



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07359/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19 October 2021

Decision & Reasons Promulgated
On 25 November 2021

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

V K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Amin, Counsel, instructed by Sohaib Fatimi Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan. His date of birth is 10 September 1988. He left Afghanistan in 2007 and arrived in the United Kingdom in 2008.
2. In a decision that was promulgated on 24 December 2019 following an error of law hearing on 20 December 2019, Upper Tribunal Judge Coker set aside the decision of the First-tier Tribunal (Judge Seelhoff) to dismiss the Appellant's appeal on asylum grounds. The salient part of Judge Coker's decision reads as follows:-

“3. Although the Appellant in his application for permission set out five grounds of appeal, the judge granting permission indicated that there was little or no merit in any of the grounds save that it was arguable the First-tier Tribunal had failed to follow the previous decision despite finding that the evidence before him did not justify a departing from the first decision’s factual findings and this error could have materially adversely infected the finding that the Appellant could, as a healthy young man, relocate to Kabul. The First-tier Tribunal Judge in his decision promulgated on 26 September 2019 considered the evidence before him in the context of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 0018 (IAC) which had of course been the subject of an appeal to the Court of Appeal - AS (Afghanistan) [2019] EWCA Civ 873. The Appellant was at risk of being recruited by the Taliban in his home province of Wardak although he was not at risk of being recruited by the Taliban in Kabul. Those findings stand on the evidence at that time”.

3. The previous decision was that of the First-tier Tribunal in 2012. In 2012 the Appellant’s evidence before the First-tier Tribunal was that his father was a member of the Taliban. He was arrested by the government in 2007 and taken to Kabul. The Appellant last saw him in 2007. The Appellant has not worked for the Taliban however he was taken by the Taliban and kept for a period of a month when they trained him. His mother passed away when he was younger. There was no one to look after him in Afghanistan. The Appellant fears the Taliban and the authorities as a result of his father’s activities.

4. The Tribunal in 2012 did not find the Appellant to be credible. It found problems and inconsistencies in the Appellant’s evidence. The panel did not accept the Appellant’s account that his father had been arrested. They were not satisfied that his father had worked for the Taliban or that he had been arrested two to three months before the Appellant left home. The panel concluded that the Appellant has nothing to fear from the Taliban or the authorities. The panel did not accept his account of having been taken by the Taliban following his father’s arrest. In relation to the documents that were before the First-tier Tribunal they did not find them to be reliable. They rejected the Appellant’s account in its entirety and concluded that the authorities had no adverse interest in him and “no basis for suspecting that the Appellant has had any connection with the Taliban except insofar as he is the son of his father” (see paragraph 54). The panel found that the Appellant has nothing to fear from the Taliban or the authorities.

5. The panel went on to make findings in the alternative on the basis that the Appellant’s father was a member of the Taliban and he was arrested and found that he would not be at risk. At paragraph 67 the Tribunal considered whether he would be at risk of attention from the Taliban and found as follows:-

67. The next question is whether the Appellant would be at risk of attention from the Taliban, given that he is a man still in his early 20s and as such recruitable, particularly if it were the case that his father had worked for

the Taliban and been arrested. We accept the observations of Dr Giustozzi regarding the presence of the Taliban in the Wardak region. We find that there would be a real risk that the Taliban would seek to recruit the Appellant. The panel found that the Appellant could safely relocate to Kabul.

6. The Appellant appealed against the decision of the Respondent following further submissions. His appeal came before Judge Seelhoff. The judge recorded the Appellant's evidence at paragraph 18 as follows:-

"18. ... the Appellant ... adopted the evidence of his statement and was asked a series of questions about the situation in Afghanistan and asserted that he now only has a sister in Afghanistan and that she is on her own as her husband was killed in 2011. The Appellant gave evidence that his sister was still living in a village in Wardak province (sic) and that she was living in poverty and would not be able to send him any support. The Appellant was then cross-examined by the Home Office about the credibility of his claim and why the documents had not been obtainable previously. In terms of the Appellant's Afghan ID document the explanation was that it was locked in their father's house until the father was released from prison and it was only after his release that his sister had been able to obtain the documents and send it to him. The Appellant's evidence was that people in Kabul would recognise him if he went back and the government would find him because the family would have a file particularly since his father had gone back to the Taliban".

7. Upper Tribunal Judge Blum made directions in this case which were issued on 22 September 2020 following a case management hearing on 24 June 2020. His decision reads as follows:-

"2. The issues for the Upper Tribunal in remaking the appeal are as follows:

- (a) whether the Appellant remains at risk of recruitment by the Taliban in Wardak (given that this finding was made in 2012, when the Appellant was in early 20s);
- (b) the reasonableness of internal relocation to Kabul.

3. In support of his contention that he would be at risk of recruitment by the Taliban in Wardak, and that internal relocation to Kabul is not reasonably available, it is anticipated that the Appellant will give further oral evidence through a Pashtu interpreter".

8. At the hearing before me the Appellant relied on his previous witness statements and an appeal bundle which was sent to the Tribunal on 27 November 2020. An amount of background evidence was also relied.

9. It was agreed that the Appellant is a vulnerable witness and I asked Ms Amin whether she was requesting any reasonable adjustments. She requested that the Appellant be given regular breaks which I acceded to.

The Appellant's evidence

10. The Appellant has made a number of witness statements. His latest witness statement is dated 25 November 2020. In addition he gave oral evidence. His evidence can be summarised.
11. The Appellant is at risk in his home area because his father has returned to the frontline after he was released from prison. He is at risk in Kabul because the Taliban now have a lot more power. They will punish him because he escaped in 2008 and did not comply with their demand to be part of their organisation. He will be detained and tortured by his father who will consider the Appellant to have betrayed him. The Taliban will find the Appellant in Kabul. The authorities will torture him to extract information about his father's whereabouts.
12. The Appellant has mental health problems. He cannot sleep during the night. He has nightmares. He is taking medication for depression. He has thought about taking his own life on many occasions. He feels hopeless and lonely. He has an extremely poor memory. He cannot remember minor things. He is struggling to take care of his health and hygiene. He struggles to make meals for himself. Sometimes he sleeps in the park. He cannot function properly because of depression. He has attended the Afghan Association of Paiwand where he has received counselling. He also attends Barnet Refugee Council where he has received counselling for help with his mental health problems. This has helped him to manage his condition.
13. The Appellant would not be able to live or get employment in Kabul. Many people know him and his father. The authorities have a reason to detain and torture him. He would not be able to cope in Kabul because of his mental health problems. He would not be able to integrate. He has only one sister with whom he has not had contact since January 2020. He could not return to his home area in any event because he fears the Taliban. He would commit suicide should he return to Kabul. He has not tried to make contact with his sister or village elders. His sister still remains in Wardak province. He has other family members there but they are distant cousins, not blood relatives. He will be killed should he return to Wardak province because he was not faithful to the Taliban. He has never worked in Afghanistan. He receives benefits here and financial help from a friend.
14. The Appellant has requested his GP send his medical records to him which will be forwarded by his solicitors to the Tribunal in due course. He cannot explain why his medical records are not before the Tribunal. In relation to the gaps in seeing his GP disclosed in the expert's report the Appellant's evidence was that there was no need to see a doctor during that time but his health has deteriorated since. He was having mental health problems between 2012 and 2020 but he was managing the situation. He was affected by homelessness.

The Medical Evidence

15. A report has been prepared by Dr Latif a registered medical practitioner and approved clinician recognised by the Secretary of State under section 12 (2) of the Mental Health Act 1983. He saw the Appellant on 7 December 2020. He had a number of documents before him including the previous decisions of the First-tier Tribunal and the Respondent's decision letter. He also had the Appellant's medical records.
16. The Appellant told the expert that he has been depressed for many years. He is prescribed sleeping tablets and anti-depressants. He has also been referred to psychological services and attended the Afghan Association of Pawiand and Barnet Refugee Council where he has received counselling. The expert cites extracts from the Appellant's medical records. On 10 January 2012 the Appellant was prescribed with Zopiclone. On 6 February 2012 he attended the surgery complaining of a headache. He expressed that he was stressed about his future. The doctor provided him with a contact number for Mind Counselling. There are no other entries to which the expert refers until 8 July 2020 when the Appellant was signposted to IAPT which is a service providing counselling and psychology services and he was given a Crisis Line contact number. There is another entry on 3 August 2020 showing that the Appellant was seen in a psychology clinic. It is recorded in the notes that the Appellant stated that he was stressed and not in contact with his sister and father in Afghanistan. He is not able to sleep at night. In August 2020 he was prescribed sertraline (50 mg a day).
17. The Appellant has a wide range of physical health problems. He is preoccupied with his immigration case and fearful of being removed. He has fleeting suicidal thoughts. His symptoms fulfil the criteria of Major Depression characterised by a pervasive and persistent low mood. It is a disabling condition that adversely effects a person's family, work or school life, sleeping and eating habits, and general health.
18. It is Dr Latif's opinion that the Appellant fulfils the criteria for Post-Traumatic Stress Disorder (PTSD) due to the trauma he experienced on the way to the United Kingdom and in Afghanistan. He has not had any proper treatment. His dose of anti-depressants should be increased. He is advised to discuss his symptoms with his GP and seek a referral to local mental health services for further assessment and treatment. He needs medication and psychological treatment in the form of Trauma Focused Cognitive Behavioural Therapy. Without treatment many people develop chronic problems over many years. Treatment will not be successful as long as the patient is afraid of returning to the source of threat. His present risk of self-harm is low but if symptoms are untreated the risk of self-harm increases.
19. The expert states that during his trips to Afghanistan he knows the poor state of mental health services in Afghanistan through regular visits and contacts. Mental health services are very limited and inadequate to meet the needs of the populations

20. There is a risk of deterioration if the Appellant is not started on the appropriate treatment or fails to comply with treatment. If he fully complies with recommended treatment his prognosis is satisfactory.

A summary of background evidence

21. The parties relied on the following background evidence:-
1. UNCHR Position on Returns to Afghanistan – August 2021
 2. EASO Afghanistan Security situation update Country of Origin Information Report September 2021
 3. BBC News report – Afghanistan: How many refugees are there and where will they go? 31 August 2021
 4. Article by Anchal Vohra: The Taliban’s Sharia Is the Most Brutal of All 13 October 2021.
 5. Country Policy and Information Note Afghanistan: Medical treatment and healthcare Version 2.0 October 2021 (CPIN 2.0 Oct 2021).
 6. Country Policy and Information note Afghanistan: Fear of the Taliban Version 1.0 October 2021 (CPIN 1.0 Oct 2021).
 7. Country Policy and Information Note Afghanistan: Security and humanitarian situation Version 8.0 October 2021 (CPIN 8.0 Oct 2021).
 8. Country Policy and Information Note Afghanistan: Afghans perceived as “westernised” Version 1.0 January 2018 (CPIN 1.0 Jan 2018) (this predates the withdrawal but may still have some material relevance).
22. I have attempted to summarise the material in order to gain an understanding of the current position in Afghanistan (and the Respondent’s position) and the relevance of current country guidance cases.
23. The background evidence establishes that there has been a rapid deterioration in the security and human rights situation in large parts of the country. UNCHR is concerned about the risk of human rights violations against civilians, including against women and girls and Afghans who are perceived by the Taleban to have a current or past association with the Afghan government or international militant forces in Afghanistan or with international organisations in the country.¹

¹ UNCHR position on returns to Afghanistan August 2021

The humanitarian situation

24. The Respondent's position is that AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 applies when considering assistance available to returnees. A departure from paras 224 - 227 of AS [2018] is not justified.
25. The Respondent's position is that there is no reason to depart from the findings of the panel in AS [2020] that a returnee generally will be able to access sufficient assistance and funds so as to be in a position to accommodate and feed himself for the first 4-6 weeks in Kabul without earning an income.²
26. Half the population is in need of some sort of humanitarian aid and gaps and delays in assistance following the Taliban takeover on 15 August 2021 is likely to lead to further deterioration in the humanitarian situation. One third of the population are in crisis. There are emergency levels of food insecurity and food prices are raising. Essential health services are already under pressure and stretched due to limited resources and medical supplies.³
27. A drought was declared by the country in on 22 June 2021. The BBC news reported on 5 August that 80% of the country is facing a severe or serious drought. Climate disaster, Covid-19 and conflict are converging in a living nightmare for the people of Afghanistan" according to a member of the International Federation of the Red Crescent Societies (IFRC).⁴ On 2 September 2021 it was reported that food supplies in many cities are running short. Pressures are particularly acute in Kabul where job losses and spiralling inflation have made it even more challenging for people to purchase food and other staples. Banks are running out of cash. City carparks are filled with makeshift encampments. The price of vegetables have climbed 50 %and fuel 75%.
28. The Respondent's position is set out at 2.3.5 of CPIN 8.0 Oct 2021

"Following the Taliban takeover of Kabul and the subsequent deterioration in the humanitarian and economic situation, as well as the lack of clarity on how the country will be governed in regard to maintaining and delivering public services, decision makers must consider on the facts of the case whether a returnee, by reason of their individual circumstances or vulnerability, faces a real risk of serious harm contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules / Article 3 ECHR as a result of the humanitarian situation"
29. On 13 July 2021 UNCHR warned of a humanitarian crisis as it noted that an estimated 270,000 Afghans have been newly displaced inside the country since January 2021 primarily due to insecurity and violence⁵. WHO estimated that nearly 3000,000 Afghans were newly displaces between 9 June and 9 August 2021 by the

² CPIN 8.0 Oct 2021 para 2.4.3

³ Ibid para 2.4.4

⁴ Ibid para 8.3.2

⁵ Ibid para 7.2.2

current crisis and noted the continuing deterioration in the humanitarian situation.⁶ Thousands are scrambling to flee Afghanistan after the Taliban seized back control of the country.⁷

30. Humanitarian needs continue to rise owing to ongoing violence natural disaster and heightened level of food insecurity compounded by the pandemic. The 18.4 million people needing humanitarian assistance in 2021 was 6 times higher compared to four year ago.⁸
31. Under the heading humanitarian crisis at para 8.1.3 – 8.1.5 of CPIN 8.0 Oct 2021 the following is stated:-

“On 26 August 2021, the International Organization for Migration (IOM) stated ‘Following the takeover of power by the Taliban, humanitarian access is opening in some areas allowing limited delivery of assistance to resume but remains extremely challenging. Gaps and delays in assistance may lead to further deterioration of the dire humanitarian situation. ‘In Kabul, the situation at the Hamid Karzai International Airport (HKIA) remains tense and volatile as thousands of Afghans attempt to leave the country; evacuations by some foreign governments are ongoing. Uncertain access conditions and an unpredictable security environment, violence against humanitarians, and limitations on the availability of cash are hampering humanitarian operations.’

Al Jazeera stated on 27 August 2021 that ‘The Taliban has assured the UN that it can pursue humanitarian work...’

On 2 September 2021, the International Crisis Group (ICG) reported ‘Kabul’s airport – crucial for bringing in humanitarian supplies and for enabling post airlift departures for Afghans vulnerable to Taliban reprisals – was seriously damaged during the chaotic evacuation and has not yet begun operating again in the wake of the U.S. withdrawal.’

Health care

32. In respect of Covid- 19 WHO has warned about widespread complacency and a failure to follow public health advice creating grave risk in the community.⁹ With the expected closures of health facilities efforts to contain Covid-19 will be hindered. There is low vaccination coverage and large scale population displacement.¹⁰
33. The BBC has reported that the number of medial professionals was likely to be lower than pre Taliban takeover because many had stopped working or fled the country.¹¹

⁶ Ibid para 7.2.4

⁷ Afghanistan: How many refugees are there and where will they go? BBC News 13 August

⁸ CPIN 8.0 Oct 2021 para 8.1.1 and 2

⁹ Ibid 8.2.1

¹⁰ CPIN 2.0 Oct 2021 para 3.2.4

¹¹ Ibid para 3.2.6

34. Aid agencies and the Afghan healthcare system was at risk of collapse due to lack of support (reported by Reuters on 30 August 2021). Aid agencies are unable to function. Because of the closure of banks almost all humanitarian agencies have been unable to access funds.¹² The UN has released \$45 million in an emergency fund.¹³
35. Post take over aid agencies reported that the Afghan health care system was at risk of collapses after foreign donors stopped providing aid. The overall system is understaffed, under-equipped and underfunded. The healthcare system was already fragile and heavily reliant on foreign aid had been under additional strain because of the massive humanitarian needs on the ground.¹⁴
36. On 6 September 2021 WHO said that a pause in funding for the Sehatmandi project which was the backbone of the health system in Afghanistan has left million of vulnerable people at risk of losing access to essential health care.¹⁵
37. There are reports of low quality medicine illegally entering the country. Humanitarian aid/medical supplies have been flown in and shipments arrived in Kabul. There is an extreme shortage of medications especially life saving drugs because they were not coming into the country from Pakistan and India as borders were closed.¹⁶
38. Age agencies have continues to provide care. Healthcare is not accessible to many because of widespread poverty. A growing number of medical facilities have begun to collect user fees.¹⁷ International funding that subsidizes that public health sector was frozen following the Taliban takeover.¹⁸
39. Mental health services in 2020 were reported to be especially lacking with critical gaps in the availability and quality of psychosocial support and mental health services in Kabul and other cities. In rural area they are virtually none-existent. Stigma is a barrier to seeking treatment. Access is out of reach for may particularly those in rural areas.¹⁹

The Security situation

40. In AK (Article 15 (c) Afghanistan CG [2012] the UT found that the level of indiscriminate violence in Afghanistan taken as a whole is not at such a high level of indiscriminate violence as to meant that within the meaning of Article 15 (c) of the Qualification Directive (QD) a civilian solely by being present in the country faces a real risk which threatens his life or person. In AS [2020] the UT found that the level of indiscriminate violence in Kabul is not sufficient to meet the threshold in Article 15 (c) QD and AK remains unaffected.

¹²CPIN 8.0 Oct 2021 para 8.6.4

¹³ CPIN 2.0 Oct 2021 para 3.2.10

¹⁴ Ibid para 3.2.1

¹⁵ Ibid para 3.2.3

¹⁶ Ibid para 3.3.1 – 3.3.4

¹⁷ Ibid para 4.2.1

¹⁸ Ibid para 4.2.5

¹⁹ Ibid para 4.4.1-4.4.2

41. The Respondent's position on the security situation post the withdrawal of US troops is that despite there being a 47% increase of civilian casualties between 1 January and 30 June 2021 since the announcement of the withdrawal of US troops the Taliban advanced across the country taking control of districts including on 15 August Kabul " with little or no fighting or resistance from the Afghan Security Forces (ANSF).²⁰
42. In respect of the nature and perpetrator of the attacks UNAMA attributed 64% of civilian casualties to Anti-Government Elements (AGEs) in the first six months of 2021 whereas RS indicated both in the first and second quarter of 2021 that 93 % of civilian casualties were AGEs. The AIHRC noted that 63% of civilian casualties were caused by AGEs (56% to the Taliban, 7 % to ISI). The number of casualties caused by the Taliban had doubled in the first six months of 2021 compared to the same period in 2020.²¹
43. The AA reported that in some areas the Taliban have almost no need to test the ANSF and where districts have fallen it was typically after a quick ANSF withdrawal often after an agreement mediated by tribal elders.²² The Taliban offensive was often met with little or no resistance.²³
44. The general security situation remained volatile and unstable in Afghanistan as of late August 2021. However there were few reports of armed clashes since the Taliban's final overtaking of Kabul.²⁴
45. At para 2.4.17 and 18 of CPIN 8.0 Oct 2021 the following is stated: -

"It is therefore open to question as to whether there continues to be a 'situation of international or internal armed conflict' in Afghanistan. Should indiscriminate violence be taking place, it is only in some areas of Afghanistan and is to a far lesser extent following the international troop withdrawal and Taliban takeover (see General security situation post-Taliban takeover). Comparable to the Upper Tribunal's findings in AK, it is not at such a high level that it represents, in general, a real risk of harm contrary to paragraphs 339C and 339CA(iv) of the Immigration Rules"

Even where there is not in general a real risk of serious harm by reason of indiscriminate violence in a situation of international or internal armed conflict, decision makers must consider whether there are particular factors relevant to the person's circumstances which might nevertheless place them at risk. The more a person is able to show that they are specifically affected by factors particular to their personal circumstances (the 'sliding scale'), the lower the level of indiscriminate violence required for them to be at a real risk of serious harm. Therefore, a person may still face a real risk of serious harm even where generally there is not such a risk if they are able to show that there are specific

²⁰ CPIN 8.0 Oct 2021 para.2.4.15 and 16

²¹ Ibid para 6.2.2

²² Ibid para 6.3.4

²³ Ibid para 6.3.5

²⁴ EASO Afghanistan Security situation update Country of Origin Information Report September 2021

reasons over and above simply being a civilian for being affected by the indiscriminate violence”

46. The Respondent’s view is that whether the Taliban is able and willing to offer protection where 15 (c) applies is an open question.²⁵ Internal relocation is unlikely to be reasonable while the Taliban remain in control and it would be unduly harsh to expect a person to return there.²⁶ There is justification for departing from AS [2020].

The Taliban

47. The Respondent states that at the time that CPIN 1.0 Oct 2021 was written it was difficult to say whether the Taliban claims of a more tolerant and inclusive system than their rule in 1996-2001 were genuine. While there is indication of a more pragmatic approach they have a core set of values and beliefs that it is highly unlikely that would compromise on. There are reports of human rights abuses.²⁷ On 17 August 2021 a spokesperson for the UN High Commissioner for Human Rights reported chilling reports of human rights abuses and restrictions on individuals.²⁸ The background material suggests that the Taliban are showing restraint under the eyes of the international community but it is a different story outside Kabul.²⁹ Despite what the Taleban have said in policy announcements, there is limited anecdotal reporting creating a mixed picture. There appear to be instances of reprisals and intimidation especially at those associated with the previous government and its foreign supporters.³⁰
48. There is widespread mistrust of the Taliban’s assurances. There have been vague pronouncements made by the Taleban as the declaration of a general amnesty. In the past civilians associated with or perceived to have supported the former government, civil society and the international community in Afghanistan including the international military forces and international humanitarian and development actors have been subject to abuse. (There are other groups subject to such abuse - a none exhaustive list is given.)³¹
49. The Respondent’s position is that there are very strong grounds to depart from the UT findings in AS [2020] that a person of low level interest for the Taliban is not at real risk from the Taliban in Kabul. The current guidance according the Respondent is set out at CPIN 1.0 Oct 2021 para 2.4.10 and 11:-

“The situation is fluid and uncertain, with the Taliban still consolidating its position. It remains unclear precisely how the Taliban will rule the country and if it will change its attitude toward and treatment of different groups as it transitions from insurgent group to de facto government.

²⁵ CPIN 8.0 Oct 2021 para 2.5.1

²⁶ Ibid para 2.6.1

²⁷ CPIN 1.0 Oct 2021 para 2.4.3, 4 and 6

²⁸ Ibid para 4.1.2

²⁹ Ibid para 4.1.4

³⁰ Ibid para 4.1.5

³¹ Ibid para 2.47 and 8

However, the current evidence suggests that persons likely to be at risk of persecution, because they may be considered a threat or do not conform to the Taliban's strict interpretation of Sharia law, include but are not limited to:

- Former government employees and members of the Afghan National Armed Forces (ANSF), including the police
- Former employees/those linked to international forces and organisations, including interpreters
- Women in the public sphere
- ethnic/religious minorities, in particular Hazara
- Persons who have credibly resisted, or are perceived to resist, Taliban requests or control, or who do not conform to, or are perceived to not conform to, strict cultural and religious expectations/mores – in particular women
- journalists critical of the Taliban • LGBTIQ+ persons”

50. The Respondent's position is that there is no protection from risk arising from the Taliban and internal relocation is generally unduly harsh. Where there is a risk from the Taliban, there are very strong grounds to depart from paras 253(iii) and (v) of AS [2020] and that internal relocation would not be reasonable.³²
51. The CPIN version 1 Oct 2021 sets out the Taliban's ideology, aims and objectives at para 3.2. The Taliban has made attempts to present themselves as a more moderate force and have said that they will not exact revenge (see para 5.1.2 and the statement made by a Taliban spokesperson on 17 August 2021). However there is a degree of scepticism expressed by international commentators. They have said that there will not be a democracy and sharia law will apply throughout the country and Shai Muslims are de facto excluded from government. One commentator has stated that no matter what the leaders say the fighters on the ground will feel no compulsion whatsoever to observe the softer rhetoric about protecting women's' rights and human rights. The power structure will bear similarities to the Taliban's time in power from 1996-2001. The Taliban were reported to be hunting individuals linked to the previous administration or security forces.³³
52. There will be a judicial system based on strict interpretation of Sharia. Punishments include execution mutilation and stoning to death.³⁴ They have been reported as using extreme practices without a legal process.³⁵ Afghan interpreters have been particularly susceptible to attacks.³⁶ An interpreter working for the US army was accused of being a spy and was beheaded according to CNN on 23 July 2021.³⁷

³² Ibid para 2.5 and 2.6

³³ Ibid para 5.2.5, 5.3.7 and 5.4.8

³⁴ Ibid para 4.6.4

³⁵ The Taliban's Sharia is the most Brutal of All Anchal Vohra October 13 2021

³⁶ CPIN 1.0 Oct 2021 para 5.3.2.

³⁷ Ibid para 5.3.4

53. The parties did not draw my attention to the Respondents Country Policy and Information Note Afghanistan: Afghans perceived as 'Westernised' Version 2.0 June 2021 (CPIN 2.0 June 2021). The report predates the take over, but what it has to say about the Taliban's treatment of returnees is arguably more relevant than it was before. A 2019 study found that having been in Europe was enough to be persecuted. If a person risks their life several times by fleeing and asking the infidel occupiers for protection they are accused of being unbelievers accused of espionage and treachery.³⁸

54. The Respondent wrote at paragraph 6.3.4:

"6.3.4 The June 2020 ACCORD report also cited Friederike Stahlmann who, in May 2020, said (informal translation by DeepL Translator):

'... in the large cities of Kabul, Herat, Mazar-e Sharif and Jalalabad, there was a threat of betrayal to the Taliban because of the flight to Europe. There is no need for any conspicuous behaviour, but the danger is actually also based on flight. The Taliban would demand support and expect you to pay taxes for them, to be loyal and, if in doubt, to fight for them. [Stahlmann] has noticed a big difference between returnees from Europe and those from Iran. If you have not been opposed to the Taliban in the past, going to Iran to provide for your family is not perceived as an escape from the Taliban. But if someone risks his life several times to come to the Western countries of the "infidel occupiers", then it is seen as a form of defection. Another accusation that can follow and also appears in threatening letters to deportees or their families is espionage. 'The problem of returnees, however, is that they are accused of not having followed the rules in the infidel West. This means that they have to live their faith and religiously legitimised rules of everyday life in a particularly convincing way in order to refute the accusation.'

Submissions

55. Mr Clarke drew my attention to the narrow scope of the appeal and asked me to consider the preserved findings in the round with the new evidence which is that the Appellant claims not to be in contact with his family and that he now has mental health problems.

56. The finding of the panel in 2012 in relation to risk in the home area of recruitment must be considered in the context of the Appellant's age now at the hearing before the Upper Tribunal. He is no longer in his 20s. He is aged 33.

57. Mr Clarke relied on the findings of the Tribunal in 2012, specifically at paragraphs 40 to 52. The Appellant is not a witness of truth. The Respondent relies on Devaseelan [2002] UKIAT 702, specifically paragraphs 40(iv) and paragraph 41 where pertinent

³⁸ CPIN 2.0 June 2021

guidance is given. The Appellant perpetuates a claim that has already been rejected and the new evidence should be treated with circumspection.

58. There is no evidence to support the Appellant receiving counselling. The expert report of 19 December 2020 does not disclose that the expert had notes relating to the counselling. The Tribunal should draw an adverse inference from the failure to produce the Appellant's medical records. It is clear from the correspondence between the Appellant and his solicitors (AB/23) that they were aware of the necessity to provide the Tribunal with the Appellant's GP records. It is baffling that the Appellant has not made any real attempt to contact his sister since 2020. She has made attempts to help him obtain documents and it is unexplained why he has not taken an interest in contacting her.
59. The medical evidence is problematic for a number of reasons. The expert makes reference to the medical records however it is not clear that the medical records that he has are complete. The expert takes the Appellant's history from the solicitor's letter. The expert receives a one sided dialogue in terms of the Appellant's circumstances. The expert refers to two entries in the GP's notes in 2012. There is no mention of PTSD. There is no mention of causation until the entry in the GP records on 8 July 2020. The Appellant's own evidence is that he was not in touch with his GP between 2012 and 2020.
60. The Appellant's evidence is that he is on medication but there is no support for this. There is no mention in the GP's records of PTSD. Whilst the expert finds that the Appellant has PTSD he does not engage with the evidence that the Appellant has been here for twelve years. The Appellant's own evidence is that his problems arose through homelessness however this is not mentioned by the expert. The expert makes no mention of the consideration of adverse credibility which may have put into context the timing. Mr Clarke invited me to attach limited weight to the evidence of the expert
61. The Appellant would be returning to Afghanistan without a profile. There is no longer an insurgency. He does not fall into a risk category either under AS or relying on the current CPIN.
62. Ms Amin made submissions. She conceded that the Appellant was no longer at risk in his home area of recruitment by the Taliban. However, she said that he falls into a risk category as per the most recent CPIN. She then stated that the Appellant relied on Article 3 (health grounds) only. (This was the first time this matter had been raised in these proceedings).
63. She said that the Appellant is a credible vulnerable witness with mental health problems. He has never worked in Afghanistan and he has not worked in the UK. She invited me to find that he suffers from PTSD. The e-mail correspondence between the Appellant and his solicitors established that strenuous efforts were made by the solicitors to obtain the Appellant's GP records. The Appellant has a very poor memory and problems arose following the pandemic. Should the

Appellant return to Afghanistan he will be asked where he has been. This will put him in a vulnerable position as an asylum seeker with mental health problems. The Appellant has no family in Afghanistan. There has been a severe displacement of the population. People are fleeing in order to escape.

64. Ms Amin relied on Dr Latif's report. There is no challenge that he is a qualified expert. In addition he himself is from Afghanistan which adds credibility to his evidence. It is not conclusive that there is a gap in the medical records from 2012 to 2020. The expert considered the delay in diagnosis. He said that a patient may not know he has got PTSD. She submitted that mental health is complex, particularly depression. She relied heavily on the paragraph at page 14 of the report relating to the condition PTSD, that it has been diagnosed recently does not mean that the Appellant was not suffering from the condition before. The psychiatrist was concerned enough to suggest a management plan making two recommendations and psychological treatment.
65. I gave Mr Clarke the opportunity to address me in respect of the new matter raised for the first time in submissions by Ms Amin. He said that the medical evidence was not sufficient to meet the test in AM (Zimbabwe) v SSHD [2020] UKSC 17.

Findings and reasons

66. There are strong reasons to depart from AS [2020] (and AS [2018]). In response to the Respondent's position it is very difficult to see how paras 224-227 of AS [2018] can survive in the light of the overall evidence, but the point is not material to this appeal. There is no international armed conflict and the evidence suggests an improvement in the security situation for civilians. However, Article 15 (c) of the Qualification Directive was not relied on by the Appellant and is not material to this appeal. In respect of the Refugee Convention, humanitarian protection (Article 3 ECHR and 15 (b) of QD) persons likely to be at risk from the Taliban on return have very much widened given the significant change in country circumstances.
67. In the light of the partial grant of permission and Upper Tribunal Judge Coker's decision, Upper Tribunal Judge Blum identified the issues before the UT. However Ms Amin conceded in submissions that the Appellant was not at risk any longer in his home area of recruitment by the Taliban. Of course, this being the case, there is no need to look at the issue of relocation in this context. However, Ms Amin said in submissions that the Appellant would be at risk from the Taliban with reference to CPIN 1.0 Oct 2021 para 2.4.11 as a person who will be perceived not to conform to strict cultural and religious expectations and mores. Confusingly she then said that the only ground on which the Appellant relied was Article 3 (health grounds).
68. This is a case where the Tribunal would have been very much assisted by a skeleton argument in the light of the change in the country situation and the raising of a new matter by the Appellant. While I appreciate that there has been a significant change in the country situation and there are recent CPINs of material relevance, I do not consider that the Appellant's representatives have assisted the Tribunal.

69. The scope of the hearing is limited in respect of the previous decisions. This was an issue that was not appreciated by the Appellant's solicitors. The error of law decision and the decision of Judge Blum make it clear that the decision relating to the core of the Appellant's claim for protection is not an issue for this Tribunal. Pre-Taliban takeover the issues were identified by UTJ Blum at a CMHR. On those issues the Appellant through Ms Amin concedes that he cannot win his appeal. At the CMHR Article 3 (health grounds was not raised).
70. The findings of the First-tier Tribunal in respect of the core of the Appellant's account are not to be interfered with. The error of law concerned the issue of relocation in the context of the risk of recruitment and it is that issue which the parties agreed at the CMHR was the issue in this appeal.
71. It is open to the Appellant to now raise issues in response to the background evidence and change in country situation. However, the assessment must be made on the basis that the Appellant has been found to have no connection with the Taliban. His account has been rejected. However, he has been in the United Kingdom for over 14 years. While his evidence about his family has not been accepted previously and this is my starting point properly applying Devaseelan. I have to consider whether the Appellant's evidence that he is no longer in contact with his sister is credible considering the country background evidence as it stands. It is of considerable concern that there has been a massive displacement of Afghans. While I appreciate that he has been in contact with his sister in previous years, it is credible that he is not now able to contact family in Afghanistan considering the impact of displacement on the population generally. There is no evidence that the Appellant has attempted to make contact with his family; however, I take into account his mental health problems which may, at least, in part account for this. It may also be the case that he has not attempted to find family because he wants to stay here. I do not find his motivation makes a difference in the present circumstances. In the current situation it would not be easy to locate family members in Afghanistan through organisations like the Red Cross. The Appellant has been absent for Afghanistan 14 years. I am satisfied that the Appellant would be returning to Afghanistan as a single adult with little prospect of finding family to support him.
72. Should he return to Wardak Province, it is reasonably likely that he will not find family or friends or anyone who would be able to support him. Even if he is able to locate family /friends there is a dire humanitarian situation throughout the country exacerbated by a drought and a global pandemic.
73. This Appellant has mental health problems. I take on board Mr Clarke's observations in respect of the medical evidence. Much of what he said was well-founded. There is a gap of 8 years (from 2012 to 2020) when the Appellant did not visit his GP on account of any mental health problems. It can be reasonably inferred that had he done so the expert would have cited entries in his report. While there is a "latency period," as described by the expert he does not comment on the length of time between the diagnosis and events in Afghanistan which he believed to be responsible

for the trauma. In any event, the core of the Appellant's account has been rejected twice by the First-tier Tribunal.

74. The Appellant has not produced evidence of GP notes that would support that he has adopted any of the recommendations made by the expert and he did not give evidence about this. The expert does not consider whether the Appellant is feigning symptoms or any other causes apart for trauma in Afghanistan and the journey to the United Kingdom 14 years ago.
75. I have considered the medical evidence in the light of JL (medical reports-credibility) China [2013] UKUT 00145. While the expert had material before him (the decisions of the Respondent and previous decisions of the First-tier Tribunal), it is not clear from reading his report that these had been considered by him. Ms Amin did not address me on what about the report affords support to what the Appellant has said and is not dependent on what he said to the doctor. I remind myself that the more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]) and that where medical experts rely heavily on the account given by the person concerned, that does not mean their reports lack or lose their status as independent evidence, although it may reduce very considerably the weight that can be attached to them.
76. In so far as the report seeks to establish causation, this is not an issue that is open to the Appellant. In any event, in the light of the above, the weight to attach to this aspect of the report is limited. However, I attach weight to the independent diagnosis made by a consultant psychiatrist. There are many reasons which could explain the cause of his mental problems. The Appellant left Afghanistan, his family and home during a time of international and internal conflict. He entered the United Kingdom illegally after what could only have been an arduous and difficult journey. He gave evidence about a period of homelessness and how this had upset him. This was not referred to by the expert. It is not for me to speculate about the causes of his mental illness. In any event, it is not material to this decision.
77. I am satisfied that the evidence establishes that the Appellant has mental health problems including depression and PTSD. I bear in mind the symptoms of depression (low mood, low energy, feeling hopeless and poor concentration) which may account for the Appellant having not followed up the expert's advice and his failure to seek medical treatment during a considerable period of time. There are PTSD symptoms (detailed in Dr Latif's report) which could hinder a person's prospects of seeking treatment.
78. Having considered the evidence of the current position in Afghanistan I accept Ms Amin's initial submission that the Appellant will be perceived as a person who does not conform to strict cultural and religious expectations. He has been in the United Kingdom for a significant period of time (14 years) and will be returning from as a failed asylum seeker who will be perceived as having been westernised. He has never worked in Afghanistan. He does not have a support network to hide behind.

79. Assimilation will be all the more difficult as a result of his mental health problems. While I accept that the Appellant is not accessing any medical treatment at present despite Dr Latif's recommendations, I accept that he takes medication for depression. Should he return to Afghanistan in the midst of a humanitarian crisis without accommodation, employment, money or family support and the risk of being perceived by the Taleban as a AGE, I am satisfied that there would be a significant deterioration in his mental health. Furthermore the background evidence supports the worsening of medical services which were already very fragile, especially as regards mental health. I note that there are problems with the supply of medication. I am satisfied that there would be no medication available to the Appellant. In any event, the Appellant has shown that he is unable to access treatment in the United Kingdom with the level of support he has here. It is very unlikely that he would be able to access any treatment in Afghanistan in the circumstances that he will find himself on return. While the evidence does not support that the appeal should be allowed on Article 3 (health grounds) (Ms Amin did not seek to address me on AM or any relevant jurisprudence), it is relevant when assessing what might happen to the Appellant on return in the context of a general Article 3 risk. His mental health would leave him more vulnerable because he will be more likely to come to the attention of the regime.
80. The Respondent disputes the Appellant's age. He said that he came to the United Kingdom when he was aged 16. He produced a Taskira which was before Judge Seelhof. Judge Seelhof recorded the submissions of Counsel that the Appellant believed himself to be a minor rather than he was a minor. Permission was not granted on this issue of the Appellant's age. There is no clear findings as to the Appellant's age by the First-tier Tribunal. However, there is reference to an age assessment having given the Appellant a date of birth of September 1988. I did not hear submissions on this, However, what is clear is that this Appellant left Afghanistan as a young adult (in 2007) on the basis of the date in the age assessment. He has spent a considerable period of time as a young man living in an open, democratic society which although has a established state religion is, for all intents and purposes, a secular society. For all these reasons I accept that it is reasonably likely that the Appellant will stand out and very quickly come to the attention of those in charge of the regime.
81. I take into account the CPIN 2.0 June 2020 at para 6.3.4 and that the context is now different in that there has been a regime change and the position to returnees is reasonably likely to be even more precarious as regards the Taliban. Having claimed asylum in the United Kingdom, it is reasonably likely that he will be perceived as a traitor. I have attached weight to the pronouncements made by the Taleban, but there is also evidence of human rights abuses and little change on the ground.
82. I find that this Appellant would be at risk of treatment contrary to Article 3 on return to any area in Afghanistan. There is no protection or safe relocation option available because he is at risk from the Taleban who are no in charge of the regime. The appeal is allowed on Article 3 grounds.

83. While mindful that Ms Amin stated that she was not relying on the humanitarian situation, having considered the dire position in Afghanistan set out in the various pieces of background evidence concerning the worsening situation and the circumstances of this Appellant, her position is not justified. I am satisfied that it is reasonably likely that the Appellant will find himself living in inhuman or degrading circumstances such that his life expectancy will be significantly reduced, or that he will experience intense suffering, properly applying Ainte (material deprivation - Art 3 - AM (Zimbabwe)) [2021] UKUT 00203. This case was promulgated on 10 August 2021. Neither party addressed me on it at the hearing. However there is a requirement for me to consider obvious points arising under the Refugee Convention or ECHR (R v Secretary of State for the Home Department ex parte Robinson [1997] 3 WLR 1162). The Appellant would be returning alone and unsupported to a regime that would at the very least treat him with serious hostility, in the midst of a humanitarian disaster caused by factors including severe draught, regime change and years of international and internal conflict. His mental health will deteriorate and he is unlikely to access treatment including medication which he is currently prescribed.

84. The appeal is allowed on Article 3 grounds.

Notice of Decision

The appeal is allowed on Article 3 grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Joanna McWilliam*

Date 18 November 2021

Upper Tribunal Judge McWilliam