



2. The appellant is a citizen of Afghanistan who was born on 1 January 1991. He originally came to the United Kingdom in 2007 but was removed back to Afghanistan on 8 December 2009. He claims that he then left Afghanistan in 2013 and arrived clandestinely in the UK in 2013. On 12 February 2015, he was apprehended and arrested by the UK authorities. On 26 February 2015, he claimed asylum which was refused on 14 April 2015.
3. Following an appeal, initially unsuccessfully to the First-tier Tribunal but ultimately successful before the Upper Tribunal in April 2016, the Secretary of State reconsidered her decision.
4. On 1 December 2017, the Secretary of State again refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.
5. The appellant again appealed to the First-tier Tribunal. Judge I D Boyes dismissed the appellant's appeal on all grounds. On appeal, the Upper Tribunal (UTJ Grubb) set aside the judge's adverse findings and conclusions in respect of humanitarian protection and under Arts 2 and 3 of the ECHR. However, the appeal against his decision to dismiss the appeal on asylum grounds was dismissed and the adverse findings preserved. The appeal was remitted to the First-tier Tribunal (Judges Povey and Wilson) which, in a decision sent on 22 January 2019, again dismissed the appeal on humanitarian protection grounds.
6. Following the grant of permission to appeal by the Upper Tribunal (UTJ Allen) on 30 May 2019, the First-tier Tribunal's decision was set aside by the Upper Tribunal (UTJ Grubb) by consent for error of law in a decision dated 19 December 2019. The appeal was retained in the Upper Tribunal to remake the decision in respect of humanitarian protection and under Arts 2 and 3 of the ECHR.
7. There followed a delay in listing the substantive hearing whilst the Upper Tribunal reached a new country guidance decision in AS (Safety in Kabul) Afghanistan CG [2020] UKUT 00130 (IAC) following the setting aside and remittal by the Court of Appeal of the earlier 2018 CG decision in AS.
8. Following a number of case management hearings in 2019 and 2020 and adjourned substantive hearings on 12 May and 9 September 2021 (the latter necessitated by the changed circumstances in Afghanistan as a result of the withdrawal of American and allied troops), the appeal was listed for a CMRH on 21 October 2021. At that hearing, the appellant was represented by Mr G Hodgetts and the respondent by Mr C Howells.
9. Mr Howells indicated that the Secretary of State intended to grant the appellant humanitarian protection and 5-years leave. Mr Howells indicated that the basis for this was as a result of a review of the appellant's case in the light of the most recent Home Office *CPIN*, "*Afghanistan: Fear of the Taliban*" (October 2021) published after the change of Government in Afghanistan to the Taliban. He indicated that,

having reviewed the appellant's case, the Secretary of State was satisfied the appellant did not qualify for asylum as he did not fall within a relevant risk category. However, the appellant did qualify for humanitarian protection on the basis of his personal circumstances, in particular the length of time he had been away from Afghanistan and in the UK and so his lack of familiarity with his country of origin; his mental and physical health issues; and the lack of a support network particularly in Kabul to which he would be returned if returns were being made by the Home Office.

10. On this basis Mr Howells invited me to allow the appellant's appeal on humanitarian protection grounds.
11. Mr Hodgetts agreed with the disposal of the appeal proposed by Mr Howells. He indicated that the appellant did not wish to pursue his asylum claim. That, of course, had been concluded against him by Judge Boyes and the decision and findings had been preserved.
12. I agree with that disposal of the appeal on the basis accepted by both parties.

### **Decision**

13. As was previously decided by the UT in its decision dated 19 December 2019, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and was set aside.
14. The adverse findings and decision in respect of the appellant's asylum claim were preserved. The decision to dismiss the appeal on asylum grounds, therefore, stands.
15. I re-make the decision allowing the appellant's appeal on humanitarian protection grounds.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
21 October 2021

### **TO THE RESPONDENT FEE AWARD**

The appellant is exempt from fees so no fee award is made.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
21 October 2021