



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05892/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business
On Wednesday 17 February 2021

Decision & Reasons Promulgated
On Wednesday 31 March 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MIM
(Anonymity direction made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although an anonymity direction was not made by the First-tier Tribunal Judge, the appeal involves a protection claim. Accordingly, it is appropriate to make an anonymity direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent.

Representation:

For the Appellant: Mr M Bradshaw, Counsel instructed by Twinwood Law Practice Ltd

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

DECISION AND REASONS

PROCEDURAL BACKGROUND PRIOR TO THE HEARING

1. By a decision promulgated on 18 November 2019, First-tier Tribunal Judge NMK Lawrence dismissed the Appellant's appeal against the Respondent's decision dated 7 June 2019 refusing his protection and human rights claims.
2. The Appellant challenged Judge Lawrence's decision on two grounds. First, it was said that the Judge erred when finding the Appellant's claim to be at risk in his home area not to be credible. Second, it was submitted that the Judge erred when finding that the Appellant could safely relocate to Kabul.
3. On 30 January 2020, Designated First-tier Tribunal Judge Woodcraft refused permission to appeal in the following terms:

"The appellant is a citizen of Afghanistan. He appealed against the refusal of asylum arguing that he was at risk upon return from the Taliban. The judge did not find the appellant to be a credible witness, see [13] to [22] of the determination and dismissed the appeal.

The grounds of onward appeal disagree with the judge's adverse credibility and internal relocation findings arguing that the judge only took one credibility point against the appellant. There is no merit in this ground. That the judge did not accept some of the criticisms of the appellant's account made by the respondent does not of itself mean that the account had then to be accepted by the judge. The inconsistency went to the core of the appellant's claim, how was he treated by the Taliban. As the appellant's claimed ill treatment could not be accepted the appeal itself fell away. Contrary to what is said in the grounds, the judge did in fact take into account the evidence on internal relocation to Kabul. At [25] the judge pointed out that Mr Foxley's report (paragraph 122) indicated that due to the appellant's low profile the risk of return was significantly lower for the appellant in Kabul.

The grounds do not demonstrate any arguable error of law on the judge's part."

4. Following renewal of the application for permission to appeal, permission was granted by Upper Tribunal Judge Mandalia on 2 March 2020 in the following terms:

"1. The appellant, a national of Afghanistan, appealed against the respondent's decision of 7th June 2019 to refuse to grant him asylum and/or humanitarian protection. **First-tier Tribunal Judge NMK Lawrence dismissed the appeal** for reasons set out in a decision promulgated on 18th November 2019.

2. It is at least arguable that in his assessment of the risk upon return and the question of internal relocation, the judge fails to give any or any adequate reasons for rejecting the appellant's claim that he is not in contact with his family in Afghanistan. As I grant permission on the second ground, I do not refuse permission on the first ground."

5. By a Note and Directions sent on 29 April 2020, Upper Tribunal Judge C Lane indicated a provisional view that the error of law issue could be determined on the papers. The parties were given the opportunity to provide written submissions on this course. Neither party made any submissions.
6. By a decision promulgated on 6 July 2020, Upper Tribunal Judge Coker found an error of law in Judge Lawrence's decision. She therefore set aside the First-tier Tribunal decision and directed a re-making at a remote hearing. Judge Coker's reasons for finding an error of law were as follows:

"... 4. The judge made a number of positive credibility findings and found against the respondent's view on a number of matters. The judge refers to a number of matters not being implausible. The judge is required to do more than merely find matters not implausible - findings have to be made, holistically, and the weight placed by the judge on one inconsistency, in the context of the other matters found, renders the decision infected by error of law, particularly given the vulnerability of the appellant at the time of the incidents that form the core of his claim and at the hearing.

5. The issue of internal relocation is not adequately reasoned given the background evidence that was before the FtT judge, as subsequently confirmed by the later CG case.

6. I am satisfied the decision of the FtT judge should be set aside for error of law.

7. The appellant sought to have the appeal remitted to the FtT with findings preserved. The findings of the FtT are such that it is appropriate for the hearing to remain in the UT; limited evidence is required."

7. As I have recorded, Judge Coker's decision was made on the papers without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Procedure Rules"). Since the making of her decision, the Administrative Court has given judgment in the case of Joint Council for the Welfare of Immigrants v President of the Upper Tribunal (Immigration and Asylum Chamber) and Lord Chancellor [2020] EWHC 3103 (Admin). In that case, Fordham J held that the Presidential guidance concerning the making of paper decisions during the Covid-19 pandemic was unlawful on the basis that it gave rise to an "overall paper norm". The Tribunal was directed to inform those potentially affected by the judgment of it and to give an opportunity for submissions to be made leading to a review of any decisions which fell within its ambit. Although that includes the present case, Mr Bradshaw for the Appellant confirmed that he takes no issue with Judge Coker's decision and does not seek to have that reviewed or set aside. That is unsurprising since the error of law decision was made in the Appellant's favour. Although Mr Tufan indicated that the Respondent's position would have been that there was no error of law in Judge Lawrence's decision, he accepted that no submissions had been made arguing against the proposed making of the decision on the papers and that no application had been made since Fordham J's decision seeking to set aside Judge Coker's decision on grounds of unfairness.

8. The directions made by Judge Coker required a schedule of agreed findings of fact to be filed no later than 21 days before the resumed hearing and skeleton arguments to be filed no later than 14 days before the resumed hearing. She also directed that either party could object to the appeal being determined by a remote hearing within 14 days from the date her decision was sent.
9. Following Judge Coker's decision, the Appellant was obliged to change solicitors as the firm previously representing him closed its legal aid department. The Appellant's current solicitors informed the Tribunal that they were acting by e-mail dated 10 September 2020. It appeared from that e-mail that, although they knew that the appeal was listed for a resumed hearing, they were otherwise unaware of the direction permitting them to object to the appeal being determined via a remote hearing. For that reason, Upper Tribunal Judge Gill, by directions given on 21 September 2020 extended time for objection to be made. No such objection was received. By her directions, Judge Gill also confirmed that the remainder of Judge Coker's directions should stand.

DOCUMENTARY EVIDENCE AND SUBMISSIONS

10. On 26 January 2021, the Appellant's solicitors filed further evidence with an application to adduce that evidence pursuant to rule 15(2A) of the Procedure Rules. The evidence included the Appellant's second supplementary statement dated 5 January 2021 (which I refer to hereafter as "the Fourth Witness Statement"), a statement from his brother ("SM") also dated 5 January 2021, a Tribunal decision allowing SM's appeal and a statement from SM's friend, ("AM") dated 25 January 2021 as well as evidence from the Appellant's college tutors.
11. By a letter dated 5 February 2021, the Appellant's current solicitors wrote to the Tribunal indicating that they wished to adduce an updated report from Mr Tim Foxley who had provided an expert report for the First-tier Tribunal hearing. It appears that no action was taken to obtain an updated report when the solicitors were first instructed because it was considered that the situation in Afghanistan in 2020 was so fluid that any updated report would quickly become obsolete. The solicitors indicated that they would seek permission to adduce the updated report at the hearing (as to which see below).
12. The solicitors also sought an extension of time to file the schedule of agreed findings of fact by 4pm on 12 February 2021 and skeleton arguments by 2pm on 16 February 2021. By directions dated 10 February 2021, the Upper Tribunal lawyer extended time for the schedule of agreed findings of fact to 4pm on 12 February 2021 and for filing of skeleton arguments to 4pm on 15 February 2021. Those were filed on 15 February 2021.
13. In relation to the updated report of Mr Foxley, that was filed on 11 February 2021 as part of a second application to adduce evidence. I refer to Mr Foxley's second

report hereafter as “the Updated Expert Report”. In addition to the Updated Expert Report, the Appellant also seeks permission pursuant to rule 15(2A) of the Procedure Rules to rely on further background evidence.

14. In addition to the Updated Expert Report and additional evidence to which I have referred above, I had before me a witness statement of the Appellant dated 5 September 2017 (“the First Witness Statement”), the Appellant’s bundle as it was before the First-tier Tribunal (referred to hereafter as [AB/xx]) which includes a statement of the Appellant dated 23 July 2019 (“the Second Witness Statement”) and a supplementary statement of the Appellant dated 8 August 2019 (“the Third Witness Statement”) and the first report of Mr Foxley dated 9 October 2019 (“the Expert Report”). I also had the Respondent’s bundle including the core documents.
15. In relation to the applications to adduce evidence, the delay in the filing of evidence is said to be the difficulty in taking instructions and contacting the witnesses due to the Covid-19 pandemic, the various lockdowns and positive test results which have affected staff in the firm and which led to closure of the offices for four weeks with caseworkers unable to access files. One of the witnesses was also outside the UK until shortly before the filing of the evidence. I have already referred to the reasons given for the lateness of the Updated Expert Report. Mr Tufan did not object to the admission of the additional evidence. For reasons which I will come to it was not necessary for me to be taken to much of the evidence. I refer only to that which is relevant to the issues I have to determine but I confirm that I have read and had regard to all the evidence.

THE HEARING - PROCEDURAL ISSUES

16. The hearing before me was conducted via Skype for Business. The Appellant and SM were present, and a Pashtu interpreter also attended to interpret their evidence. The interpreter confirmed that he could understand and was understood by the Appellant and SM. For reasons which I will come to, it was only necessary to hear from SM briefly. There were some minor technical difficulties experienced during the giving of SM’s evidence but those were overcome by questions and answers being repeated as necessary. The representatives confirmed that they were able to follow the hearing throughout.
17. At the outset, I clarified with Mr Bradshaw what were the issues I had to determine. Initially, those were stated to be:
 - (a) The particular risk to the Appellant on return to his home area;
 - (b) The general risk to the Appellant whether in his home area or in Kabul;
 - (c) The reasonableness of internal relocation to Kabul.
18. I also pointed out to both representatives that there might be an issue of consistency between the Appellant’s case and the case of SM as recorded in the

Tribunal decision allowing his appeal. However, when Mr Tufan was asked to clarify what of the facts included in the draft statement of facts could be agreed, he indicated that he was content to take the Appellant's claim at its highest on the assumption that it was credible as he considered the material issue to be whether the Appellant could reasonably be expected to relocate to Kabul to where he would be returned. For that reason, he was content to agree the draft statement of facts.

19. Mr Bradshaw expanded the draft statement of facts to a minor extent by noting the Respondent's concession as to credibility of the Appellant's claim. However, for that reason, it was agreed that oral evidence was not required to be taken from the Appellant. His statements could stand as read. Mr Bradshaw asked that he be permitted to ask SM a few questions orally in relation to his ability to support the Appellant on return. I agreed to that course. I deal with SM's evidence below.

ISSUES AND LEGAL BACKGROUND

20. In light of the Respondent's concession, the three issues identified above are narrowed to the general risk to the Appellant in Kabul and the reasonableness of internal relocation to that place. It is accepted that the Appellant cannot return to his home area and I do not therefore need to deal with that prospect.
21. Article 15 of the Council Directive 2004/83/EC (the Qualification Directive) ("Article 15(c)") defines serious harm as including at Article 15(c) a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". The reasonableness of internal relocation arises only if there is no real risk of serious harm in the area of relocation. The burden to establish a real risk of serious harm is on the Appellant.
22. The issues which remain are the subject of the Tribunal's decision in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC) ("AS (Afghanistan)"). The relevant guidance given is as follows:

"Risk on return to Kabul from the Taliban

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

Risk of serious harm in Kabul

- (ii) There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence.

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..."

23. The test in relation to the reasonableness of internal relocation is found summarised and discussed by the Court of Appeal in its judgment relating to the appeal against the previous Tribunal decision in AS (Afghanistan) at [61] to [68] ([2019] EWCA Civ 873). I have regard to the test as there discussed and articulated. I do not need to set that out. In short, the question for me is whether, on a holistic assessment of the circumstances which the Appellant would face on return to Kabul, it is reasonable and not unduly harsh for him to be removed there.
24. As to the burden of proof which applies, I have regard to what is said at [48] and [49] in AS (Afghanistan) as follows:

"48. In respect of whether it is reasonable for him to internally relocate, an evaluative and holistic assessment is required, as explained in *Secretary of State for the Home Department v SC (Jamaica)* [2017] EWCA Civ 2112 at [36] and by the Upper Tribunal in *MB (Internal relocation – burden of proof) Albania* [2019] UKUT 00392 (IAC) where it was stated:

The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance sheet approach endorsed later in *SSHD v SC (Jamaica)* [2017] EWCA Civ 2112, at paragraphs [40] and [41]. *MM v Minister of Justice, Equality and Law Reform, Ireland (Common European Asylum System – Directive 2004/83/EC)* Case C-

277/11 does not impose a burden on the respondent or result in a formal sharing of the burden of proof, but merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports.

49. We remind ourselves that, as stated in *MB* at [25]:
An over-emphasis on the overall burden of proof can be a distraction from that holistic assessment.”

25. Finally, I record that the Appellant accepts that no issue falls to be determined in relation to his private and family life in the UK under Article 8 ECHR. Mr Bradshaw expressly conceded that this was not a ground of appeal and if the Appellant were to fail in this appeal, he would need to make further submissions to the Respondent in that regard.

26. With that framework firmly in mind, I turn to the relevant evidence.

AGREED FACTS AND ADDITIONAL FACTUAL EVIDENCE

27. In light of the Respondent’s position on the Appellant’s claim (as set out at [18] above), I record the facts and issues as agreed:

“..2. The appellant in this matter is a 20-year-old male, an Afghan national and Sunni Muslim. His date of birth is 19 July 2000. The appellant was born and raised in Abkhul village, which is in Pul E Khumri district, Baghlan province.

3. The appellant lived in Abkhul with his mother, brother and sister, until his brother left Afghanistan. The appellant’s father was associated with the Taliban and was killed in a bomb blast when the appellant was approximately 6 years of age. Following the appellant’s father’s death, the family was supported by the appellant’s maternal uncle.

4. The appellant did not attend school in Afghanistan. He speaks Pashto but cannot read or write in that language. He has learned English in the United Kingdom and was able to sit GCSE’s in May 2019.

5. After the death of the appellant’s father, the Taliban sought for the appellant’s brother to join them. The appellant’s mother feared the appellant’s brother would be successfully recruited, so, with the assistance of the maternal uncle, the appellant’s brother left Afghanistan to go to Europe. The Taliban then sought to recruit the appellant from around one year before he left the country. They attended his house on several occasions seeking to recruit him.

6. At the material time, the Taliban forcibly recruited and abducted children, generally, and did so to provide suicide bombers. The Taliban acted with persistence, generally. As such, the appellant’s account of abduction and the Taliban’s attempt to use him as a suicide bomber is plausible and externally consistent. Further, it is plausible that the Taliban acceded to the appellant’s refusal to go out as a suicide bomber and that he was escorted from the camp by a cook who was the appellant’s father’s friend. It is also plausible that the Taliban failed to guard the appellant properly, enabling him to escape.

7. The appellant’s exit from Afghanistan was facilitated by his maternal uncle. The appellant left around April or May 2015, along with 7 or 8 other boys. He travelled via Iran, Turkey, Italy and France. He did not claim asylum in Italy or

France as he was under the control of an agent. The appellant arrived in the UK on 3 August 2016 and claimed asylum the same day. He has been accommodated with a foster family in the UK since September 2016. The appellant attended his substantive interview on 9 October 2017. The respondent refused his asylum claim on 7 June 2019.

8.

9. In August 2019, the British Red Cross confirmed they had located the appellant's mother and sister, but the appellant has been unable to reach them via the contact numbers he was given. The appellant has, by chance, been able to re-establish contact with his brother, who is in the UK. Contact between them is ongoing.

10. The appellant's brother has previously claimed asylum in the UK on the basis of attempted recruitment by the Taliban and was found credible by Immigration Judge Callender Smith in a determination dated 24 January 2012. The appellant's brother's appeal was allowed on asylum and human rights grounds. Within his claim, the appellant's brother gives matching family history to that given by the appellant and also recounts their father's earlier involvement with the Taliban."

28. I need to make two observations about that statement of the facts. First, as regards [10], as I have already observed, the claims made by SM and the Appellant are not entirely "matching" as asserted. The claim made by SM is not that the Taliban "attempted" to recruit him as asserted in that paragraph but that they had done so and he had escaped (in other words, much the same account as is now given by the Appellant). SM was asked to confirm this when he gave oral evidence before me and confirmed that his case was that he was detained by the Taliban but escaped. That question and reply caused obvious consternation to Mr Bradshaw as it appeared to undermine the Respondent's acceptance of the credibility of the Appellant's account. I indicated however that it was my understanding of the Respondent's position that, notwithstanding the discrepancy between SM's and the Appellant's account as to SM's past, that had no impact on the credibility of the Appellant's account as to what had befallen him before he left Afghanistan. Both representatives were content with that position.

29. Second, in those circumstances, and in light of the Respondent's concession, the Appellant's account as set out above is accepted. In other words, it is accepted that:

- (a) The Appellant's father was previously involved with the Taliban and is now dead;
- (b) The Appellant was himself abducted by the Taliban to serve as a suicide bomber, managed to escape and fled Afghanistan thereafter, assisted by his maternal uncle;
- (c) The Appellant's mother and sister remain in Afghanistan, in his home area but, although they have been traced, the Appellant has been unable to contact them;
- (d) The Appellant's brother SM is in the UK and is entitled to remain as a refugee;

- (e) The Appellant left Afghanistan in 2015 when he would have been aged a little under 15 years;
- (f) The Appellant was uneducated in Afghanistan and although he speaks some Pashto, he cannot read or write in that language;
- (g) The Appellant has been educated in the UK since his arrival in August 2016, has learned English and is continuing his studies here.

30. As indicated above, the Respondent having proposed that the Appellant's case should be taken at its highest, there was no need for me to hear from him. His written statements are taken as read. I refer to those as necessary below. I reiterate the Respondent's concession that, the Appellant's claim having been accepted to be credible in relation to what happened to him in his home area and therefore that the Appellant would be at risk there, the only issue to be determined is whether there is a risk on return to Kabul and whether it is reasonable to expect the Appellant to internally relocate there. If I conclude either that there is a risk on return to Kabul or that it is not reasonable to expect the Appellant to internally relocate there, then he is entitled to succeed on protection grounds.

31. The Appellant deals with the prospect of return to Kabul in the Second Witness Statement as follows:

"..16. I am unable to return and relocate within Kabul as I know that there is a lot of insurgency in Kabul from the Taliban with suicide bombings and Kabul itself remains unsafe. Where would I return to? Kabul is no longer safe. There are daily attacks which I see in the media. It is not safe for those living in Kabul and I will be returned there."

32. He expands on that position in the Fourth Witness Statement as follows:

"..10. I continue to fear my life and cannot return to Afghanistan. The Home Office considers Kabul to be safe for me to return to. I strongly disagree with this.

11. I see it in the media how Kabul as a city is insecure. It is not safe. There are always spontaneous random acts of violence in the capital city. The Taliban do not have a base in the capital city but continue to target the city for their acts of violence. Kabul the city is vastly different to villages. Kabul is modern and has developed immensely. It is seen as westernised by the Taliban. The Taliban does not accept the women leaving their houses without 'proper clothing' and without their heads/faces covered. The women in Kabul are much more modern and wear English clothes. The Taliban do not like children being in education and the fact that media channels streamed nationally in the country from Kabul portray them in a bad light. Therefore, Taliban target Kabul more and more frequently. They do not state when they will commit an act of violence and randomly bomb the capital to prove their point, but reality is that they harm and kill innocent civilians.

12. I am presently studying Access to Higher Education in Biology at Bourneville College. I wish to study Biomedical Science at undergraduate level in September 2021. I am taught in English in the UK and speak Pashto. If I were to be

removed to Kabul then I would be at a disadvantage with my education as universities in Kabul are predominantly taught in Dari language, a language that I speak truly little and moreover I cannot read/write in Dari/Pashto. There are universities in Kabul that do teach in English, but reality is I cannot enrol into a university there as the qualifications I have obtained in school and further education from the UK will not be accepted there. I will not be eligible to enrol at any university.

13. I will struggle to live in Kabul alone. There is an increase in small crimes throughout the city. I read recently that someone was killed for a mobile phone. The looting in Kabul is at its highest. I have never been to Kabul. Similarly, I had never been to Birmingham until I entered the UK but comparing Kabul and Birmingham to each other the former remains unstable and dangerous compared to the latter. It is wholly unfair for me to rely on my brother [SM] to support me whilst he in the UK as given the present violence in Kabul I may not have a fixed address. Also, if I was to be removed to Afghanistan the phoneline connection is not good and I can lose contact with my brother again. Something which I do not want.

14. Kabul's crime rate is at its highest and the terrorist acts by the Taliban are much more frequent and unplanned. They target any area in Kabul they see fit. In the chaos I could be injured or harmed. The SSHD is aware of this but continue their stance of returning me to war torn Afghanistan."

33. I do not place much if any weight on what the Appellant says about the security situation in Kabul. It is clear from his statement that his evidence is based only on media reports and possibly what he has been told by his expert. The Appellant has never been to Kabul. His brother has, so far as the evidence shows, never been there either and, in any event, has been in the UK for a considerable period. The Appellant does not have contact with any family members in Afghanistan and, so far as the evidence shows, has no family members in Kabul.
34. I heard oral evidence from SM. I have dealt above with the answer he gave in relation to his own claim but that is not something which need concern me for the reasons there given.
35. In addition to that matter, SM confirmed that he had last spoken to his mother and sister when he left Afghanistan about ten years ago. He had tried to find them but could not. He had tried to trace them through the Afghan communities in the UK. He was aware of the information emanating from the British Red Cross via his brother, but they had been unable to contact the family in Afghanistan.
36. SM was asked about his own ability to provide support to the Appellant in the event that the Appellant were returned to Afghanistan. SM said that he has his own business but that has suffered during the lockdowns caused by the pandemic. His shop has been closed and he is struggling to pay his rent and other expenses. He said that he sometimes gives the Appellant small amounts of money ("£10, £20, £30") but would be unable to provide support via money transfers to Afghanistan. In addition, SM intends to get married next year to a

woman in the UK. He says that thereafter he will not be in a position to support the Appellant as he will need to support his own family. Mr Tufan sought to undermine SM's evidence in this regard by cross-examination. However, SM was consistent in his answers and I accept his evidence that he is and would in the future be unable to provide the Appellant with financial support were the Appellant to be returned to Afghanistan.

37. The Appellant says in the Fourth Witness Statement (at §12 as cited at [32] above) that he wishes to go on to study Biomedical Science at University later this year. The evidence in the initial Appellant's bundle about his educational achievements does not necessarily reflect this as being a realistic ambition. However, with the supplementary evidence to which I refer at [10] above, the Appellant has included letters from tutors who teach him now and have taught him in the past. There is a document confirming that the Appellant is currently undertaking a course entitled "Level 3 Access to Higher Education Diploma in Science" at Bourneville College which is due to come to an end in July 2021. There is a letter dated 22 October 2000 from Sarah Holmes who is the Head of the School dealing with that programme which reads as follows:

"[MIM] started at the college in September 2017. During his first year at the college I taught him for Enterprise, and despite initial language difficulties, he persevered and became a valuable member of the group. He worked with other members of his team to set up an enterprise project to raise money for a local charity. Although often quiet, he motivated other students in his group to achieve the aims of the project and maximise the profits they made.

[MIM] has worked his way up and is now studying towards an Access to Higher Education Diploma in Science, where I am delighted to be teaching him again. He is approaching this course with the same determination and perseverance as he showed when I first met him. He has improved his English language and academic skills considerably during this time, through hard work and diligence. He now demonstrates all of the necessary skills to succeed both at university and in his chosen career of biomedical science.

In the time that I have known him [MIM] has shown himself to be a dedicated and committed young man. Although things have not always been easy he works hard to overcome any difficulties and always does this with a smile, whilst ensuring that his peers (and teachers) are also doing well. He is one of the most caring and considerate students that I have the pleasure to work with. He has shown a high degree of resilience and conscientiousness and has made excellent use of the opportunities he has been given."

38. That and the other evidence regarding the Appellant's educational achievements paints a picture of a determined young man who has persevered in the face of difficult circumstances. On the other hand, it also shows that the Appellant has been supported in his endeavours by his tutors.
39. In terms of the other support from which the Appellant has benefitted since his arrival, he has been in the care of [SB], his foster mother. She has provided a letter dated 23 July 2019 (at [AB/6-7]). She provides a great deal of information

about the Appellant's integration in the UK. She speaks of the Appellant's relationship with her two children; he is like an elder brother to them. Although the Appellant did not do well academically at school (which is consistent with the other evidence about his early years in the UK), she confirms that he is now "a keen learner" and determined to do well in his education.

40. [SB] also provides evidence about the Appellant's character both now and when he arrived in the UK. That evidence is as follows:

"..During these initial weeks [following his arrival in the UK], [MIM] struggled to settle. At night [MIM] would sleep with the light on, he was very afraid of the dark and was fearful for his safety due to originally being placed with Men in Adult accommodation and the scary journey he had made to the UK.

...

[MIM] is an honest, polite, kind, generous and very well-mannered son. He is always thinking of others and is happy to go the extra mile. He has a very strong connection to his foster brothers and they both look up to him. He makes friends very easily as he is very approachable and always smiles. He has never taken anything for granted. He has remained consistent the entire time he has spent with our family, always abided by curfews, never late for appointments or meetings and happy to help around the home. Since joining our family he has thrived academically and has grown into a responsible caring respectful citizen. He is very disciplined, grown well in confidence and takes pride in himself."

41. Whilst that evidence is consistent with what is said by the college tutors about the Appellant's resilience, it also suggests that the Appellant is used to following orders from others and that, if faced with extreme adversity, does become frightened (albeit I recognise that when he arrived in the UK, he was aged only just under 15 years and is now nearly 21 years).

BACKGROUND AND EXPERT EVIDENCE

42. Mr Bradshaw confirmed my view that I do not need to have regard to the background evidence contained in the original Appellant's bundle as that pre-dates the guidance given in AS (Afghanistan).
43. I have before me two reports of Mr Tim Foxley, the Expert Report dated 9 October 2019 and the Updated Expert Report dated 8 February 2021. Again, since Mr Foxley's initial report pre-dates the AS (Afghanistan) guidance, and he has in any event updated his opinion in the second report, I do not need to have regard to the first report.
44. In terms of his expertise, Mr Foxley has been studying Afghanistan since 2001. He currently runs his own consultancy based in Sweden, focussing on Afghanistan. He is a research fellow with the European Foundation for South Asian Studies. He has a Masters degree in Peace and Conflict studies from Malmo University, specialising in Afghanistan. He has in the past completed temporary positions with the UK Foreign Office and MOD as an analyst and

researcher into Afghan issues. He was based in Kabul for several months in 2006 and 2011 and has undertaken “several field trips and operational tours” there since 2002. Mr Foxley has provided expert evidence in a number of appeals involving Afghan asylum seekers although he was not one of the experts who gave evidence at either of the AS (Afghanistan) hearings. I am satisfied though that he has appropriate expertise in relation to the issues dealt with in his reports and that I can give weight to that evidence.

45. As a starting point, Mr Foxley does not disagree with the guidance given in AS (Afghanistan). At [31] of the Updated Expert Report he summarises the change in the security situation in Kabul. He says that “[i]n the last year or so, the Taliban have reduced the number of mass-casualty terrorist attacks in Kabul”. Although he assesses that they retain the capability to conduct such attacks, he notes that they have focussed on “targeted explosions and assassinations” against “low, middle and high profile male and female Afghan citizens and government officials, including journalists, civil and human rights activists, judges and doctors, as well as military and police personnel”. In Mr Foxley’s view, that change of approach may be a waiting game to judge what action the US will take in May 2021 when US troops are due to be withdrawn. Whatever the reason, and although Mr Foxley points out that the Appellant might be at risk from indiscriminate attacks from the Taliban and other groups, he does not suggest that the Taliban would target the Appellant in Kabul ([103]; [116]). Mr Foxley does point out though that there is “a growing violent crime wave in the capital” ([44]) but that assessment is based on only one press article from October 2020 and is not supported by any statistical analysis.
46. Although not at risk of targeted attack, Mr Foxley points out at [61] that, “as a young man with limited schooling, no experience of the wider Afghanistan [sic] or operating as an independent adult, [the Appellant] is likely to struggle to seek assistance and to understand and respond to the security situation or other threatening situations as effectively as fully experienced adults might”.
47. Dealing with the reasonableness of return in general, Mr Foxley also points at [52] to a November 2020 analysis which suggests that 36% of the population of Afghanistan face “high level of acute food insecurity”. He also there notes that “[t]he Corona virus is bringing additional pressure to bear on an already weakened healthcare system”.
48. In terms of return to Kabul in particular, Mr Foxley refers to three key challenges for “internally displaced Afghans” – lack of housing, access to food, and unemployment ([58]). He opines that the Appellant, with no support network in Kabul, would be dependent on assistance from the Afghan government, charities and NGOs which support is “low and unreliable”.
49. I do not place weight on Mr Foxley’s report of verbal and physical abuse of returnees at the airport as that stems only from one article dating from 2017. The

other information given directly to Mr Foxley is that the Appellant would be unlikely to attract attention.

50. In terms of the support which might be offered to the Appellant, Mr Foxley notes at [59], that the International Organisation for Migration and charities provide advice, health checks, transportation, training and funds. There is a government run short-term reception facility but that offers only temporary support and accommodation.
51. Mr Foxley also draws attention to the problems of trafficking and forced labour to which returnees in particular are vulnerable. Whilst it appears from the report that the problem is a long-standing one as the footnotes date back in some instances to 2014, Mr Foxley refers to NGO reporting of an increase in trafficking to which returnees and internally displaced persons are particularly vulnerable ([63]). The trafficking includes exploitation of young workers “in appalling work conditions”. The Afghan government’s performance in tackling trafficking has been the comment of a USDS 2020 report downgrading the country.
52. Mr Foxley accepts that risks arising from “westernisation” are lower in Kabul. As Mr Foxley notes at [69], “Kabul is relatively cosmopolitan” and therefore “Western clothes, mannerisms and style are more commonplace than in the rest of the country”. There may though be a risk of becoming a victim of crime based on perceived wealth ([71]) (although I note that the source of that comment dates back as far as 2012).
53. In terms of accommodation, Mr Foxley points out at [85] that most of the available housing amounts to “informal constructs” which are not well constructed and do not have official position. They are described as “slums”. The Afghan government is said to be trying to address lack of housing by “formalising informal settlements”, but progress is slow.
54. In Mr Foxley’s view, the Appellant would only have access to education if he was able to afford private schooling although his support for that contention dates back to a 2015 report ([88]). There is though said to be a low quality of schooling across Afghanistan due to destruction of infrastructure, limited resources and a lack of qualified teachers.
55. The already difficult employment situation is, unsurprisingly, said to be worse at the moment due to corona virus. There is no unemployment benefit as such. If the Appellant could not find work, he would be dependent on charity. Although there is an informal job market, that is said to be “plagued with numerous problems placing workers’ health, safety and livelihoods at risks, such as hazardous working environments, very low paying jobs, harassment by city management authorities, and a lack of job security” ([94] – footnote [160]).

FINDINGS OF FACT AND DISCUSSION

56. Having regard to the guidance in AS (Afghanistan) (which decision has now been upheld by the Court of Appeal), the evidence in this case and the Respondent's concessions recorded above, I make the following findings:
- (1) As conceded by the Respondent, the Appellant is at risk in his home area and cannot return there (see [30] above).
 - (2) There is no real risk that the Appellant would be of interest to or targeted by the Taliban in Kabul (see [45] above).
 - (3) There is no real risk of serious harm in Kabul falling within Article 15(c) arising from the general security situation there. I can give little if any weight to the Appellant's own evidence in this regard as it is based on media reports or possibly what he has been told by his expert ([33] above). His expert, Mr Foxley, accepts what is said in AS (Afghanistan). If anything, the view expressed in the Updated Expert Report is that, for whatever reason, the position has slightly improved ([45] above).
 - (4) Whilst there may be some evidence of a growing violent crime wave, that evidence is limited and does not give a general picture of the situation ([45] above). The evidence is insufficient to show any general real risk that the Appellant would come to harm. The evidence of risk based on perceived wealth as a returnee from the UK is similarly limited ([52] above). In any event, any such assertion is inconsistent with the Appellant's case that he would be destitute on return due to his circumstances.
57. Based on those findings, I conclude that there is no real risk to the Appellant on return to Kabul. I therefore turn to consider whether it is reasonable to expect the Appellant to internally relocate there.
58. I accept that the Appellant will have no support from family members in Afghanistan. I accept, as was conceded by the Respondent, that, although the British Red Cross has managed to trace the Appellant's mother and sister in Afghanistan, the Appellant and SM have been unable to make contact with them using the phone number given ((§9) at [27] above). In any event, so far as the evidence shows, the Appellant's mother and sister remain in the Appellant's home area to where it is accepted that the Appellant cannot return.
59. I accept SM's evidence that he would be unable to provide the Appellant with financial support were the Appellant to be returned to Afghanistan ([36] above). The Appellant has been living with a foster family since his arrival in the UK and remains supported by the authorities in the UK. The financial support which SM has given the Appellant since they regained contact is in the form of "pocket money" for incidental expenses and is not day to day financial support. SM is himself struggling due to the impact of the pandemic on his business and will, in the near future, have his own family to support as he intends to marry next year.

60. I accept, as conceded by the Respondent, that the Appellant does not read or write in Dari or Pashtu ((§4) at [27] and (§12) at [32] above). The Appellant's evidence in this regard was not challenged by the Respondent. The Appellant does however speak Pashtu and also speaks English. That he has been able to learn English to a standard which has permitted him to advance to the level he has in his education is not only to his credit but also shows his ability to adapt. If he were returned to Afghanistan, therefore, I would expect that he would be able to pick up the languages spoken there fairly readily. SM gave his evidence in Pashtu and it was expected that the Appellant would give evidence also in that language had he given evidence. That suggests that he is fluent in his understanding and communication of that language.
61. I accept that it is highly unlikely that the Appellant would be able to proceed with his university ambitions, at least in the short-term following return. Although the Appellant accepts that there are universities in Afghanistan which teach in English, the evidence suggests that he would be unlikely to be able to access either those universities or indeed those which teach in Pashtu or Dari. Mr Foxley says that the only education to which the Appellant might be able to gain access would be private. The evidence which is unchallenged is that the universities in Afghanistan are unlikely to accept the qualifications gained in the UK. In any event, the Appellant would have to find some means to support himself whilst studying. That is not a problem which he faces in the UK.
62. I do not accept however that the inability to progress to higher education would render return of the Appellant to Kabul unreasonable. The unchallenged evidence is that the Appellant never went to school in Afghanistan. Whilst the loss of the opportunities which he has been given in the UK would no doubt be disappointing for him, he could have had no expectation of any education let alone higher education had he remained in Afghanistan.
63. This brings me on, however, to what the Appellant would be expected to do on return to Kabul. I accept that he would have access to some temporary support in the form of short-term financial and accommodation assistance from NGOs and other organisations ([243] to [246] of AS (Afghanistan); see also [48] and [50] above). Thereafter, however, the Appellant would be left to fend for himself.
64. It is at that point that the obstacles facing the Appellant's return become more obvious. He left Afghanistan as a child. He has never lived in Kabul. There is no evidence that he has ever worked there or indeed in his home village. There is little to no evidence of the Appellant's economic and cultural background. All that is said is that his father was a member of the Taliban. The family was supported by an uncle. There is no evidence that the Appellant undertook any form of work prior to leaving Afghanistan.
65. Moreover, the Appellant comes from a village in Afghanistan. He does not come from a city. He has lived in a city in the UK. However, as he says in the Fourth

Witness Statement (at (§13) at [32] above), life in Birmingham is a far cry from life in Kabul.

66. As Mr Foxley points out, as a young man who left Afghanistan as a child, the Appellant will not know how society operates (see extract from report cited at [46] above). Whilst I do not accept (as I have already found) that the general security situation or violence in Kabul is such as to put the Appellant at real risk on return there, I do accept that it is relevant to the question of reasonableness of return for a young man with no understanding of how to avoid threatening situations.
67. In terms of employment, without connections “stable and secure employment would be virtually impossible to obtain” ([234] of AS (Afghanistan)). The Appellant does not have connections, and nor does it appear from the evidence that he has a taskera. As indicated by the guidance in AS (Afghanistan) at [234] to [236] and [239] therefore, the Appellant would only be able to find employment in the informal job market. He would then be at the mercy of unscrupulous employers who look to exploit returnees, particularly young workers ([51] and [55] above).
68. I accept that the evidence shows that the Appellant is a personable young man who is determined and resolute in the pursuing of his ambitions in this country which might be thought to assist him in obtaining the sort of manual, unskilled labour which is available in Kabul informally. However, in this country he has had support. He is used to being guided by others, be it his foster mother or his tutors.
69. True it is that the Appellant faced a difficult and arduous journey to reach the UK. Again, that shows his resilience. However, even then, he was with others of his age and assisted (if that is the right word) by an agent. He was not on his own, left to his own devices, in a strange city of which he has no previous knowledge and with no understanding of what to do to get by. As I note above, Mr Foxley’s evidence is that persons in this position are particularly vulnerable to exploitation ([51] and [55] above). Further, the Appellant has no work experience whether in the UK or Afghanistan to “present himself in a way that would attract employers” ([236] of AS (Afghanistan))
70. I accept that there is available accommodation in Afghanistan, albeit of very poor quality ([231] to [233] of AS (Afghanistan) and [53] above). However, I return to the points made about employment above. The Appellant has no-one to guide him or to turn to in Kabul. He has never lived there. He left Afghanistan at a young age. He would find it extremely difficult to find accommodation by himself. Furthermore, he would need some means to fund such accommodation in the longer term.

71. Fortunately, the Appellant has not been scarred by his previous experiences to the extent of developing mental health problems. According to the evidence, he has neither mental nor physical health problems which would increase his difficulties on return. However, the statement from [SB] (the Appellant's foster mother) suggests that the Appellant was traumatised when he first arrived in the UK ([40] above). He is now an adult whereas he was then a child. I do not place much weight on the evidence of the Appellant's trauma on arrival with his foster mother but it does indicate that the Appellant is perhaps not as resilient as the evidence might otherwise suggest.
72. I have to carry out a holistic assessment of all the circumstances. There is no one factor which carries the day. However, as is indicated at (v) of the headnote in AS (Afghanistan), "familiarity with the cultural and societal norms" is a relevant factor when assessing reasonableness of relocation to Kabul for those with no support network or connections in that place. That lack of familiarity may arise, as here, because of the age the Appellant was when he left Afghanistan. Although the evidence is that the Appellant is a fairly resilient young man, he is able to be so with the support which he has in the UK. Faced with the unfamiliar territory of a city which he does not know, and with the extreme difficulties which he would face in obtaining employment and accommodation there with no support, I am (just) persuaded that it is not reasonable to expect the Appellant to internally relocate to Kabul. It would be unduly harsh to return him to that place. For that reason, the Appellant succeeds on Refugee Convention and Article 3 ECHR grounds.

DECISION

I allow the appeal on protection (Refugee Convention) and human rights (Article 3 ECHR) grounds.

Signed *L K Smith*
Upper Tribunal Judge Smith

Dated: 23 March 2021