Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11970/2011

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28th April 2017	**On 11th May 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

HU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Elliott-Kelly, Counsel, instructed by Paragon Law
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed against a decision of First-tier Tribunal Judge Astle, who dismissed the appellant's appeal under Section 83 of the Nationality Immigration and Asylum Act 2002, against the Secretary of State refusal, on 18th October 2011, of the appellant's claim for asylum and humanitarian protection.

2. The appeal was formerly heard on 28th November 2011 but following an error of law in the decision by the First-tier Tribunal, the appeal was

remitted by the Upper Tribunal for a hearing de novo and came before Judge Astle.

3. The appellant is a citizen of Afghanistan and after an age assessment his age was resolved and agreed as being as at [ ] 1997 making him 14 years on arrival and 19 years old at the date of the hearing before Judge Astle.

4. The core of the appellant's claim was that he lived with his parents, younger brother and sister in the village of [P] District in Baghlan Province and his father was a taxi driver, who was ordered by the Taliban to carry weapons for them in his vehicle. After receiving a gunshot wound his father managed to return home after one particular excursion carrying weapons but then disappeared from the family home; the appellant claimed that he had not seen him since. This occurred prior to the appellant's arrival in the United Kingdom. He asserts that he does not know when he entered the United Kingdom but was encountered in the back of a lorry in Spalding in 2011.

5. The appellant maintained that the Taliban had attacked the appellant's home believing the father had betrayed them and thus the appellant escaped his own home and hid in the home of his maternal uncle for one month. His uncle arranged for him to leave the country. On his way to the UK the appellant claims that he was told by the agent that his uncle had died. He also asserted he had been unable to contact his family since his arrival in the UK.

Grounds for Permission to Appeal

6. The initial first ground of appeal which challenged the adverse credibility finding in relation to the appellant was not granted permission to appeal. The remaining grounds for permission to appeal to the Upper Tribunal which were granted included:

Ground 1

A failure to take account that the appellant would be at risk irrespective of any evidence against him/irrespective of whether he will come to the adverse attention of the authorities.

It was submitted that at paragraphs 23 to 25 of the 17th August 2014 report Dr Giustozzi indicated that there is a

> "*... serious chance of mistreatment and physical harm for anybody arrested under the accusation of being linked to the insurgency. ... Arrests were often being carried out on the basis of the slimmest of evidence. ... H would therefore be at risk of arbitrary arrest even in the absence of any evidence against him personally.*"

It was submitted that the judge had proceeded on the basis of the appellant's account being accepted to be credible as the only basis upon which he may come to the adverse attention of the authorities. That was

the wrong approach. On the analysis of the expert, however, there was a real risk to the appellant on the basis of a perceived or suspected link to the insurgency even in the absence of any case or evidence against him personally. There was therefore a basis of the appellant being at risk irrespective of his account being true and the First-tier Tribunal Judge had not addressed that.

Ground 2

Failure to give any or sufficient reasons for departing from the expert's conclusion as to the risk upon being questioned.

At paragraph 12 of his 17th October 2016 report the expert made clear that there was a real risk that the appellant would be arrested on return as a failed asylum seeker and thereby he risked treatment contrary to Article 3 of the ECHR. In principle it was open to the judge to find as she did that questioning of the appellant would not put him at risk but the judge should have done so only after giving sufficient reasons for departing from the expert's view in this respect and had not given any or sufficient reasons for departing from that view.

Ground 3

There was a failure to consider a material consideration of how the appellant may be able to avail himself of family support.

The First-tier Tribunal Judge found at paragraph 31 that the appellant would not be without family members upon return simply because she had found his account to be fabricated. That may well be a sustainable finding but there was no consideration of how he would avail himself of support of family members even if they did exist. This was particularly significant because the judge appeared to accept that travel to his home was likely to be problematic, see paragraph 30, and in light of the judge's findings that conditions generally in Afghanistan may have deteriorated, paragraph 32.

Ground 4

With regards to humanitarian protection there was a failure to have regard to a material consideration, that being the additional risk of marginalisation.

At paragraph 42 of his 17th August 2014 report Dr Giustozzi referred to

> "*... the additional risk of marginalisation ... which would compound his difficulties in seeking accommodation and employment. This would be even more so the case should his symptoms aggravate, which was not unlikely given that his access to mental health care would be at best irregular and of low standards*."

The judge made at paragraph 32 reference to the evidence of Dr Winton to the effect that the appellant's mental health would not be disabling and

while on Dr Winton's interpretation the effect on return per se may not be disabling, the deterioration in mental health should have been assessed in conjunction with the additional risk of marginalisation. There was therefore a material factor which had been omitted from the assessment.

Ground 5

No reason had been given for not departing from country guidance.

At paragraph 32 the judge stated:

> *"Although conditions in Afghanistan may have deteriorated I do not have the evidence before me that persuades me to depart from current country guidance."*

The current country guidance was **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)** and paragraph 243 of **AK**, made reference to the importance of specific findings in relation to an appellant. On the basis of the prevailing conditions in 2011 the Tribunal found Kabul to be generally safe but the judge had material evidence before her to cause her to reappraise the country guidance or at least to cause her not to be bound by that guidance. This evidence was in the underlying parts of the background evidence which were handed up in the form of a handwritten schedule. Dr Giustozzi gave a clear opinion as to the situation now being significantly worse than when considered for the purpose of the current country guidance, which by the date of the hearing was of some vintage. In summary the material parts of Dr Giustozzi's most recent report, which dealt with 2016, were that at paragraph 7 the Taliban activities in Kabul had been intensifying and there was an escalation in the use of indiscriminate violence and at paragraph 8 there was a phenomenon of "ghosting" in terms of the security forces, the effect being a general diminution in their ability to protect the population. Both from the perspective of the sheer level of violence and the ability of the state to protect the position it appears therefore would be qualitatively different from that which pertained in 2011 which at the least merited consideration as to departure from a strict application of the country guidance. The judge gave no reasons for saying why she considered herself bound by the country guidance.

The Hearing

7. At the hearing before me Ms Elliott-Kelly expanded on the grounds on which she relied substantially. She acknowledged that the judge had found the appellant not credible but emphasised that the appellant's family came from Baghlan and that he would not be able to travel there and even though he had sought to contact his family via the Red Cross there was an inadequacy of findings in relation to the appellant's contact with his family.

8. She submitted that the judge did not address the expert evidence in relation to relocation to Kabul and that his risk as an asylum seeker and under Article 15(c) should have been considered. She accepted that he was not a minor but there was no bright line and he had left Afghanistan when he was only 13 years old and had been absent for a considerable period of time. The question of family support was relevant to the reassessment of whether he would be at risk on return and there was no proper consideration. The judge had dealt with all the issue in a perfunctory manner and the reasoning was insufficient.

9. In relation to the risk factors the judge had not made an express finding that the appellant had been in contact with the family and the assessment thereto was inadequate.

10. In relation to the mental health difficulties this referred to the medical report of Dr Winton at page 43 of the bundle and although it was accepted that the appellant was not receiving any medical treatment the medical difficulties were a fact to be considered under the assessment for humanitarian protection and in relation to whether it was unduly harsh to expect him to internally relocate to Kabul. It is important to take into account that the appellant may resort to an IDP and that he would experience a marked deterioration in his health.

11. Turning to the last ground the judge had failed to give reasons for not departing from the country guidance. Ms Elliott-Kelly acknowledged paragraph 12 of the Practice Direction. The country guidance was in relation to Article 15(c) and the analysis by the judge was unreasoned in relation to both the question of ability to relocate, the unduly harsh test and Article 15(c). The judge had not properly considered the documentary evidence. She had further not considered the question of the appellant being detained by virtue of being a failed asylum seeker.

12. Mr Clarke strenuously resisted the application in relation to ground 2. He stated that the quote given in relation to ground 1 by the appellant should be placed in context and I was referred to the full paragraphs 23 to 25 of Dr Giustozzi's report and reminded that the ground challenging the judge's finding on credibility had not been granted. The quote was in the context of the appellant being linked to the insurgency and it was found that he was not a suspected insurgent. There was no risk to him from insurgents simply through being in Kabul as there was no tangible link to the insurgence.

13. In relation to ground 2 Mr Clarke submitted that at page 117 of the appellant's bundle in relation to Dr Giustozzi's report he had cited from a single source that being an interview with a police officer in 2013 that the appellant would be at risk of being returned as a failed asylum seeker. There was no single example of an arrest as argued and the interview was three years prior to the hearing. It was not enough to demonstrate through that reference in Dr Giustozzi's report that the appellant would be

detained on return. This was not a material error by the judge for failing to deal with this.

14. In relation to ground 3 and the reference to family support the argument was advanced on the basis that the family would have to go to Kabul to meet the appellant. The judge had addressed the issue in relation to the family in two ways. First, she was not satisfied that the appellant had no means of contact in his family rather than actual contact and, secondly, the judge at paragraph 32 made an alternative finding. It was erroneous to argue that it was necessary for the family to be in Kabul. The judge was entitled to take into account that the contact was there bearing in mind the credibility finding and the findings in relation to contact with the family are not undermined.

15. In relation to ground 4 and the risk of marginalisation the judge found at paragraph 32 that the appellant had a mild depressive order but it could not be argued that the judge had not taken into account the mental health issues. He found that the appellant was 19 years old and an adult and had family in Afghanistan and had taken a number of factors into account. It was not arguable that the judge had failed to take into account the relevant factors.

16. In relation to the final ground 5, that there were no reasons given for not departing from the country guidance, Mr Clarke referred to the case of **R (on the application of Naziri and Others) v Secretary of State for the Home Department (JR - scope - evidence) IJR [2015] UKUT 00437 (IAC)**, which was a judicial review decision but which reviewed a considerable body of evidence outlined at Schedules 1 and 2 of Appendix 2 to R (on the application of **R (on the application of Naziri and Others)** and which had been upheld by the Court of Appeal in **HN & SA (Afghanistan) (Lead Cases Associated Non-Lead Cases) v The Secretary of State for the Home Department [2016] EWCA Civ 123**. Mr Clarke submitted that a comprehensive body of evidence had been considered in **Naziri**. At paragraph 95 the Tribunal stated:

> "*Within the limitations of a judicial review challenge and the hearing which has taken place we find no warrant for departing from the current country guidance promulgated in **AK**. In particular, we find that the evidence falls short of satisfying the stringent Article 15(c) test.*"
>
> *Mr Clarke then referred me to **DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC)**.*"

Mr Clarke submitted there should be very strong grounds for departing from country guidance.

17. Mr Clarke also referred me to paragraphs 62 to 63 of **Naziri**, which reiterated case law that a person may still be accorded protection even when the general level of violence is not very high if they are able to show

that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) inquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, whether there is a particular risk based on the "sliding-scale" notion. This was identified at paragraph 63 citing in turn **HM and others (Article 15(c)) Iraq CG [2012] UKUT 409**, paragraph 80:

> "*In our judgment the nexus between the generalised armed conflict and the indiscriminate violence posing a real risk to life or person is met when the intensity of the conflict involves means of combat (whether permissible under the laws of war or not) that seriously endanger non-combatants as well as result in such a general breakdown of law and order as to permit anarchy and criminality occasioning the serious harm referred to in the Directive.*"

Mr Clarke submitted that there was a population of 30,000,000 in Afghanistan and that judicial notice may be taken of this and even looking at the figures that indicated death and injury and considering the diminution of security forces' ability there was not the anarchy and breakdown of law and order that was required in relation to Article 15(c). In the light of the authority there would be little mileage for the judge trawling through the voluminous evidence of the authority and the judge cannot be criticised at paragraph 32 for evidence which did not persuade her to depart from the country guidance.

18. Ms Elliott submitted that the cases of **Naziri**, **HN** and **DSG** were not country guidance cases and it was not for the Secretary of State to now undergo an analysis of the evidence. The decision should be set aside and remitted to the First-tier Tribunal and I was reminded that **Naziri** and **HN** were both decided in the context of judicial review proceedings. The evidence submitted by the appellant was in relation to 2016 and she identified that across the country 323,000 people were displaced because of the conflict and there was an upward trend. There was ample evidence of the deteriorating strain on the infrastructure and the healthcare which was evident in Kabul.

Conclusions

19. An overall reading of the decision demonstrates that the judge carefully reviewed the evidence. The judge recorded at paragraphs 14 to 17 in her decision:

> "*14. Dr Giustozzi has prepared a series of reports for this appeal. The first, dated 17 August 2014, offers a general background to the situation in Baghlan and elsewhere in Afghanistan, as well commenting on this specific case. He says that the practice of the Taliban to threaten those they consider to be collaborating with the enemy is well documented. When intimidation does not*

work, assassinations are common. There is evidence that the Taliban threaten or kidnap family members of people associated with the government. Relatives of individuals who oppose the Taliban, whether government employees or village elders, are known to have been executed in retaliation. 'Relatives are targeted particularly when their family members collaborating with the government are out of reach.'

15. *He comments that the Appellant would not be safe in Kabul either but at paragraph 18 he says that the Appellant would not be a high priority target of the Taliban outside his home area. However, compared to other targets of the Taliban, he would lack protection. If returned to Kabul the Appellant would in all likelihood have to reside in one of the Pashtun neighbourhoods of the city which tend to be affected by Taliban activity. In addition he could be at risk from the authorities as they might not be convinced that he was effectively coerced by the Taliban. Arrests are often carried out on the basis of the slimmest evidence. He says that the Appellant would not receive a level of mental health care even remotely comparable to what he could receive in the UK. An additional risk would be that he would suffer marginalisation. People would tend to avoid him, a fact that would compound his difficulties in seeking accommodation and employment. There is little understanding about mental illness. If he relocated without any family support or state assistance and unable to secure a well-paid job, he would be at risk of becoming homeless. Finding accommodation will be difficult and expensive.*

16. *The second report is dated 30 July 2015. In this he comments that in 2014 the targeting of collaborators continued on a larger scale than ever. Forms of police collaboration with the Taliban continued. He notes the increase in insurgent attacks in Kabul. He says that it is now the official position of the Afghan government that the country is not safe for returned failed asylum seekers.*

17. *In the most recent report, dated 17 October 2016, Dr Giustozzi says that in the summer of 2016 the Taliban stepped up operations in Baghlan. Taliban activities in Kabul have also been intensifying. Evidence indicates a tendency towards an escalation in the use of indiscriminate violence. The Afghan security forces are afflicted by serious manning problems. He refers to the use of 'ghost soldiers' and 'ghost policing'. Commenting on the particular claim he says that the Taliban are known to coerce people from time to time to carry their supplies and he finds the Appellant's account plausible. He says that the Taliban will find it harder to locate and strike at the Appellant in Kabul but much will depend on where he will be able to settle. He comments on the expense of living there and the failing*

> *economy. Unless his father's file has been closed the authorities will still want to interrogate and perhaps detain him. On return he will be questioned about his personal background.*"

20. The judge also specifically made a note at paragraph 18 of the decision as follows:

> "*In addition to the above reports I have taken into account those passages in the background evidence underlined and listed on the schedule supplied by Mr Dixon.*"

21. It is important at the outset to note that the judge found at paragraph 22 of the decision that the appellant's account was not reasonably likely to be true because there were too many inconsistencies. Permission was not granted in relation to the challenge to the adverse credibility findings and those stand. It is quite clear that the judge did not accept the appellant's account in relation to his father and to the attack on his home, noting specifically at paragraph 28 that had the Taliban been searching for the appellant or his father she would have expected the homes of the family members to be checked. Individually with respect to the uncle the judge found that:

> "*I am now told that the appellant heard that his uncle died of natural causes but this stands in contrast to his answer at question 162 of his substantive interview where he said that he did not know who killed his uncle or how he died.*"

In sum, the appellant's account was found not to be credible and that he had *"not demonstrated that he is of adverse interest to the Taliban or the Afghan authorities".* It is correct to state that the judge made the credibility findings over a series of paragraphs after having set out the expert evidence from Dr Winton and Dr Giustozzi over paragraphs 11 to 17 of her decision. Although the judge's apparent assessment of the appellant's ability to return is condensed into the last four paragraphs of the determination that does not undermine her decision.

22. That the appellant's account was not accepted as being true was fundamental to consideration of ground 1. A fuller reading of the 17th October 2016 report was important in view of the way the ground was put and Mr Clarke referred me to the context of Dr Giustozzi's report. Dr Giustozzi at paragraph 23 of his report referred to the appellant being

"*... effectively coerced by the Taliban, particularly given his escape*."

23. In paragraph 23 Dr Giustozzi states:

> "*The majority of individuals arrested are detained without serious evidence, simply because they are found near the place of an insurgent attack or because they are related to known insurgents.*"

24. The report from Dr Giustozzi is predicated on the basis that the appellant's account was true and that was specifically rejected by the judge; as such the appellant was not linked to the insurgence let alone personally involved. That the judge did not place reliance on this aspect of the report was open to her. I find no error on the part of the judge to fail to take into account evidence which was predicated on the assumption of the appellant being linked to the insurgency when he was not. I therefore dismiss this challenge to the judge's decision.

25. Ground 2 was launched on the basis that the judge had failed to give any or sufficient reasons for departing from the expert's conclusion as to his risk on being questioned. I am not persuaded, in the light of a fuller reading of the report by Dr Giustozzi including the footnotes, which indicate the sources, that the judge materially erred when failing to refer to any risk to the appellant as described by the expert, on returning to Afghanistan simply by being a failed asylum seeker. In **PM and Others (Kabul - Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089** there was a finding that simply being a failed asylum seeker would not put an appellant at risk on return. Notwithstanding that authority, the reference by Dr Giustozzi and reliance on one single interview with a police officer, in the 17th October 2016 report at paragraph 12, was insufficient evidence adduced by the appellant to demonstrate that he would be at risk on return simply by being a failed asylum seeker. There was no evidence adduced that the appellant would be returned without documentation and, as indicated, there was no evidence presented before the First-tier Tribunal that there was a single example of an arrest, merely on that basis, in the independent reports for example from Human Rights Watch. There as simply not enough evidence to demonstrate that he would be detained on return as a failed asylum seeker and a failure by the judge to specifically state that in light of the evidence was not a material error of law.

26. I turn to Ground 3, which alleged the judge had failed to take into account a material fact, the method of contact with the family, when making the assessment of whether the appellant's relocation to Kabul could be classified as unduly harsh in line with **Januzi v SSHD [2006] UKHL 5** or fall into the category of Article 15(c), risk of serious harm. It was asserted that the First-tier Tribunal Judge erred in finding that the appellant would not be without family members simply because she had found his account to be fabricated. It was acknowledged in the grounds of challenge that that was a sustainable finding. As pointed out by Mr Clarke, there does not have to be travel between the appellant's family to Kabul or vice versa. It would be open and clearly this was anticipated by the judge for the appellant to access support whilst in Kabul. The judge did not accept that the appellant would be without family support and specifically stated at paragraph 31:

> *"I do not know what information he provided to them but there are clearly difficulties for outside agencies working in Afghanistan."*

The judge continued:

> "*Nevertheless, given that I have found his claim fabricated, I am not satisfied that he is without the means of contacting family members once he returns there.*"

Not only did the judge therefore consider that the appellant could derive support merely by contacting his family, and that she does not state that she expects the family to be present in Kabul is not an error in itself, and the judge further at paragraph 32 notes that

> "*... it is apparent from the background evidence that the problem of IDPs is increasing but he does have the option of applying for assisted return with the package of benefits that brings.*"

27. This avenue of support is a factor that the judge clearly took into account when making the assessment in relation to the family and the overall welfare support that he would experience on return to Kabul, albeit through financial means. As submitted, it is not necessary for the family to be actually in Kabul to obtain some form of support. The judge did not accept as credible the story of the uncle's death and who had organised the appellant's departure. It was open to the judge to assess the family contact circumstances as she did and find as she did in relation to the appellant's welfare on return. The judge assessed all the relevant facts and accorded due weight to the evidence.

28. In relation to ground 4 I am not persuaded that the judge erred in relation to marginalisation. The judge was criticised for failing to take into account the report of Dr Giustozzi at paragraph 42 of his August 2014 report when referring to

> "*... the additional risk of marginalisation ... which would compound his difficulties in seeking accommodation and employment. This would be even more so the case should his symptoms aggravate, which was not unlikely given that his access to mental health care would be at best irregular and of low standards.*"

29. Before the First-tier Tribunal hearing the appellant adduced expert evidence from Dr F E Winton, consultant psychiatrist, who produced a report on 6th August 2014. The judge recorded at paragraph 12 that Dr Winton had concluded that the appellant had a 'mixed anxiety and depressive disorder' and in terms of treatment he would probably benefit from an antidepressant and "he should ideally stop his hashish use" and he would "benefit from supportive psychotherapy".

30. The First-tier Tribunal Judge in her decision at paragraph 12 recorded the following from Dr Winton's report:

> "'*It is my opinion that his anxiety and depressive symptoms will have a certain impact although not a highly disabling one on his ability to cope with the problems he would face in Afghanistan provided his*

symptoms remain as they are.' Dr Winton also concluded that the Appellant's mental health will deteriorate if he were returned to Afghanistan. Evidence from his support worker suggested a significant demoralisation on the part of the Appellant which could lead to quite a fatalistic approach on his return."

31. The judge then referred to a further report in paragraph 13 of her decision:

> "*Dr Winton prepared a follow-up following a meeting with the Appellant on 2 July 2015. At this time the Appellant was living with his Hungarian girlfriend. They had been in a relationship for the past year. Indeed the Appellant confirmed at the hearing that the relationship continues. He had been prescribed some medication but found it did not help and had stopped taking it. He did not drink or smoke cigarettes but used cannabis two times a week. He was trying to reduce this. His sleep was interrupted. He experienced nightmares and suicidal ideas on a fluctuating basis. He also experienced symptoms of anxiety, sometimes associated with palpitations and sweating. From time to time he would hyperventilate. Dr Winton described the Appellant as mildly depressed and having subclinical PTSD. He considered that the Appellant would benefit from doing regular exercise and attending a stress management course. It was still his firm opinion that the Appellant's mental health will deteriorate if he returned to Afghanistan.*"

32. It is clear from the judge's careful rehearsal of the evidence of Dr Winton that it was taken into account in detail. Although Ms Elliott-Kelly criticised the reference by the judge to the fact that the appellant's mental health "would not be disabling" she referred me to the later report of 25th July 2015 at page 36 of the consolidated bundle which merely confirmed that the appellant had a 'mild depressive order'. Indeed the judge referred to this in paragraph 32 of the decision and noted paragraph 4.5 of Dr Winton's report:

> "*It is my opinion that a slight worsening of his depressive symptoms would be an impediment for him if he were to return to Afghanistan.*"

33. Clearly the judge carefully addressed the evidence but on the basis of the medical diagnoses and descriptions, themselves, I am not persuaded that the judge erred in any material way by her assessment of the appellant's mental health difficulties or their impact on his ability to return. They were set out in detail in the decision and clearly taken into account in paragraph 32 when coming to an overall assessment as to whether it would be either unduly harsh for the appellant to relocate to Kabul or indeed whether he would expose himself to risk of serious harm under Article 15(c).

34. In sum, it is important to set out that which the judge states at paragraph 32 and I do this below:

> "*32. It is apparent from the background evidence that the problem of IDPs is increasing but he does not have the option of applying for assisted return with the package of benefits that brings. He suffers from a mild depressive order and that may cause additional difficulties but he does not currently receive any medication or therapy. Although Dr Winton says that his health may deteriorate he does not consider that it would be highly disabling. He will be returning to the country of which he is a national and of which he speaks the language. I have referred above to his ability to contact family. In any event he is 19 years old and an adult. I fully accept that he will face difficulties but those are not in my view at such a level that it makes the relocation option unreasonable. Although conditions in Afghanistan may have deteriorated I do not have the evidence before me that persuades me to depart from current country guidance. Given my findings regarding the lack of adverse interest in him I do not consider questioning by the authorities is likely to put him at risk. Having reviewed the evidence in the round I find that the Appellant is not a refugee.*"

There is no doubt that the judge took into account the fact that the appellant had access to the assisted return package, and that he had a mild depressive disorder which may present him with some additional difficulties but the judge noted specifically that the appellant was not currently in receipt of any medication or therapy. It was identified in the reports that the appellant used cannabis on a regular basis, which may contribute to his condition. As the judge stated, he would be returning to the country of which he was a national and where he spoke the language.

35. The judge at this point also took into account the fact that he had the ability to contact his family having failed to believe his inability to contact them.

36. Moreover, the judge took into account that the appellant was 19 years old and an adult and fully accepted that he would face difficulties but not at a level which made his relocation option 'unreasonable'. That test does not even employ the "unduly harsh test" but apparently a test to the advantage of the appellant which was less onerous.

37. Turning to the last and final ground in which it was asserted that the judge had not shown good reasons for not departing from the country guidance I am not persuaded that this challenge enunciates the correct approach. As **DSG & Others**, paragraph 26 confirms:

> "*26. This has clear implications for other cases involving claimed risk on return to Afghanistan for Hindus or Sikhs, in the period between now and such time as further country guidance on the*

> *subject can be issued. A country guidance case retains its status until either overturned by a higher court or replaced by subsequent country guidance. However, as this case shows, country guidance cases are not set in stone (see also HS (Burma) [2013] EWCA Civ 67), and a judge may depart from existing country guidance in the circumstances described in the Practice Direction and the Chamber Guidance Note. That does not amount to carte blanche for judges to depart from country guidance as it is necessary, in the wording of the Practice Direction to show why it does not apply to the case in question. In SG (Iraq) [2012] EWCA Civ 940, the Court of Appeal made it clear, at paragraph 47, that decision makers and tribunal judges are required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced, justifying their not doing so. To do otherwise will amount to an error of law.*"

The Court of Appeal in **SG,** as indeed do the Practice Directions**,** make it clear that decision makers and Tribunal Judges are required to take country guidance determinations into account and to follow them unless very strong reasons supported by cogent evidence are adduced justifying their not doing so. It is quite clear that the judge when referring to country guidance was referring to **AK** because she referred to "current country guidance" and that does indeed refer to **AK**. It was open for the judge to rely on the current country guidance and she identified that she had taken indeed into account the various documentation indicating the change in the security situation.

38. I am mindful of Ms Elliott-Kelly's submissions that **Naziri** and **HN** refer to judicial review proceedings and note within **HN** at paragraph 79 that it was specifically stated that it was not the function of the Tribunal or the court to enter into a detailed examination of the security situation in Afghanistan because the court was not adequately equipped to make factual judgments about the situation and it was not its role in those proceedings. That said, in **Naziri** the Tribunal was presented with extensive updating material as outlined in Schedule 1 and Schedule 2 of Appendix 2 up to April 2015. At paragraph 75 of **Naziri** the Tribunal stated that it was mindful of the oft-repeated admonition that judicial review is an unsuitable vehicle for resolving disputed facts but noted that this was a general rule but not an inflexible principle, noting that "disputed questions of fact do not normally arise in judicial review cases but they can of course arise and they may be crucial", quoting from **R v Secretary of State for the Environment, ex parte London Borough of Islington [1997] JR 121**.

39. As such the Tribunal rehearsed all the evidence and did indeed review the country background evidence finding at paragraph 95 that there was no warrant for departing from the current country guidance promulgated in **AK** and "in particular, we find that the evidence falls short of satisfying the stringent Article 15(c) test" (paragraph 95).

40. As such the background evidence in relation to Afghanistan has undergone the gaze and scrutiny of the court and **AK** was not disapproved. Ms Elliott-Kelly urged me to consider the fact that much of the evidence submitted was in relation to 2016 but, for example, the Human Rights Watch World Report 2016 Afghanistan 27th January 2016 in fact refers to events and contents of 2015.

41. I was invited by both parties to review the material presented to the Tribunal in order to show that the evidence did underline a worsening security situation or, alternatively, did not underline a considerable expansion in the death rate and injury of the civilian population, albeit that any death rate and injury is to be lamented.

42. The critical point is to consider the background and general level of violence together with the particular circumstances of the appellant. **Naziri** at [63], reaffirmed the guidance (deriving from Elgafaji) on how Article 15(c) should be applied and clearly opined there was not 'such a general breakdown of law and order as to permit anarchy and criminality occasioning the serious harm referred to in the Directive' such that violence was indiscriminate. Taking into account the appellant's particular and individual circumstances, which the judge did, the judge clearly, on a reading overall, did not consider the appellant's relocation as being either unduly harsh or exposing the appellant to risk of serious harm under Article 15(c). It was the task of the judge to give reasons if she departed from the county guidance which she did not. I am not persuaded that in the light of the background evidence, albeit voluminous, that the judge needed to expand on the reasons given, albeit that they are short, for her refusal to depart from the country guidance. She did consider the particular circumstances of the appellant as I have outlined above.

43. As set out in **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC)

'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.

On a careful reading of the decision I find that judge gave brief but adequate reasoning for her findings and I conclude that there is no material error of law in the decision and the decision shall stand.

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 his 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 Helen Rimington Date Signed 9th May 2017

Upper Tribunal Judge Rimington