother but on one day in around May 2015 he was abducted by the Taliban when he was approximately 18. He was held for four or five days but was able to escape. His mother then tried to arrange for him to be removed but the Taliban returned, beat him and took him back to the base saying that if he ran away again they would kill him. He left the country in August 2015 travelling by land.
4. The respondent's case is set out in the refusal letter of 15 January 2018. In summary, the respondent did not accept that the appellant had been forcibly taken by the Taliban as claimed or that he escaped from them or that he had received threats from them. It was considered also that there would be a sufficiency of protection for him and/or that he would be able to relocate. The Secretary of State was not satisfied either that he was entitled to discretionary leave nor was she satisfied that his removal would be contrary to Article 8 of the Human Rights Convention noting that he did not meet the requirements of paragraph 399(b) of the Immigration Rules nor were there very compelling circumstances such that his deportation was disproportionate.
5. The Secretary of State noted his claim to have made suicide threats and self-harmed in custody but concluded that his removal to Afghanistan would not be in breach of Article 8.
6. On appeal to the First-tier Tribunal the judge found [24] that:
 - (i) the appellant's account of forcible abduction and being taken to a cave was not inconsistent with the background material, the fact that he was able to walk out of it without being noticed by anybody was not credible bearing in mind that he had been taken forcibly and his capturers would wish to avoid him escaping; as there was no attempt to hide him after he returned to his mother's house; that there was no proper explanation of the incident in which he was hit on the head by the Taliban, there being no particular evidence of this, a Section 35 report specifically stating that there was no scarring; and, that it was not credible that the Taliban would have allowed him to wait at his mother's house to recover;
 - (ii) the appellant had not told the truth about his brother in the United Kingdom [25] concluding that the appellant was sensitive to the allegation that he left Afghanistan to join his brother in the United Kingdom which explained the anomalies in his account noting a "staggering coincidence" that the man met somebody in a refugee camp in Hungary who turned out to have his brother's phone number there being no explanation for this, it also being incredible that

the appellant's brother would not have told his mother where he is; that the truth of the matter is that the appellant deliberately left Afghanistan to join his brother in the United Kingdom and that the appellant and his brother were in fact in contact with her; that there is no reason why the appellant could not return to Kabul; that he would have family support if he returns [28] and even if not so, it would not be unduly harsh to return him there despite the fact that he suffers from depression and PTSD, there being no suggestion that he proposes to commit suicide;

- (iii) the appellant did not meet the requirements of paragraph 399A and having had regard to the factors set out in Section 117C of the 2002 Act, his deportation was proportionate.

7. The basis of the appeal is as directed:

“Whilst the judge's findings of fact are to be preserved, there will need to be a fresh analysis of the risk to the appellant in terms of humanitarian protection and/or risk pursuant to the Refugee Convention and the Human Rights Convention with regards to his home area and/or whether he could be expected to return to Kabul.”

Proceedings

8. It is unfortunate that the remake of the appeal did not take place until 27 April 2021 owing to a culmination of the appeal being adjourned pending a country guidance decision on Afghanistan and then owing to COVID-19.

The Hearing

9. I heard submissions from both representatives who also both provided skeleton arguments. In addition, I had the following before me:-

- (i) Respondent's bundle
- (ii) Appellant's bundle provided for the First-tier Tribunal
- (iii) Supplementary bundle
- (iv) Letter from the appellant's treating psychiatrist dated 18 February 2021
- (v) EASO country guidance on Afghanistan, published January 2021
- (vi) EASO COI Report on Afghanistan's security situation, September 2020 (section on Paktia Province)
- (vii) Home Office's country background note: Afghanistan December 2020
- (viii) Country Policy Information Note: Afghanistan, medical and healthcare provision December 2020

- (ix) Country Policy Information Note: Afghanistan, anti-government elements, June 2020
- (x) Country Policy Information Note: security, Afghanistan, May 2020

The Law

10. It is for the appellant to demonstrate to the lower standard of proof that he has a well-founded fear of persecution in Afghanistan or that he is entitled to humanitarian protection. Similarly, it is for the appellant to show that he is at risk on return to Afghanistan if ill treatment is of sufficient severity to engage Article 3 or that his right to private and family life would be infringed to such an extent that it would be disproportionate.
11. In assessing the evidence before me, I have considered details as a whole and I have taken it all into account even if not expressly referred to.
12. I bear in mind that the appellant is a foreign criminal as defined. It is not, however, submitted that he is as a result excluded from humanitarian protection or that section 72 of the 2002 Act applies.

The appellant's mental health

13. I start my analysis by consideration of the material relating to the appellant's mental ill health. The Secretary of State does not dispute that the appellant is suffering from depression and PTSD but does take issue with the more recent reports of Dr Nuwan Galappathie which, she submits, should not be given weight. The earliest material relating to the appellant's mental ill health is from 2016 and is in the form of a letter from a nurse practitioner identifying that he has been prescribed medication for poor sleep, anxiety and depression. It said also that his mood and mental health is very fragile. A letter from 29 December 2016 from a clinical practitioner/counsellor, indicates depression and anxiety, very low mood and poor motivation. Symptoms of PTSD are also identified. The detention centre Rule 35 Report records detention exacerbating sleep disturbance and stress but makes no other relevant comments about mental ill health.
14. Prior to the previous appeal, the appellant was seen by Peter Thorne, (a consultant clinical psychologist until 2015). Mr Thorne prepared a re-examination report on 21 August 2019.
15. In his first report, Mr Thorne notes [18] that he had not found evidence of psychosis the appellant denying hallucinations. He did, however, note that the screening tools he used for the detection of symptoms associated with depression and anxiety indicated the appellant scored in the severe range on both, concluding [28] that the appellant met the criteria for a diagnosis of a depressive order present to a moderate degree of severity. He also concluded the appellant currently presented with a mixture of chronic and complex PTSD and associated secondary depressed mood as

a result of past traumatic experiences [39] noting from his medical records that he presented with these prior to conviction and imprisonment.

16. Mr Thorne noted [56] that the appellant's GP records show that he had reported problems with his mental health before arrest, he was coping poorly with symptoms of PTSD and depression, was finding the pressures and chances of life in a very different cultural environment difficult to adjust to, he was struggling to cope with being in an intimate relationship. The period of imprisonment appeared to have compounded the difficulties. He stated,

"My overall impression of [the appellant] was that he was deeply pessimistic, hopeless about his prospects in life and his future safety, troubled by continuing mental health problems and lacking a sense of direction, other than remaining in the relative safety of the UK."
17. In the second report Mr Thorne notes that, in addition to the GP medical records, he had updated records including information from the local community mental health team. He noted [13] no evidence of true psychosis and that although he sometimes imagined people approaching him, this appeared to be due to hyper vigilance associated with PTSD symptoms rather than psychotic paranoia. He notes also that he had reported to staff at his surgery that he sometimes hears voices of family members but "these sound like dissociative PTSD phenomena rather than psychotic symptoms".
18. Mr Thorne repeated the two self-screening tools used before and noted that the appellant continued to score in the higher range and [23] that the appellant continues to meet the criteria for a diagnosis of depressive order with a moderate degree of severity. He also concluded that there was the presence of chronic symptoms of PTSD [24] and [33]; that the appellant continues to have a mixture of chronic and complex PTSD with comorbid depressed mood; and, his depression was of moderate severity and his PTSD was severe.
19. With regards to the likely impact of being forcibly sent back to Afghanistan including the risk of self-harm or suicide, Mr Thorne indicated that the risk would increase [37] and noting in the medical records [38] a letter from a CBT therapist at Wellbeing Suffolk that the appellant had presented with severe depression and frequent suicidal thoughts and reported that he had "frequent suicidal ideation" with some planning. He notes also that the doctor who produced a Rule 35 Report noted that the appellant has a history of self-harm by cutting his arms and recorded that he made an attempt to hang himself whilst in prison.
20. In his witness statement dated 31 December 2020, the appellant gives an account that he is homeless and since November 2019 having had more support from the mental health team in Ipswich. He has also spoken to psychiatrists on the telephone and has a support worker to speak to if he has a problem. He has also had contact with the Samaritans when he had been worried that he was going to harm himself and cut himself. He explains that he was worried about leaving Ipswich as he has a support

network there and although assisted by Suffolk Refugee Support to apply for emergency accommodation, he was then taken to Derby which he stressed to me had been far away from Ipswich where he had been living for five years. He as a result became distressed, took an overdose and cut himself which resulted in him being taken to hospital.

21. The appellant says he has also lost contact with his brother, Yusuf, whom he has now been told has been using drugs and got into debt and so had had to leave Ipswich. He has since learned from contact with his brother that he is in Pakistan his wife and children and would return to the United Kingdom.
22. The first letter from Charity Muchemwa, senior community mental health nurse, of 6 December 2019 records that the appellant has been referred to the Ipswich IDT youth team given concerns about his mental health. As at that date he had not started on any work but had been receiving regular welfare calls to check on his wellbeing. Ms Muchemwa's second letter of 2 July 2020 indicates that although the appellant would benefit from PTSD therapy this cannot be commenced yet due to his destabilisation factors of stress such as accommodation as he is currently homeless and his immigration status. It is recorded:

"As [the appellant] is currently homeless, this has been a concern within our team/service since he has no recourse to public funds and we are trying to source out accommodation for him during this coronavirus pandemic period which has been very difficult and non-existent to what is available for him at this time. This appears to be increasing his current stresses and impacting negatively on his mental health. [The appellant] has also been referred to our sister services whilst still within our service such as the home treatment team when his mental state had deteriorated due to the home treatment team offering intensive support in a short timescale. [The appellant] is to see the psychiatrist on 15 July 2020 at 10am and possibly his medication may be reviewed again following this appointment. He is currently on an anti-depressant, citalopram 40mgs once a day and an anti-psychotic, risperidone 1mg as a calming agent and also to help with nightmares.

Due to [the appellant]'s suicide high risk and other risks, we have been maintaining contact with him on a weekly basis either by telephone or face-to-face. Currently this is increasing and we are having contact with him three times a week because his mental health has deteriorated further in the past month."

23. The letter from Dr Franklin Obeng-Asare, consultant psychiatrist (and to whom the appellant had been referred), dated 16 July 2020 records that since the initial referral the appellant had missed multiple outpatient appointments for various reasons and that he was recently under the home treatment team due to being suicidal and also then records the appellant's history and how he had presented noting that he could not elicit any psychotic phenomena. The diagnosis is described as PTSD and chronic adjustment disorder.

24. It is useful to consider also the letters from the appellant's support worker, Stephen Emery. Mr Emery records on 7 January 2021 that the appellant was discussed in multi-discipline team meetings on a weekly basis as they deemed the risks of him harming himself to be high. He records also the appellant being concerned about his mother and feeling guilty that she is on her own and talks about not knowing where she is which results in him becoming tearful. He has noted also the appellant reports self-harm by burning himself with cigarettes and scars have been observed on his forearm. Mr Emery states:

"The ongoing stress of sofa surfing and not having a place he can call home is something [the appellant] brings up in almost every conversation with the team. He regularly talks about walking the streets at night as he has nowhere to go. It is during these periods that [the appellant] reports feeling suicidal and not wanting to carry on. He reports minimum food intake and says he does not feel hungry and he is only getting a few hours sleep at night. When seen in person [the appellant] will present as flat in mood and appear tired."

25. The most recent letter from Dr Obeng-Asare of 18 February 2021 states that the appellant was reviewed on 17 February 2021 by telephone. He notes the appellant's reporting paranoia, admitting to self-harm but notes that he has no suicide intent or plan. It is recorded that the appellant has not noticed any change in his thoughts of perception experiences in spite of the increased dose of risperidone with duloxetine.
26. Dr Obeng-Asare notes that the appellant has agreed to a trial of quetiapine to be given his significant sleep problems. Again, the diagnosis is post-traumatic stress disorder and chronic adjustment disorder.
27. Dr Galappathie's report must be considered in the context of this material. Dr Galappathie, who is a consultant forensic psychiatrist, states that he has read the respondent's bundle as well as Mr Thorne's reports, the decisions of the First-tier and Upper Tribunal as well as medical records including the letters from Miss Muchemwa and Mr Emery and Dr Obeng-Asare's letter of 16 July 2020.
28. The examination was conducted by video with the assistance of a Pashtu interpreter. The doctor records the appellant's history of trauma, albeit that that is not believed as he noted [26]. He notes the past psychiatric history [44] and the information from GP records [46] to [63]. In summary, these demonstrate anxiety, depression and PTSD including in 2017 an indication of severe depression and some suicidal ideation. The analysis of the IRC health records confirms continuing problems as too the information from GP records from January 2019 onwards.
29. Dr Galappathie states at [83] that he had spoken with Mr Emery.
30. In Dr Galappathie's opinion, the appellant has a severe depressive episode indicated by his account of suffering from a low mood and a range of depressive symptoms [96]. He states:-

“Clinically, he presented as an individual suffering from severe depression. This would be indicated by the number and extent of his symptoms and the impact they have had on his level of social and occupational functioning. Objectively, he presented as depressed as indicated by his reduction in speech which required prompting in evidence of black mood and reduced emotional activity.”

31. He used the same depression rating test as did Mr Thorne in defining that it indicated severe depression. He also considered that the health records were consistent with the diagnosis of depression noting that these confirm the appellant has presented with frequent thoughts and acts of self-harming including instances of burning himself and cutting himself and trying to hang himself in prison. He states also that “In my opinion, his depression has worsened since he was assessed by Dr Peter Thorne”.
32. Dr Galappathie also concluded the appellant suffers from generalised anxiety disorder and post-traumatic stress disorder noting that despite the First-tier Tribunal Judge’s findings [108] that the appellant describes having recurrent and distressing memories of past traumatic events and, having completed the impact of events scale revised (IES-R) and a score of 67 out of a possible 88 is well above the cut-off of a probable diagnosis of PTSD.
33. Dr Galappathie says that in his opinion the depression is currently severe [112] as is his PTSD, the latter being likely to have been caused by trauma he experienced in Afghanistan or during his journey to the United Kingdom.
34. I found little merit in the respondent’s challenge to Dr Galappathie’s report. Contrary to what is submitted the report is not based solely on what the appellant has told him through an interpreter in a relatively short time period; on the contrary, it involved a detailed analysis of the medical records made available to him covering a number of years and a discussion with the appellant’s support worker. In reality there is no inconsistency with the assessment that, as at that date, the appellant was suffering from a severe depressive episode. That is consistent with the picture of the evidence of the appellant’s ill health deteriorating perhaps exacerbated by sofa surfing and the effects of isolation during the COVID pandemic but it is not a reason not to follow Dr Galappathie’s conclusions. The doctor gave adequate reasons for his conclusions with reference to the relevant diagnostic criteria in tests.
35. I do not consider that there is any inconsistency between the appellant’s account of incidents of self-harm and suicidal thoughts being omitted from witness statements of his former girlfriend and brother. He no longer resides with the brother and the incidents of self-harm are recorded in several places both in the GP records and in the other material provided to me. I am at a loss to understand why the failure of a girlfriend and brother to record weight loss, trembling, lack of attention, shaking, sweats, palpitations etc. is relevant. They are not medically qualified and there is no indication that they were asked to provide evidence on that issue. Further, I do not

consider that this is in marked contrast to aspirations for further education, marrying and starting a family.

36. Whilst I accept that there is a history of the appellant not being believed, I remind myself that that does not mean that he has been untruthful in everything he has said. There is a remarkable degree of consistency in the appellant's account of his symptoms of mental ill health noted by several people over a period of four years. There is, in reality, no evidential basis for the submission by the respondent that the appellant's diagnosis of severe depressive episode are predominantly due to his failure to obtain immigration status in the United Kingdom. On the contrary, they appear to be perhaps the inevitable result of the appellant's underlying serious mental ill health exacerbated by additional stresses. Insofar as Dr Galappathie has sought to revisit the findings of the First-tier Tribunal, that decision does not make any finding that the appellant had not been exposed to trauma, albeit of a different type from that claimed and the judge simply expresses [24] that there was no evidence before him of scarring as a result of being hit on the head. The Section 35 Report does not positively say that there is no scarring it says the appellant does not report any or indication of any physical examination having been undertaken of the scalp. I note the First-tier Tribunal's conclusions on that matter, but absence of evidence is not evidence of absence.
37. That said, I do record that Dr Galappathie does not make any opinion on the findings of if the appellant would benefit from family support on return to Afghanistan but equally, that would have been speculative.
38. I accept that the letters from Dr Obeng-Asare do not refer to concerns about suicide but the letters are brief. They are not provided as a comprehensive report for the purposes of a Tribunal and they are silent as to the diagnosis of depression. But equally, they do not take any issue with what is observed from the other medical notes from the GP and the health workers giving a consistent thread of the appellant having depression. The reviews that Dr Obeng-Asare held with the appellant appear to have been done by telephone rather than face-to-face.
39. Accordingly, I am satisfied that I can give weight to the report of Dr Galappathie.

Current situation in the appellant's home area

40. I then turn to background material relevant to Afghanistan, and the appellant's home province in particular, viewing it through the lens of AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130 (IAC) and the guidance it gives.
41. The starting point is to consider the appellant's position in his home area.
42. The most recent EASO Security Situation report on Paktia sets out the background to the situation as it is in Paktia which is summarised in the EASO Country Guidance Report at pages 141 to 143:

Paktya is located in eastern Afghanistan and has a population of approximately 612 000. The main ethnic groups are Pashtuns, followed by Tajiks. The province is divided into 15 districts, including four temporary districts. It borders Pakistan and the provinces of Logar, Khost, Paktika, and Ghazni. The Kabul-Gardez highway connects the provincial capital to Kabul City and the Gardez-Khost highway runs to the Afghan-Pakistani border. Paktya province is witnessing an active insurgency, which is reportedly constrained by strong tribal affiliations and cohesive local communities. The province is a stronghold of the Taliban, but the Haqqani Network has also become powerful in the province. The network allied with Al Qaeda foreign fighters in order to reach the provincial capital and potentially Kabul by demanding transit rights through Zurmat valley. The presence of the Tehrik-e Taliban Pakistan is also reported. LWJ considered four of the districts as contested, two districts as under Taliban control, and the remaining four districts, including the capital Gardez, under government control or undetermined. ACLED collected data on 651 violent events in the period from 1 March 2019 to 30 June 2020 (average of 9.4 incidents per week), of which 450 were coded as 'battles', 176 as 'explosions/remote violence' and 25 as 'violence against civilians'.

Example of incidents include two suicide attacks in Gardez in March and May 2020, and a long-lasting clash, in June 2019, between the Taliban and a police unit in Ahmadaba district. During the September 2019 presidential election, only five of twenty-two polling centres in Zurmat district were actually open. Afghan and foreign security forces carried out operations and airstrikes against insurgents in the districts of Ahmadabad, Zurmat and Sayedkaram, which also caused civilian casualties. Further examples of incidents include a Taliban attack on a convoy of provincial officials and the kidnapping of passengers on the Kabul-Gardez highway. It was also reported that militants allegedly belonging to the Khost Protection Force executed civilians on more than one occasions. ISKP attacked a Shia mosque and at least 38 worshippers were killed. Further impact on the civilian population included, for example, collection of taxes by the Taliban from truck drivers going from Paktya to Ghazni, and the closure of polling centres. UNAMA documented 218 civilian casualties (78 deaths and 140 injured) in 2019, representing 36 civilian victims per 100 000 inhabitants. This is a decrease of 49 % compared to 2018. The leading causes for the civilian casualties were ground engagements, followed by targeted/deliberate killings and search operations. RS ranked Paktya in the category of provinces where the number of civilian casualties was between 26 and 50 or the first quarter of 2020, and between 76 and 100 for the second quarter. In the period 1 March 2019 – 30 June 2020, 2 541 persons were displaced from the province of Paktya, mainly within the province itself. In the same period, 161 persons were internally displaced to Paktya, coming from Logar.

43. The EASO Security Situation Report provides more detail on current trends:

27.3.1 General

In 2019, UNAMA documented 218 civilian casualties (78 deaths and 140 injured) in Paktya province. This represents a decrease of 49% compared to 2018. Leading causes of casualties were ground engagements followed by targeted/deliberate killings and search operations.³⁰¹² Resolute Support recorded between 102 and 150 civilian casualties in Paktya in the first half of 2020, reporting a marked increase during the second quarter compared to the first.³⁰¹³ In regard with the severity of the conflict, Resolute Support recorded between 501 and 1000 enemy-initiated attacks in Paktya province over the full year 2019 –an increase in comparison with 2018 (301–500).³⁰¹⁴ In 2020, interviewed by AAN after the February 'reduction in violence' period had ended, a local journalist stated that the Taliban had soon

resumed attacks against security forces posts in the districts of Jaji (Alikhel), Zurmat, Sayedkaram and Rohani Baba (Zurmat).³⁰¹⁵In April 2020, a resident of Shawak district observed that violence had remained 'somewhat reduced', due to weather conditions and longing of Taliban for peace. In Zurmat, a local elder noted that the Taliban had stopped pressuring people for food or questioning them about their travel.

44. The EASO Security report also provides at 27.3 1 at pages 264-265;

Out of the 25 recorded events of violence against civilians, 14 were attributed to Afghan security forces and its NATO allies, primarily in Gardez, Jaji and Zurmat districts.³⁰³³Such events include the killing of five civilians from a single family by the KPF, during a search operation against the Taliban in Zurmat district in March 2019. This incident prompted local residents to organise a protest in front of the provincial governor headquarters.³⁰³⁴Also illustrating this trend is the killing of 11 civilians on 11 August 2019, during a night raid carried out by the NDS-01 Special Forces Unit and US forces, in the Kulalgo area of Zurmat district. While Afghan officials claimed that the victims were Taliban fighters, family members and local elders denied it and added that they should have been questioned instead of being shot from close range. The Afghan authorities ordered an investigation on the matter but, several months later, its conclusions had not yet been made public.³⁰³⁵UNAMA expressed concern over several similar incidents involving NDS Special Forces, the KPF and Paktika-based Shaheen Forces, but noted that the 25 civilian deaths attributed to the KPF across Khost, Paktya and Paktika in 2019 represented a 'significant drop' from 2018 and that almost all of them had been reported during the first quarter of 2019 alone. KPF search operations appeared to be less frequent during the remainder of the year.³⁰³⁶

The Taliban were held responsible for six events of violence against civilians by ACLED.³⁰³⁷These included the murder of tribal elders in August 2019 and June 2020, respectively in Zadran³⁰³⁸and Jaji (Alikhel) district.³⁰³⁹Besides its high numbers across the three ACLED categories detailed above, Gardez capital district has also been the scene of increasing criminality. In June 2019, the city dwellers expressed concerns about the growing pattern of targeted killings by unidentified gunmen and robberies. This prompted the local police chief to announce increased efforts to tackle violence.³⁰⁴⁰According to Pajhwok, in early 2020, the Taliban were preventing Paktya's health centres to receive medical supplies, reportedly because of their discontent towards the quality of services provided by the NGO in charge of medical supplies.³⁰⁴¹In mid-February 2020, UNOCHA noted that 45 health care facilities had forcedly been closed by anti-government groups in Paktya, depriving up to one million people from basic health services.³⁰⁴²

45. The conclusion drawn in the EASO Country Guidance Report in the section directed towards article 15 (c) provides:

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the province of Paktya, however not at high level and, accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.

46. While that conclusion is not binding on me, I consider that, viewing the evidence as a whole, and taking into account the CPIN reports, it is correct. The respondent's most

recent CPIN provides a graph indicating that the casualty levels are relatively low (see paragraph [7.2.10]) but that is to be considered alongside the more detailed account in the EASO Security Report. Despite the respondent's submissions, I do not consider that, viewing the evidence as a whole, that the figures are such that the nuanced conclusion in the EASO Country Guidance Report is not to be followed. The situation does, in my view, appear to be fluctuating and certainly it would appear that whilst the government controls some areas where their forces are concentrated that is not true of the whole province. It is evident that there are problems with the use of roads which, as a matter of common sense, are easily targeted that had been the case with the Taliban operating roadblocks and attacking convoys. How much of this then is carried out against civilians is less clear.

47. With regard to Mr Foxley's reports, I note that he says at [19] that the majority of the appellant's home province is controlled or contested by the Taliban. That is consistent with the EASO reports, bearing in mind that the situation is ever-changing on the ground. The incidents set out at [19] are consistent with the other reports of car bombings and attacks on roads and infrastructure. But beyond that, there is little evidence of militants attacking civilians although I do note the evidence [20] that travelling may be difficult and that there have been specific problems with security of the roads. I note that there would be a risk of indirect and indiscriminate risks – the appellant in fact had been caught in crossfire or as a result of criminality from illegal checkpoints where there may well be attack, robbery, intimidation and so on.
48. I accept, in the circumstances, that the appellant may be at risk if travelling to his home area in the light of this and I bear in mind also a consistency in the reports on his mental health of being bullied by militants, perhaps entirely understandable in the context of Afghanistan.
49. To a significant degree the extent to which the appellant would have difficulties in his home area are dependent on the extent to which he could rely on family. The respondent submits that he can do so, and there would in consequence be no article 15 (c) risk, given the apparent resources available to them.
50. The appellant's evidence, which was disbelieved, is that he is not in contact with his mother. That finding is preserved, notwithstanding the additional evidence in his new witness statement albeit one that was not tested by cross-examination, that he is not in contact with her. Given his statement that he is not in contact with his brother who appears to have returned to Pakistan, but who is consistent with what he has said to his care workers, I am prepared to accept that that is the case now. I find it difficult to consider that the appellant would, given his undoubted mental health problems be able to maintain such a consistent deceit.
51. While the appellant's account of not being in contact with family and not having told the truth about the family's resources and whereabouts was not believed, and thus that his evidence on that point is not reliable, it is not proper then to conclude positive findings from that, that support of a particular type or from particular individuals is or will be available. That is not, however, to say that as the respondent

submits, that there is generally an expectation in Afghanistan that family, clans and tribes even ethnicity will feel obliged to help people or family, tribe or clans.

52. It is evident from the material and the relevant country guidance cases that a large percentage of the population in Afghanistan suffer from some mental ill health if not just depression and PTSD and as a result of what has happened in that country over the last 30 years. There is, I accept, a stigma attached to mental ill health, particularly where that results in behaviour issues but there is insufficient material before me to conclude that the appellant's family would reject him or fail to support him as a result of his current mental ill health.
53. Would that then put the appellant in a position such that he is not at risk of an Article 15(c) risk in Paktia? I have no doubt that the appellant is vulnerable but it does not necessarily follow he would be at enhanced risk of indiscriminate violence as a result. I do, however, note that he has been out of the country for a significant period of time. He left the country whilst a minor and I found some merit in his submission that having been in the west, he may find it more difficult to adapt. That is not to say that he would be targeted as a result merely that he may not have the necessary skills or the ability to develop the necessary skills to avoid situations in which he is placed in danger.
54. With regard to any risk flowing from the appellant being perceived as "Westernised" I have taken into account the CPIN "Afghanistan: Afghans perceived as 'Westernised'", of January 2018 in which contrasting views emanating from a report by EASO are cited at [5.1.1] to [5.2.3]. It is evident that what is acceptable in terms of learned behaviour in Kabul is different from that in rural areas. It would appear that what is accepted or at best tolerated in Kabul in certain circles would not be tolerated in home areas. The extent to which there would be any sanctions for perceived western behaviour in a rural area is more difficult to assess. At [5.2.3] Ali Latifi is quoted as saying that those who do not adhere to local customs can "play it off as being urbanised" as the reason they do not know the local custom. Dr Schuster quoted at [5.2.1] remarks that a person in Afghanistan must be constantly conscious about one's actions, body language and how and what one is saying and how one is perceived. Someone who comes back from Europe and does not know the unspoken rules, forgets, errs, or makes mistakes, could be perceived to be "cheeky", rude or disrespectful. Equally, at [5.1.2] Dr Schuster opined that the development of a critical stance on Islam whilst in the West is what puts people at most risk. And that it will all turn on the specific location where a person is returning to, the nature and attitudes of their immediate community and family in assessing whether the person would encounter problems.
55. It is in this case difficult to assess how the appellant would be received on return to his home area in Paktia, it being unclear what family he has there. It is also not entirely clear the extent to which he has become "westernised" in his habits but I do note that, for example, he does not drink. There is nothing to suggest that he has a critical stance towards Islam but equally he left the country at a relatively young age, and whilst he has had some contact with relatives in the United Kingdom and has

associated with Afghan people, it does not follow that he has any idea about how to behave in Paktia as an adult. Equally, that province is one described as conservative and it is reasonable to expect people to be more circumspect and to avoid trouble, people self-censure to a significant degree and adherence to more conservative norms are expected.

56. Added to this, there is the appellant's continuing mental ill health which affects how he interacts with others, as is seen in his perception of being followed and hyper-vigilance.
57. Whilst I accept that there may well be an enhanced risk of the appellant being exploited given his vulnerable position, it is less clear that that will be so if he has the support of family. For example, if supported by them financially, it would be unnecessary for him to be seeking employment thereby putting himself in a situation of being exploited for trafficking or forced labour.
58. Equally, where there is merit in the respondent's submission that his family must have had money to send him out of Afghanistan but it does not necessarily follow that having done that once, they have much resources left. And, as was noted in AS (Afghanistan) [2020] UKUT at Appendix A, paragraph 111:
111. Many returnees from Europe have problems with their family because the family has sold all their resources to send the family member to Europe and if he fails, the family are unable to pay their debts. Return can also be perceived as a kind of shame or indication that the person committed a crime (and therefore was deported).
59. There is then the issue of whether the appellant would, even with family support, be able to travel safely to his home area. I accept that there continue to be a large number of people in the area but it does not necessarily mean that they are able to travel easily or to be able to travel from there to Kabul. The risk of violence to those travelling by road appears to be higher than those who are not moving and it is unclear how the wealth or any other attributes of the appellant's family will be such as to be able to protect him on the journey.
60. Drawing these strands together, and applying the principle in Elgafaji, [2009] EUECJ C- 456/07 that the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required, I am satisfied that on the particular facts of this case, given the appellant's particular vulnerability owing to his mental ill-health and length of time outside his home area, that he is at risk, despite family support, owing to the accumulation of factors set out above on account of treatment contrary to article 15 (c) of the Directive. He would at best be financially reliant on them, and would be at enhanced risk were he to go out and interact with others; he could not be expected to remain entirely within the family setting.
61. I am not, however, persuaded that this is sufficiently connected to any Convention reason such that he has a well-founded fear of persecution. IN reaching that conclusion I have applied DH (Particular Social Group: Mental Health) Afghanistan

[2020] UKUT 223 (IAC) but I consider that can be distinguished on its facts. The nature of the illness here is not so severe as to amount to a serious mental illness, nor is there a likelihood of disinhibited behaviour, and thus less of a stigma will arise.

Relocation to Kabul

62. Having found that the appellant is at risk in his home area, I must consider whether he it is reasonable for him to relocate to Kabul. In doing so, I have applied AS(Afghanistan). I have considered also Mr Foxley's report, but I conclude that at present, as the respondent has submitted, that it does not displace the guidance set out in AS (Afghanistan) which provides

Reasonableness of internal relocation to Kabul

(iii) 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 and even if he does not have a Tazkera.

(iv) 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. Given the limited options for employment, capability to undertake manual work may be relevant.

(v) 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. A person without a network may be able to develop one following return. A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether, and if so how quickly and successfully, he will be able to build a network.

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 16 \(IAC\)](#) also remains unaffected by this decision.

63. Whether or not the appellant would be safe in Kabul depends to a significant degree as to whether he has support of family there. The appellant has been disbelieved on the issue of family and where they are, the First-tier Tribunal finding that he was, in effect, an economic migrant following in his brother's footsteps. He has been found not to tell the truth, but equally there is a degree of consistency in his account of his mental ill-health. He clearly had some support in the past in terms of the resources spent on having him smuggled out of Afghanistan, but I accept that he is estranged from his brother now. The lack of contact with the mother is now confirmed by several of the psychological reports, and it is unlikely that he could maintain such a deceit.
64. While I am satisfied that there would be some sort of family support in his home area, be it from extended family, tribe or village, viewing the evidence as a whole, and bearing in mind how his mental ill-health manifests itself, I consider it unlikely that the appellant would be able to access meaningful support in Kabul from family or more attenuated connections. Even with support, he would not I expect be able to get a job and indeed given his mental ill health it is unlikely that he would be able to undertake any employment successfully.
65. If he does not have support of family, I bear in mind that he will have some financial support in the form of grant on return and that this might assist him so that he would be able to find inexpensive accommodation in a "chai khana" [tea house].
66. I accept that the appellant does speak some English, but I find that given his lack of other skills, mental ill-health and consequent vulnerability that this would not assist him in getting work as a day labourer; he has no other employable skills gained from the United Kingdom. There is, I accept, only one mental hospital in Kabul but there is no indication that the appellant requires in-patient treatment or anything more than he is currently receiving.
67. The appellant is not a single, healthy, well young man in the paradigm in the country guidance of **AS (Afghanistan)** and I consider that there would be some risk, given his vulnerability, to him being exploited in the sense of forced labour. I consider that the material to that effect adduced by the appellant is reliable. Given the high rate of unemployment, exploitation is perhaps inevitable.
68. That said, I find it unlikely that the Taliban would seek to recruit somebody of the appellant's position. As the respondent points out, the EASO guidance indicates that the Taliban have no little need to forced recruitment let alone of people of the appellant's age. There is insufficient evidence to show that the fact that he is westernised to any degree would result in him being targeted nor is there any proper indication as to the purpose of him being recruited.
69. Drawing these strands together, I find it would be unreasonable to expect the appellant to relocate to Kabul to live on that basis, and indeed unduly harsh. That is through a combination of factors. I consider that whilst his mental ill health may well be treated by drugs which might be available to him and certainly would be

given that he has access to funds on return as a result of the grant given to him which would allow him to be accommodated and supported for a time, he would not be able to reintegrate into a society where he has no skills and in a place where he has not lived. His support would therefore run out relatively quickly and he would be left destitute.

70. Accordingly, for these reasons, I am satisfied that the appeal falls to be allowed on Humanitarian Protection grounds.
71. I do not, however, accept that the appellant's ill-treatment is sufficiently connected with his mental ill-health or any other reason such that it engages the Refugee Convention.

Human Rights Convention grounds

Article 3 - Suicidal Ideation

72. In assessing this issue, I have applied J v SSHD [2005] EWCA Civ 629. I am not satisfied that the risk of suicidal ideation is, bearing in mind the high threshold, such that there is a risk of an Article 3 breach on return to Afghanistan. That is speculative and insufficiently borne out by the psychiatric evidence.

Article 8

73. Given that I have found that the appellant is at risk of Article 15(c) he is entitled to humanitarian protection, I am satisfied that there are very compelling circumstances over and above Exceptions 1 and 2 such that his removal will be disproportionate and I therefore formally allow the appeal on that ground also.

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 17 May 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX - ERROR OF LAW DECISION



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01228/2018

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 2 December 2019**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**Z R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Fitzsimmons, instructed by Wilson & Co

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge D Ross promulgated on 25 September 2019, dismissing his protection appeal. The appellant's case is that the Taliban had killed his father, uncle and cousin and that his older brother had run away from home as had another brother. He had remained at home with his mother but on one day in around May 2015 he was abducted by the Taliban when he was approximately 18. He was held for four or five days but was able to escape. His mother then tried to arrange for him to be removed

but the Taliban returned, beat him and took him back to the base saying that if he ran away again they would kill him. He left the country in August 2015 travelling by land.

2. The respondent's case is set out in the refusal letter of 15 January 2018. In summary, the respondent did not accept that the appellant had been forcibly taken by the Taliban as claimed or that he escaped from them or that he had received threats from them. It was considered also that there would be a sufficiency of protection for him and/or that he would be able to relocate. The Secretary of State was not satisfied either that he was entitled to discretionary leave nor was she satisfied that his removal would be contrary to Article 8 of the Human Rights Convention noting that he did not meet the requirements of paragraph 399(b) of the Immigration Rules nor were there very compelling circumstances such that his deportation was disproportionate.
3. The Secretary of State noted his claim to have made suicide threats and self-harmed in custody but concluded that his removal to Afghanistan would not be in breach of Article 8.
4. The judge directed himself [22] that the appellant is a vulnerable witness and this would be taken into account in assessing his evidence. He noted there were inconsistencies in the appellant's account at [23] but did not place much weight on these. The judge found [24] that:
 - (i) the appellant's account of forcible abduction and being taken to a cave was not inconsistent with the background material, the fact that he was able to walk out of it without being noticed by anybody not being credible bearing in mind that he had been taken forcibly and his capturers would wish to avoid him escaping; as there was no attempt to hide him after he returned to his mother's house; that there was no proper explanation of the incident in which he was hit on the head by the Taliban, there being no particular evidence of this, a Section 35 report specifically stating that there was no scarring; and, that it was not credible that the Taliban would have allowed him to wait at his mother's house to recover;
 - (ii) the appellant had not told the truth about his brother in the United Kingdom [25] concluding that the appellant was sensitive to the allegation that he left Afghanistan to join his brother in the United Kingdom which explained the anomalies in his account noting a "staggering coincidence" that the man met somebody in a refugee camp in Hungary who turned out to have his brother's phone number there being no explanation for this, it also being incredible that the appellant's brother would not have told his mother where he is; that the truth of the matter is that the appellant deliberately left Afghanistan to join his brother in the United Kingdom and that the appellant and his brother were in fact in contact with her; that there is no reason why the appellant could not return to Kabul; that he would have family support if he returns [28] and even if not so, it would not be unduly harsh to return him there despite the fact that he suffers from depression and PTSD, there being no suggestion that he proposes to commit suicide;

(iii) the appellant did not meet the requirements of paragraph 399A and having had regard to the factors set out in Section 117C of the 2002 Act, his deportation was proportionate.

5. The appellant sought permission to appeal against that decision which was granted on 20 October 2019 it being observed that Judge Ross appeared not to have engaged with the psychologist's report insofar as it impacts the appellant on return and in respect of the substantive claim.

6. I address the grounds in turn.

1 *Making an Adverse Credibility Finding without regard to the Corroborative Force of the Psychological Reports and Other Medical Evidence, contrary to Mibanga [2005] EWCA Civ 367*

7. It is evident that the judge did bear in mind the medical reports as can be seen from the determination. It is clear also that he was aware of the appellant's vulnerability. It was open to the judge to note [22] that the appellant appeared to understand the questions to give appropriate answers and to note, importantly, that the psychiatric report at paragraph 47, in response to the question:

"Please comment on whether any of the mental health problems you have identified would be likely to impact on the appellant's ability to coherently recall events and experiences".

provided:

"I did not observe any specific difficulty in [the appellant's] recall or recounting of past experiences. However, he was relatively relaxed in his interview with me. In a situation he perceived as threatening, emotional arousal and fear could well contribute to give cognitive errors and problems with recall of remote events".

8. It is clear from what the judge wrote at [22] that he had taken into account in the context of inconsistencies in his account. He also took into account that the appellant was only 18 at the time when he was first interviewed. There is thus no merit in the submission that the judge erred in not taking the medical report into account in assessing the appellant's credibility or the apparent discrepancies in the account.

9. The medical report states at [39] that the appellant presents with a mixture of chronic and complex PTSD with associated secondary depressed mood as a result of past traumatic experiences including degrading treatment, violent assault, threats to his life and abduction. At paragraph [41] the doctor also wrote that the appellant appears to have tried to bury his emotions and memories as far as possible which is common. The judge also directed himself at [49] that he was aware of the possibilities of malingering and that the appellant's symptoms were exaggerated or feigned.

10. On that basis, it is argued that it should have been taken into account in assessing whether the appellant had suffered as claimed.

11. Whilst I accept that a doctor may, following the Istanbul Protocol, make weighty observations on the wider context of an injury it is less evident that this is so where somebody suffers from an accepted mental illness. In this case the challenge is not that the judge did not take into account the possibility of the appellant's mental health problems accounting for apparent difficulties in recall, but rather the judge did not take into account the possible corroborative effect of PTSD confirming what had happened to the appellant.
12. It was open to the judge to note that there was no physical scarring report but there is no indication that he took this as definitive.
13. It must be borne in mind also that at its highest the report is confirmation that the appellant had suffered violence and trauma in the past That is the necessary inference from the diagnosis of PTSD. What that report is not is confirmation of who inflicted the trauma, when and where.
14. Accordingly, I am not satisfied that ground 1 is made out as I am not satisfied that the judge improperly failed to take into account evidence of PTSD as corroborating the appellant's account. He clearly bore the report in mind, but it cannot be said that he failed to take it into account as having weight as corroborating the appellant's account.

Ground 2 – irrational approach to the Rule 35(3) medical report.

15. I find no merit in this submission. All that the judge did was to note that the report did not confirm scarring. That is an accurate assessment. It is clear that the judge did take into account the Rule 35 report which was at its highest that the appellant may have been a victim of torture but reached conclusions open to him on the evidence

Ground 3 – failure to have regard to the expert report of Mr Foxley.

16. I find no merit in this submission. The judge clearly accepted that the account could have happened, that is that he was abducted, taken to a cave, but rejected the specific account on its specific facts. The judge clearly also noted that the appellant was 18 when interviewed and given that these events took place when the appellant was (he was born on 1 January 1997, therefore leaving at the end of July 2015 he was 18 in any event) is of little merit or substance.

Ground 3(A) and ground 4.

17. Despite Mr Tufan's submissions, I find that the judge had failed to determine the humanitarian protection claim. He also failed to deal with the UNHCR Guidelines which have come into being since **AS (Afghanistan)** was heard. There is, however, no attempt to address the issue of humanitarian protection and it is not suggested that the appellant is excluded from humanitarian protection despite his conviction.
18. That said, the question then arises whether it is material given the unchallenged adverse credibility findings at paragraph 25 and the findings that the appellant is in contact with his mother and could have support on return to Afghanistan.

19. There are significant problems with return to the appellant's home province of Paktia in any event. The judge does not appear to have engaged with difficulties that there might be in the appellant's home province although he does at [18] summarise Mr Foxley's report. But what he does not do is set out what his assessment of the risks might be. Ground 4 is therefore made out.

Ground 5 – inadequately reasoned findings on Kabul.

20. I consider that this ground is made out. There is no proper engagement with the expert report or the difficulties that the appellant might be even with family support on return to Afghanistan given his mental health. That is a factor which needs to be taken into account. There is no sufficient analysis of that point.

Ground 6

21. I am not satisfied that the judge erred materially in his assessment of the risk of suicide. This was dealt with in Dr Thorne's report in terms of removal to Afghanistan in that he might become distressed but this is not, in my view, a sufficient basis in which it is said it could be material given the lack of sufficient evidence to show that the threat is imminent and thus can meet the threshold in J v SSHD. It is not arguable that this is in any way analogous with Y and Z (Sri Lanka) v SSHD [2009] EWCA Civ 362. This is not a case in which it could be said that there is a real risk of suicide or that this was as a result of a subjective fear of being again tortured by the same perpetrators on an analogy with Y and Z.
22. Accordingly, I am not satisfied that ground 6 is made out.

Conclusion

23. For the reasons set out above, the decision of the First-tier Tribunal did involve the making of an error of law. I consider that whilst the judge's findings of fact are to be preserved, there will need to be a fresh analysis of the risk to the appellant in terms of humanitarian protection and/or risk pursuant to the Refugee Convention and the Human Rights Convention with regard to his home area and/or whether he could be expected to return to Kabul.

Directions

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal will be reheard in the Upper Tribunal on a date to be fixed.
3. Any new material upon which either party wishes to rely must be served at least 10 working days before the hearing.
4. It is assumed that the appellant does not wish to give any further oral evidence. If he wishes to do so, he must notify the Upper Tribunal at least 10 working days before the hearing, stating whether an interpreter is required. That notification must include full witness statements capable of standing as evidence in chief.

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.

Jeremy K H Rintoul

Signed
Upper Tribunal Judge Rintoul

Date 18 December 2019