



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03195/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17 September 2015

Determination Promulgated  
On 21 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

PJ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Halim, instructed by BHT Immigration Legal Services

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

**DETERMINATION AND REASONS**

1. The appellant, an Afghan national, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 2 May 2014 to refuse his application for asylum in the UK. His appeal was dismissed by Designated First-tier Tribunal Judge Manuell. The appellant appeals with permission to this Tribunal.
2. The background to this appeal is that the appellant has been assessed as having a notional date of birth of 1 January 1994. He entered the UK illegally and claimed asylum on 28 December 2007, when he was 13 years old. The basis of his claim was that his father worked for the intelligence services in Afghanistan and his brother

was a doctor working for the Swedish Committee for Afghanistan. He claims that his brother was captured by the Taliban along with some colleagues and that his father led the operation to free them in which several members of the Taliban were killed. The appellant claims that 15-20 days later his father was killed when his car was blown up. About a month later the family home was attacked and his mother was shot and died. He believes that his family were targeted by the Taliban. Six days later the appellant's brother arranged for the family to leave Afghanistan and they went to Pakistan. He stayed in a refugee camp there for 2-3 months. He was threatened because of his father's work for the Afghan government. The appellant's brother arranged for the appellant to leave Pakistan with an agent. The agent took him to the UK via Iran and France. The appellant's asylum application was refused on 18 March 2008 and the appellant appealed against this decision but later withdrew his appeal. He was granted Discretionary leave to remain until 1 June 2011 because he was under 18. The appellant was cautioned for criminal damage in July 2009 and received a reprimand for theft in May 2011. He was arrested for shoplifting in June 2013 and received a 12 month conditional discharge. The appellant has a daughter born on 4 February 2011 who has been adopted. The appellant is no longer in a relationship with the mother of the child who is serving a prison sentence for stabbing him in the back. The appellant says that his brother moved to Iran but he has lost contact with him. He claims that he is in a new relationship with a British citizen. The appellant suffers from depression.

3. The Designated First-tier Tribunal Judge found that the appellant's testimony in relation to past events in Afghanistan was credible. The Judge expressed some reservations as to whether the appellant's brother and mother were specifically targeted by the Taliban but said that the summary of the appellant's evidence set out at paragraph [9] to [13] of the determination stands as the Tribunals' essential findings of fact. The Judge identified the issues to be determined as being whether the appellant will enjoy a sufficiency of protection if returned to Afghanistan and whether he can reasonably relocate to Afghanistan. He went on to find that there would be a sufficiency of protection for the appellant in Afghanistan based on the family's experiences of the police in the past and on the current background information. He found that there is no satisfactory evidence to show that the Taliban's resources are anywhere near sufficient to keep track of persons such as the appellant let alone that the appellant would be capable of being recognised and that in any event the appellant's father who the appellant believed was the focus of Taliban interest is long dead [30]. The Judge also found that it would be reasonable for the appellant to relocate to Kabul to avail himself of the greater level of security there and because he comes from a situation of sufficient means for him to have been able to pay for his passage to the UK [32]. The Judge considered Article 8 of the European Convention on Human Rights and found that the appellant's moral and physical integrity will not be placed at real risk of serious harm or of suicide by his return to Afghanistan.
4. The appellant's application for permission to appeal was refused by the First-tier Tribunal but granted on renewal to the Upper Tribunal. The renewed application for permission to appeal to the Upper Tribunal relies on four grounds. The first ground

is that the Judge failed to properly or adequately consider the psychiatric report of Dr Fairweather dated 15 August 2014 and the report from the appellant's counsellor as part of the assessment of reasonableness of return. Secondly, it is contended that the Judge failed to properly consider the country expert report of Dr Schuster dated 10 August 2014 and failed to give adequate reasons for rejecting the report. The third ground contends that the Judge failed to make clear findings of fact as to risk profile on return to Kabul. It is contended that the Judge erred in failing to make findings of fact as to risk, and in particular as to whether the appellant's family members were targeted by the Taliban, before going on to consider sufficiency of protection and internal relocation. Finally, it is contended that the Judge failed to properly consider the issue of Article 8 of the European Convention on Human Rights and humanitarian protection and the respondent's discretionary leave policy.

5. Permission to appeal was granted primarily on the basis that the Judge arguably erred in failing to take account of the psychiatric report. The Judge granting permission pointed out that there is an error in the numbering of the psychiatric report in the appellant's bundle.
6. At the hearing before me Mr Halim submitted that the psychiatric report is material as it goes to credibility and to the appellant's mental health on return to Afghanistan. He emphasised that the issue here is reasonableness of internal relocation, it is not a medical case, and the evidence as to the effect of internal relocation on the appellant's health is relevant to the assessment of the reasonableness.
7. Mr Tufan accepted that the First-tier Tribunal Judge appeared to have failed to consider the psychiatric report but submitted that this failure did not have a material impact on the decision. He submitted that the psychiatrist concluded that the appellant might be suffering from PTSD. He relied on the decision in KH (Afghanistan) v SSHD [2009] EWCA Civ 1354 and submitted that the guidance there was relevant to the question of internal relocation. He submitted that this case is not exceptional in terms of consideration under Articles 3 and 8 of the European Convention on Human Rights. He relied on the decision in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) where the Tribunal pointed out at paragraph 233 that the reasonableness test in relation to internal relocation remains a stringent one.
8. In response Mr Halim submitted that the appellant's credibility is intact, subject to the somewhat unclear findings of the First-tier Tribunal Judge as to who targeted the appellant's family members. He submitted that the Judge failed to attach proper weight to Dr Shuster's expert report in relation to the plausibility of the appellant's claims as it dealt with the issue of who targeted the appellant's family. He submitted that this case is different from those considered in KH and AK because the appellant here is credible and the risk has been established. The issue here is not general risk but risk specific to the appellant in light of his credibility. He submitted that in AK the Tribunal was considering relocation within the context of Article 15(c) and not the issue of internal relocation in an asylum case. In his submission the issue here is whether internal relocation is reasonable in all the circumstances taking into account

the support available to the appellant and the impact of return on his mental health. He submitted that the psychiatric report identifies the risk of suicide if the appellant is returned to Afghanistan. He relied on the decision in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362 and submitted that the appellant has a subjective fear and no capacity to avail himself of services in Afghanistan and that he meets all of the criteria set out by Sedley LJ.

### Error of Law

9. I am satisfied that the Designated First-tier Tribunal Judge made an error of law in failing to consider the report of Dr Fairweather. It is clear from his consideration of the medical evidence at paragraph 34 that the Judge did not consider Dr Fairweather's report. This may have been due to the misnumbering of the appellant's bundle. I am satisfied that the error is material because, in light of the finding that the appellant's account is credible, and the finding at paragraph 25 that the appellant is at risk in his home area, which is described as 'volatile', the issue for the Judge was whether it is reasonable for the appellant to relocate to Kabul. In this context it is necessary to consider all of the relevant facts. *"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so"* (per Lord Bingham in Januzi v SSHD [2006] UKHL 5, 21).
10. I am satisfied that the contents of the psychiatric report are relevant factors and are capable of impacting on the assessment of the reasonableness of internal relocation and that the Judge therefore made a material error in failing to consider that report. In these circumstances I set aside the decision of the First-tier Tribunal in relation to asylum. Mr Halim did not pursue any submissions at the hearing in relation to the Judge's treatment of Article 8 and this issue of Humanitarian protection/Discretionary Leave (ground four) and I preserve the Judge's conclusions in relation to these issues. There is no challenge to the findings of fact and I preserve them. In these circumstances, with the consent of the parties, I proceed to remake the decision in relation to internal relocation on the basis of the factual findings made by the Designated First-tier Tribunal Judge, the evidence before me and the submissions made by Mr Tufan and Mr Halim at the hearing before me.

### Remaking the decision

11. As set out above there is some lack of clarity in the Judge's findings of fact. Whilst the Judge finds that the appellant's evidence was 'credible' [24] and 'reliable' and that the summary of the appellant's evidence at [9] to [13] of the determination stands as the findings of fact, he also did not accept that the appellant's father or brother were targeted by the Taliban. The Judge found that it is unclear whether the appellant's mother was targeted by the Taliban but considered that he did not need to make further findings on this matter given his findings in relation to sufficiency of protection and internal relocation. The Judge referred to the report of Dr Schuster dated 10 August 2014 at paragraph 20 but did not consider it in this context.

12. In order to be clearer on this issue in the context of remaking the decision I have considered the evidence before the First-tier Tribunal on this issue. It is recorded that the appellant said in oral evidence that he believed that his father and brother had been targeted by the Taliban. He said that he believed that the Taliban kidnapped his brother and he believed that his family had been the target of the attack in which his mother was killed [12].
13. In his email dated 23 April 2008 (I8-I9 of the respondent's bundle) the appellant's brother described the events of June and July 2007. He said that he was kidnapped by the Taliban. He said that they did not know who was responsible for the bomb explosion that killed his father. He said that unknown people attacked the family's home and his mother was shot and later died. In his email dated 9 April 2008 a doctor from SCA said that the SCA does not know if those who kidnapped the appellant's brother were Taliban or any other criminal group.
14. Dr Liza Schuster prepared a report dated 10 August 2014. At paragraph 14 Dr Schuster said that, as an intelligence officer known in the district, the appellant's father would have been an important target for insurgent forces and that the attack that killed the appellant's father fits with the pattern of attacks in Nuristan. She listed a syndicate of at least 9 enemy groups who were operating in the area at the time and said that any one of these groups could have targeted the appellant's father and his family. She said that it is unlikely that the appellant's mother would have been targeted directly but plausible that there would have been an attack on their compound, especially with the appellant's brother present.
15. The evidence from the appellant's brother and from Dr Shuster does not confirm that the appellant's father was targeted by the Taliban. However on the basis of the appellant's father's role in the intelligence services and Dr Shuster's report it seems likely that the appellant's father was targeted by opposition forces. The appellant's brother claims that he was kidnapped by the Taliban however his SCA colleague does not confirm this and Dr Shuster makes no comment on it. The evidence does not establish that the appellant's brother because of his family background rather than his employment. It has not been established that the appellant's mother was specifically targeted, albeit the family residence may have been. I consider the remaining issues in light of these findings.
16. The Judge found that the appellant would be at risk in his home area. There has been no challenge to that finding and it is on that basis I proceed to consider whether it is reasonable to expect the appellant to relocate within Afghanistan.
17. In the case of SSHID v AH (Sudan) [2007] UKHL 49 Baroness Hale said that the Court agreed that the correct approach to internal relocation under the Refugee Convention is that set out by Lord Bingham of Cornhill in Januzi. She went on to draw a distinction between the reasonableness test and that to be applied in assessing an Article 43 claim;

“20. ...

As the UNHCR put it in their very helpful intervention in this case,

" . . . the correct approach when considering the reasonableness of IRA [internal relocation alternative] is to assess all the circumstances of the individual's case holistically and with specific reference to the individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal life without undue hardship."

I do not understand there to be any difference between this approach and that commended by Lord Bingham in paragraph 5 of his opinion. Very little, apart from the conditions in the country to which the claimant has fled, is ruled out.

21. We are also all agreed that the test for internal relocation under the Refugee Convention is not to be equated either with a "well-founded fear of persecution" under the Convention or with a "real risk of ill-treatment" contrary to article 3 of the European Convention on Human Rights. By definition, if the claimant had a well-founded fear of persecution, not only in the place from which he has fled, but also in the place to which he might be returned, there can be no question of internal relocation. The question pre-supposes that there is some place within his country of origin to which he could be returned without fear of persecution. It asks whether, in all the circumstances, it would be unduly harsh to expect him to go there. If it is reasonable to expect him to go there, then he can no longer claim to be outside his country of origin because of his well-founded fear of persecution. Mercifully, the test accepts that if it is not reasonable to expect him to go there, then his continued absence from his country of origin remains due to his well-founded fear of persecution.

22. Further, although the test of reasonableness is a stringent one - whether it would be "unduly harsh" to expect the claimant to return - it is not to be equated with a real risk that the claimant would be subjected to inhuman or degrading treatment or punishment so serious as to meet the high threshold set by article 3 of the European Convention on Human Rights. As Lord Bingham points out, this is not what was meant by the references to article 3 in *Januzi*, including what was said by my noble and learned friend, Lord Hope of Craighead, when he referred to "the most basic of human rights that are universally recognised" at para 54. Obviously, if there were a real risk of such ill-treatment, return would be precluded by article 3 itself as well as being unreasonable in Refugee Convention terms. But internal relocation is a different question."

18. It is clear from this assessment that the appellant's case must be considered holistically with specific reference to his personal circumstances including his past persecution, his psychological and health conditions, family and social situations and survival capacities in the context of conditions in Kabul.
19. In her report Dr Schuster considered the reasonableness of internal relocation to Kabul in the context of UNCHR guidelines. She concluded that there is every likelihood that, without social networks in Kabul, the appellant would be in the same situation as IDPs in Kabul and that his situation would therefore be worse than the general population. In her opinion the appellant would be forced to live in certain parts of Kabul where he would be at greater risk from those who would recognise him and those who would see him as contaminated by his time in the West or

assume that time spent abroad would mean that he or his family would be able to pay a ransom. In her opinion neither the Afghan government forces nor the international forces are in a position to offer protection to him.

20. According to the letter dated 28 May 2014 from the appellant's social worker the appellant is a vulnerable person who continues to suffer emotionally from his past experiences in Afghanistan. He is said to have suffered difficulties as a result of losing his application to care for his young daughter, who was then adopted.
21. In his report from May 2008 Dr Alec Frank concluded that the appellant had a degree of Post Traumatic stress but did not have a major Post Traumatic Stress Disorder (PTSD). He said that the appellant's psychological health is not robust and concluded that the appellant suffers an adjustment reaction to a new community and country and a bereavement reaction to the traumatic murders of his parents and the loss of contact with all of his home life as well as a variable depression and some symptoms of post traumatic stress.
22. In his email dated 11 December 2014 Hanno Koppel, a psychotherapeutic counsellor, who said that the appellant attended three appointments and found it very difficult to talk about his experiences in Afghanistan. He said that the appellant had recently arranged to see the counsellor again and that he was hopeful that therapy could begin. In his opinion returning someone with PTSD to the environment in which they were traumatised is likely to have a very serious effect on their mental health.
23. In her report of 15 August 2014 Dr Susannah Fairweather noted that the appellant said that he does not speak Pashtu very well and that the interpreter corroborated this saying that the appellant has lost 30-40% of his Pashtu vocabulary. She described the appellant's history of self-harm and said that he reported a long history of suicidal ideas. She described him as having a number of episodes of dissociation during the interview which she described as a psychological defence against overwhelming emotional states that a person may experience. She concluded that the appellant presents with '*complex mental health difficulties related to the chronic trauma and multiple losses of close family members in traumatic circumstances he described*'. She concluded that he meets the diagnostic criteria for the psychiatric disorder F32.1 Moderate depressive episode, International Classification of Diseases – 10 (ICD-10), on the basis of a number of symptoms including ideas or acts of self-harm. She concluded that he also presents with co-morbid or possibly primary post-traumatic stress disorder symptoms. She went on to conclude that the appellant meets the diagnostic criteria for PTSD arising from numerous episodes of trauma (the loss of his parents, separation from his brother and loss of his daughter to adoption) which meant that he presents with complex trauma or a chronic traumatised state. She said that his difficulties will mean that when he is faced with stressful situations '*he is more vulnerable than (sic) other young people and more likely to find maladaptive ways of managing*'. In her opinion a return to Afghanistan is unlikely to allow for recovery. She said that in her opinion the appellant's mental health is likely to deteriorate significantly if he were to be removed to Afghanistan. She believes that he will be particularly at risk of suicide if he cannot remain in the UK due to his fear of the loss

of his current context of safety and the support he currently has and the loss of the potential for future contact with his daughter and his belief that his life will be at risk in Afghanistan because of his family history. Dr Fairweather believes that the appellant's mental health would also deteriorate with it likely that his depressive disorder would become severe requiring urgent psychiatric treatment for his physical and mental health to be maintained. In her view the appellant's PTSD symptoms are likely to escalate too and that he is vulnerable to self-harm and act impulsively when emotionally overwhelmed. In Dr Fairweather's opinion the appellant's risk will escalate significantly throughout the removal process and in her view it is *'very likely'* that he would act on his suicidal thoughts given his lack of coping strategies and impulsivity. She also expressed the opinion that his suicide risk would remain high in Afghanistan and would be a chronic risk not limited to the initial phase of return. She said that it is likely that the appellant would be in such a deteriorated state, which would require psychiatric treatment, however, *'he would not be able to access the services, as his state would mean that he could not look after himself enough to present at a clinic'* and he is unlikely to have the motivation to access services and would be unable to proactively self-care by presenting to appropriate services. According to the psychiatrist, if the appellant is in such a state he is not likely to have the ability to meet his other basic needs such as finding a safe and stable home, obtaining education and regular income. She believes that he would then be particularly vulnerable to exploitation.

24. The parties submitted a number of cases to support their positions. KH can be distinguished from the present case as it concerns an appellant who was not found to be credible in relation to his asylum claim and the medical issues he raised, which are similar to the appellant's, were therefore considered within the context of Articles 3 and 8 of the European Convention on Human Rights which, as highlighted by Baroness Hale above, is a different test. The Court in KH said *'The truth is that the presence of mental illness among failed asylum seekers cannot really be regarded as exceptional'* [33]. However the appellant in this case is not a failed asylum seeker as his account has been accepted.
25. In the case of AK, where again the appellant's account of past persecution was found not to be credible, the Tribunal considered return to Kabul in the context of Article 15 (c) of the Refugee Qualification Directive. The Tribunal made the following remarks in relation to internal relocation in Kabul (in the context of subsidiary protection);

"243. As regards Kabul city, we have already discussed the situation in that city and we cannot see that for the purposes of deciding either refugee eligibility or subsidiary protection eligibility (and we are only formally tasked with deciding the latter) that conditions in that city make relocation there *in general* unreasonable, whether considered under Article 15(c) or under 15(b) or 15(a). We emphasise the words "in general" because it is plain from Article 8 (2) and our domestic case law on internal relocation (see AH (Sudan) in particular) that in every case there needs to be an inquiry into the applicant's individual circumstances; and what those circumstances are will very often depend on the nature of specific findings made about the credibility of an appellant in respect of such matters as whether they have family ties in Kabul. But here our premise concerns an appellant with no specific risk characteristics and someone



found to have an uncle in Kabul: see above paras 3,5,154, 186 and below, paras 250-254). To summarise our conclusion, whilst when assessing a claim in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing "safety" and reasonableness") not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many IDPs living there, these considerations will not in general make return to Kabul unsafe or unreasonable, although it will still always be necessary to examine an applicant's individual circumstances."

26. In considering the appellant's individual circumstances I take into account the fact that the appellant has no family in Afghanistan. I take into account the appellant's family background. Although it is not clear who targeted his brother and father it is accepted that his father was an intelligence officer and therefore a likely target of opposition forces and his brother worked for an NGO in the context of which he was kidnapped. The appellant encountered difficulties in Nasir Bagh refugee camp because of his family background. Dr Shuster said that it is extremely difficult to remain anonymous in Kabul [58]. In light of all of this evidence I accept that, in the absence of family support, it is possible that the appellant will be identified in Kabul and his family background may place him at some risk there.
27. I attach significant weight to Dr Fairweather's report. Contrary to Mr Tufan's submission Dr Fairweather does confirm that the appellant meets the diagnostic criteria for PTSD at paragraph 6.2.5 on the basis of the several episodes of trauma he suffered. Dr Fairweather gave a detailed assessment of the likely impact upon the appellant of return to Afghanistan. A particular risk is that of deterioration of his mental health accompanied by the impact of his lack of coping strategies which would mean that it is unlikely that he will be able to access psychiatric treatment and support services. She also identifies the high suicide risk during the removal process and the chronic ongoing risk of suicide upon and following his return to Afghanistan. I am satisfied that Dr Fairweather's assessment is detailed and reasoned based on the appellant's history.
28. I have considered the appellant's individual circumstances in the context of the situation in Kabul and the likely severe deterioration in his mental health, his likely inability to access psychiatric and health care services along with the lack of family support and the risk of being identified lead me to conclude that it would be unduly harsh and would not be reasonable to expect the appellant to relocate to Kabul.

**Conclusion:**

I remake the decision in this appeal by allowing it on asylum grounds.

Signed

Date: 20 October 2015

A Grimes  
**Deputy Judge of the Upper Tribunal**

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

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 20 October 2015

A Grimes  
**Deputy Judge of the Upper Tribunal**